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June 27, 2017

VIA CM/ECF

Mark Langer  
Clerk of Court  
United States Court of Appeals for the  
District of Columbia Circuit  
333 Constitution Ave., N.W.  
Washington, D.C. 20001

Re: Supplemental Authority in *ACA International et al. v. FCC and United States*,  
No. 15-1211 (and consolidated cases)

Dear Mr. Langer:

Per FRAP Rule 28(j) and Circuit Rule 28(f), Petitioners submit the Second Circuit's recent decision in *Reyes v. Lincoln Automotive Financial Services*, No. 16-2104 (June 22, 2017), holding that "the TCPA does not permit a consumer to revoke its consent to be called when that consent forms part of a bargained-for exchange." Slip op. 4.

*Reyes* supports Petitioners' position that the TCPA does not bar callers and consumers from mutually agreeing to particular forms of revocation. Joint Br. 61-64. The Second Circuit found "no lack of clarity in the TCPA's use of the term 'consent.'" Slip op. 16. Where Congress uses a term that "has accumulated a settled meaning under ... the common law, a court must infer, unless the statute otherwise dictates, that Congress meant to incorporate" that meaning. *Id.* at 12 (citation, alterations omitted). "The text of the TCPA evidences no intent to deviate from common law rules in defining 'consent,'" and "the common law is clear that consent to another's actions can become irrevocable when it is provided in a legally binding agreement." *Id.* at 12, 13 (citation omitted).

Petitioners showed that, at common law, parties can also contractually establish the necessary methods of revoking consent. Joint Br. 61-62. Indeed, if the TCPA unambiguously provides that consent can be *irrevocable* in the context of a bargained-for exchange, then it is at minimum unreasonable to interpret the statute as prohibiting agreements to define mere *methods* of revocation. Thus, in holding that the TCPA clearly incorporates common-law rules of consent, *Reyes* confirms that the TCPA gives parties the right to agree to forms of effective revocation. *Id.* at 61. To conclude otherwise would improperly allow one party to "alter a binding contract by revoking a term without the consent of a counterparty." Slip op. 13-14.

Mark Langer  
June 27, 2017  
Page 4

Although the Commission on appeal claims that the order on review does not interpret the TCPA to override private agreements concerning revocation, Joint Reply 29 n.6, the Court should make clear—consistent with *Reyes*—that such an approach would be incompatible with the TCPA’s text and common-law backdrop.

Respectfully submitted,

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Mark Langer  
June 27, 2017  
Page 4

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 27, 2017, I caused the foregoing letter to be served on all parties or their counsel of record via the CM/ECF service of the United States Court of Appeals for the District of Columbia Circuit. All parties required to be served have been served.

/s/ Helgi C. Walker  
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