

April 20, 2016

**VIA ECFS**

Marlene H. Dortch  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation  
*Petition of Broadnet Teleservices LLC for Declaratory Ruling*  
CG Docket No. 02-278

Dear Ms. Dortch:

On April 18, 2016, Patrick Halley and the undersigned, both of Wilkinson Barker Knauer, LLP and outside counsel to Broadnet Teleservices LLC (“Broadnet”), met with Mark Stone, Micah Caldwell, Kurt Schroeder, Karen Schroeder, John B. Adams, and Kristie Thornton of the Consumer and Governmental Affairs Bureau, and Richard Mallen of the Office of General Counsel. During the meeting, consistent with Broadnet’s Petition for Declaratory Ruling (“Petition”)<sup>1</sup> and other previous filings,<sup>2</sup> we urged the Commission to confirm that the Telephone Consumer Protection Act (“TCPA”) and the Commission’s TCPA rules do not apply to federal, state, and local government entities and those acting on their behalf. Absent such action, wireless-only citizens – including a growing number of people of color, millennials, and individuals living in poverty – will continue to be deprived of important opportunities to engage with their government.

Our conversation focused on the numerous benefits to constituents of state and local governments that are able to participate in telephone town halls and the real harms to wireless-only citizens that will continue to be left out absent Commission action. By way of example, in a recent telephone town hall, over 19,000 wireless-only households missed out on the opportunity

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<sup>1</sup> Petition for Broadnet Teleservices LLC for Declaratory Ruling, CG Docket No. 02-278 (filed Sept. 16, 2015) (“Petition”).

<sup>2</sup> See, e.g., Notice of Ex Parte Presentation of Broadnet Teleservices LLC, CG Docket No. 02-278 (filed Feb. 29, 2016).

Ms. Marlene H. Dortch  
February 29, 2016  
Page 2

to receive vital information on the Flint water crisis. We noted that state and local governments have strong incentives not to contact their citizens with unwanted autodialed calls, as state and local governments are responsive to and elected by the constituents they serve. Moreover, we observed that the TCPA and the Commission's implementing rules today allow callers (including state and local government officials) to make informational robocalls to residential lines without consent, but that we are unaware of state or local governments abusing this ability.

We also reiterated that the reasoning underlying *Campbell-Ewald Co. v. Gomez* applies equally to state and local governments.<sup>3</sup> We noted that even within the Communications Act, when Congress intended a provision to clearly include state and local governments, it did so explicitly.<sup>4</sup> Nevertheless, we observed that in finding that the term "person" excludes state and local governments for purposes of the TCPA, the Commission need not apply such finding to other provisions of the Communications Act or to the agency's rules. Specifically, we noted that Section 153 itself contemplates context-specific interpretations of the terms provided,<sup>5</sup> and that doing so is consistent with past Commission practice<sup>6</sup> and judicial decisions.<sup>7</sup> Finally, we stated that nothing in the legislative history suggests that Congress clearly intended to apply the TCPA to governmental entities.

Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Joshua M. Bercu/  
Joshua M. Bercu

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<sup>3</sup> See *id.* at 1-2. As Broadnet previously described, the Supreme Court has applied this reasoning to state governments. Other courts have similarly found that when Congress defines "person" in the same fashion as in the Communications Act, such language can be read to exclude municipal governments and other local government entities. See *id.* at 2.

<sup>4</sup> See 47 U.S.C. § 208(a) ("[a]ny person, any body politic or municipal organization, or state commission"); 47 U.S.C. § 202(a) ("any particular person, class of persons, or locality").

<sup>5</sup> 47 U.S.C. § 153 (explaining that definitions are "[f]or purposes of [the Communications] Act, *unless the context otherwise requires*") (emphasis added).

<sup>6</sup> See *Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 to Amend Section 338 of the Communications Act*, 20 FCC Rcd 14242 ¶ 9 (2005) (interpreting "state" in a different manner than the Commission had in other contexts "bear[ing] in mind that ... the Communications Act provides definitions of terms that apply for the purposes of [the] Act, 'unless the context otherwise requires'").

<sup>7</sup> See *Haw'n. Tel. Co. v. Pub. Util. Comm'n of Haw.*, 827 F.2d 1264, 1269 (9th Cir. 1987) (observing that Section 153 "expressly gives ... leeway to interpret the terms of the Act '[as] the context ... requires').