

April 15, 2016

VIA ELECTRONIC DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TWA325
Washington, DC 20554

**Re: Notice of *Ex Parte* Presentation
CG Docket No. 02-278**

Dear Ms. Dortch:

On April 13, 2016, Mark W. Brennan and Wesley B. Platt of Hogan Lovells US LLP, counsel to RTI International (“RTI”), met with Diane Cornell, Special Advisor to Federal Communications Commission (“FCC” or “Commission”) Chairman Wheeler to discuss RTI’s pending Petition for Expedited Declaratory Ruling (“Petition”).¹ In the Petition, RTI asks the Commission to confirm that the Telephone Consumer Protection Act (“TCPA”)² does not restrict research survey calls made by or on behalf of the federal government.³

During the meeting, we discussed the Commission’s legal authority to grant RTI’s Petition. For example, we discussed how the plain language of the TCPA and the Commission’s TCPA rules demonstrates that the TCPA does not apply to research survey calls by or on behalf of the federal government.⁴ Both restrict only “persons” from certain calling activities,⁵ and the federal government is not a “person” as defined in the Communications Act (in which the TCPA is codified).⁶ Moreover,

¹ See RTI, Petition for Expedited Declaratory Ruling, CG Docket No. 02-278 (filed Sept. 29, 2014) (“RTI Petition”).

² 47 U.S.C. § 227.

³ See RTI Petition at 1.

⁴ See, e.g., Letter from Mark Brennan, Counsel, RTI, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278 (filed June 11, 2015); RTI Petition at 5-8.

⁵ See 47 U.S.C. § 227(b)(1); 47 C.F.R. § 64.1200(a).

⁶ See 47 U.S.C. § 153(39).

the Supreme Court has repeatedly held that “the term ‘person’ does not include the sovereign” and that “statutes employing the [term] are ordinarily construed to exclude it.”⁷

We also discussed how the Supreme Court’s decision in *Campbell-Ewald Co. v. Gomez* supports the position that a federal government contractor that “performs as directed” is, like the federal government and its agencies, “not subject to the TCPA’s prohibitions” with respect to its contracted activities.⁸ As the Supreme Court explained, federal government contractors who act on behalf of the United States “obtain certain immunity in connection with work which they do pursuant to their contractual undertakings.”⁹ Consistent with the *Gomez* decision, such contractors should be protected against liability when they do not violate the federal government’s “explicit instructions.”¹⁰

In addition, we explained that RTI’s calls are placed “on behalf of” the federal entity with which RTI contracts to conduct research surveys. Some of these surveys, such as the U.S. Department of Health and Human Service’s National Survey on Drug Use and health, even require random number sampling and must include calls to wireless subscribers to yield usable and reliable data.¹¹

Pursuant to Section 1.1206(b) of the Commission’s rules, I am filing this notice electronically in the above-referenced docket. Please contact me directly with any questions.

Respectfully submitted,

/s/ Mark W. Brennan
Mark W. Brennan
Partner
Counsel to RTI International
mark.brennan@hoganlovells.com
D 1+ 202 637 6409

cc: Diane Cornell

⁷ *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 64 (1989); *Wilson v. Omaha Tribe*, 442 U.S. 653, 667 (1979) (quoting *U.S. v. Cooper Corp.*, 312 U.S. 600, 604 (1941)); see also, e.g., *U.S. Postal Serv. v. Flamingo Indus. (USA) Ltd.*, 540 U.S. 736, 745 (2004); *U.S. v. Mine Workers*, 330 U.S. 258, 275 (1947).

⁸ See *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663, 666, 672 (2016).

⁹ *Id.* at 672.

¹⁰ *Id.* at 666, 672.

¹¹ See, e.g., Letter from Mark W. Brennan, Counsel, RTI, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278, at 2 (filed Mar. 11, 2016).