I. Introduction.

Frederick Luster (“Mr. Luster”) is a subscriber of cellular telephone services who has had the same telephone number since the late 1990’s, but has received several thousand debt collection calls from debt collectors, servicers and creditors seeking to collect debts owed by persons altogether unknown by him. The vast majority of these calls have been automatically dialed robocalls, many of which blast artificial and prerecorded voices. Many of the annoying and nuisance inducing robocalls are made by student loan and mortgage servicers regarding debts guaranteed by or owed to Federal, State or local government entities, and some servicers and guarantors calling have some affiliation with state governments. In many cases, Mr. Luster has repeatedly asked callers to stop calling, but the calls have continued to persist.

This Commission released its Omnibus Declaratory Ruling on July 10, 2015 emphasizing the need to “empower consumers to decide which robocalls and text messages they receive, with

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1 Despite the repeated assertion to the Commission by creditors and collectors that so called “wrong number” calls are the result of a reassigned number where the caller has the express consent of a prior subscriber to that number, the undersigned’s experience is that most “wrong number” calls are the result of a bad skip trace where the caller knows it does not have consent but calls anyway. This is the experience of Mr. Luster whose number has been called by dozens of different entities regarding scores of different persons despite no evidence that any of the alleged debtors ever subscribed to his telephone number or provided the number to any creditors in connection with any debts.

heightened protection to wireless consumers” and to “preserve consumer's rights to stop unwanted robocalls . . . and thus respond to the many who have let [the Commission], other federal agencies, and states know about their frustration with robocalls.” Mr. Luster asks that the Commission continue to protect consumer’s rights to be left alone and not issue any new sweeping exemptions to the TCPA.

II. Broadnet’s Petition

Broadnet, like many others before the Commission, is now requesting a blanket exemption for its line of business to allow it unfettered access to consumers’ time and cellular telephones without consent. And like many others, Broadnet asserts that its calls are somehow different and that people really want to hear its prerecorded voice. The Commission should not issue a sweeping order exempting all government related entities or contractors from the TCPA because it would create loopholes for unwanted debt collection and telephone solicitation calls to consumers. Rather, the Commission should permit common law rules of sovereign immunity and Federal statutory liability control under the TCPA like any other Federal consumer protection statute.

III. Sovereign Immunity Protects Governments from Suit without Consent.

When communicating with their own citizens, State and Federal Government entities, and agencies which are arms of the state, are generally protected from suit without their consent due to common law and Eleventh Amendment sovereign immunity. In addition, the Supreme Court is set to decide this term the extent to which Federal contractors are entitled to immunity

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from TCPA liability. These immunity doctrines already provide ample protection from suit for official government actions.

However, some governments have created essentially commercial enterprises which operate well outside the political borders of the government, and Courts have determined that such entities are not immune to suit if they are not an “arm of the state” or if they subject themselves to the jurisdiction of a sister state. In addition, many collection agencies and banks collect debts, such as student loans and mortgages, which are originated by, owed to, or backed by the Federal government or some state affiliated entity. The Commission should be careful in creating a TCPA specific carve-out that could create a broad loophole for annoying and unwanted debt collection calls when generally applicable legal principles already provide immunity for most state actors for communications directed at their own citizens.

IV. Contractors already have Ample Means of Communications.

Government contractors delivering messages on behalf of government entities, like all other callers, already have ample alternative means of communications. In addition, Government contractors are free to robocall anyone when the call is for emergency purposes. When the call is not an emergency, callers can either use a live caller or call those who have affirmatively requested or consented to such calls. In enacting the TCPA, Congress found that

“subscribers consider automated or prerecorded telephone calls, \textit{regardless of the content or the initiator of the message}, to be a nuisance and an invasion of privacy.”\textsuperscript{11} Accordingly, the Commission should follow the lead it set earlier this year in its Omnibus Declaratory Ruling and continue to allow consumers to decide for themselves which calls they wish to receive and not provide any new blanket exemptions.\textsuperscript{12}

V. Conclusion.

Generally applicable legal principles, including sovereign immunity, already provide ample protection for government entities from suit. Whether contractors are liable for TCPA violations should be no different than whether they are liable for violations of any other Federal statutory provision. The Supreme Court may provide some answer in \textit{Campbell-Ewald Co. v. Gomez}; however, the Commission should permit the Courts to answer these questions with regard to the TCPA under the generally applicable principles of Federal law. Applying common law principles would be consistent with the Commission’s decision in \textit{In re Dish Network, LLC} applying Federal common law principles to vicarious liability under the TCPA.\textsuperscript{13}

Government contractors already have ample alternative means of communications and are free to robocall in cases of an emergency. Mr. Luster respectfully requests that the Commission deny Broadnet’s petition by declining to issue any blanket rule establishing either liability or immunity from TCPA suits by government entities or their contractors. Instead, the Commission should permit common law rules for liabilities and immunities to apply with equal force under the TCPA.

\textsuperscript{13} 28 FCC Rcd. 6574 (FCC 2013).
Respectfully submitted,

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