Filed: 09/15/2016

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

RITE AID HDQTRS.	
CORPORATION,)
Petitioner, v.) Nos. 15-1211, 15-1218, 15-1244, 15- 1290, 15-1306, 15-1304, 15-1311,
FEDERAL COMMUNICATIONS) 15-1313 & 15-1314
COMMISSION and UNITED)
STATES OF AMERICA,)
)
Respondents.	

RULE 28(j) SUPPLEMENTAL AUTHORITY LETTER

Pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure,

Petitioner Rite Aid Hdqtrs. Corporation ("Petitioner") submits the following notice

of a pertinent and significant authority of which it became aware after the filing of

its Reply Brief.

In *Roberts v. Medco Health Solutions, Inc.*, Case No. 4:15-cv-1368-CDP, 2016 WL 3997071 (E.D. Mo. July 26, 2016), the court granted summary judgment in favor of defendants Medco Health Solutions and Accredo Group, Inc., both pharmacy benefit managers, on plaintiff's claims they violated the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, by using a prerecorded voice to make calls to her mobile phone in an attempt to deliver healthcare information related to prescription refills. The court held that automated calls

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placed to a mobile phone number previously belonging to three of the defendants' patients did not trigger liability under the TCPA because the calls fit within the statute's "emergency purposes" exemption for "calls made necessary in any situation affecting the health and safety of consumers." *Roberts*, 2016 WL 3997071, at *3.

Roberts' holding supports Petitioner's argument that the Federal

Communications Commission erred by subjecting HIPAA-protected

communications to different regulatory treatment under the TCPA. See Pet. Br. at

10; Pet. Reply Br. at 6, n.3. As Petitioner argued, HIPAA-protected

communications are not properly subject to regulation under the TCPA because

they meet the statutory "emergency purpose" exemption.

Dated: September 15, 2016

Respectfully Submitted,

/s/ Paul Werner

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Paul Werner Brian Weimer Sheppard Mullin Richter & Hampton LLP 2099 Pennsylvania Ave., N.W. Suite 100 Washington, D.C. 20006-6801 Tel. (202) 747-1931 Fax (202) 747-3817 pwerner@sheppardmullin.com

Counsel for Petitioner Rite Aid Hdqtrs. Corp.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was electronically filed with the Clerk of Court in the U.S. Court of Appeals for the District of Columbia Circuit this 15th day of September, 2016. All participants are registered users of the CM/ECF system and will be served electronically by the CM/ECF system.

__/s/ Paul Werner_

Paul Werner

Counsel for Rite Aid Hdqtrs. Corp.

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