

ORAL ARGUMENT NOT YET SCHEDULED

---

Nos. 15-1211, -1218, -1244, -1290, -1304, -1306, -1311, -1313, & -1314  
(Consolidated)

---

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

---

ACA INTERNATIONAL, ET AL.,

*Petitioners,*

v.

FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES

*Respondents.*

---

On Petition for Review of an  
Order of the Federal Communications Commission

---

**NOTICE BY ELECTRONIC PRIVACY INFORMATION CENTER (EPIC)  
OF INTENT TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF  
RESPONDENTS**

---

MARC ROTENBERG  
ALAN BUTLER  
Electronic Privacy Information Center  
1718 Connecticut Ave. NW  
Suite 200  
Washington, DC 20009  
(202) 483-1140  
rotenberg@epic.org  
*Counsel for Amicus Curiae*

December 16, 2015

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and D.C. Cir. Rules 27(a)(4) and 28(a)(1)(A), *amicus curiae* EPIC submits the following corporate disclosure statement:

EPIC is a public interest research center in Washington, D.C. EPIC was established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and other Constitutional values. EPIC is a 501(c)(3) non-profit corporation. EPIC has no parent, subsidiary, or affiliate. EPIC has never issued shares or debt securities to the public.

/s/ Marc Rotenberg  
MARC ROTENBERG

## **NOTICE OF INTENT TO FILE AN *AMICUS CURIAE* BRIEF**

Pursuant to D.C. Cir. Rule 29(b), and the guidance set forth in Section IX(A)(4) of this Court’s Handbook of Practice and Internal Procedure, EPIC hereby notifies this Court of the intent to file an *amicus curiae* brief in the above captioned matter in support of the Respondents Federal Communications Commission (“FCC”) and United States.

Petitioners and Respondents have indicated that they consent to the filing of EPIC’s *amicus curiae* brief.

EPIC is a public interest research center in Washington, D.C. EPIC was established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and other constitutional values. EPIC maintains one of the most popular web sites in the world concerning privacy—[epic.org](http://epic.org)—and is recognized as a preeminent expert on consumer privacy issues.

EPIC routinely files amicus briefs in federal cases concerning important consumer privacy issues. *See, e.g., Spokeo v. Robins*, No. 13-1339 (U.S. filed Sept. 8, 2015) (arguing that the violation of a consumer’s privacy rights under federal law constitutes an injury-in-fact sufficient to confer Article III standing); *In re Nickelodeon Consumer Privacy Litig.*, No. 15-1441 (3d Cir. filed May 4, 2015) (explaining why the definition of personally identifiable information under the Video Privacy Protection Act includes Internet addresses and other unique

persistent identifiers); *FTC v. Wyndham Hotels & Resorts, LLC*, 799 F.3d 236 (3d Cir. 2015) (supporting the agency’s argument that data security practices are subject to the unfairness and deception provisions of Section 5 of the FTC Act).

EPIC contributed to the development of the Telephone Consumer Protection Act (“TCPA”) and has advised Congress about emerging challenges to the consumer protection law. *See, e.g., Telephone Advertising and Consumer Rights Act, H.R. 1304, Before the Subcomm. on Telecomms. and Fin. of the H. Comm. on Energy and Commerce*, 102d Cong., 1st Sess. 43 (April 24, 1991) (Testimony of Marc Rotenberg);<sup>1</sup> *S. 1963, The Wireless 411 Privacy Act: Hearing Before the S. Comm on Commerce, Sci., & Transp.*, 108th Cong., 2d Sess. (Sept. 21, 2004) (Testimony of Marc Rotenberg, Executive Director, EPIC) (discussing privacy issues raised by a proposed wireless directory for customers of wireless telephone services).<sup>2</sup>

EPIC has also submitted numerous comments to the FCC and the Federal Trade Commission concerning the implementation of the TCPA. *See, e.g., EPIC et al., Comments in the Matter of Telemarketing Rulemaking*, FTC File No. R411001 (2002);<sup>3</sup> *EPIC et al., Comments in the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No.

---

<sup>1</sup> Available at <http://www.c-span.org/video/?18726-1/telephone-solicitation>.

<sup>2</sup> Available at [https://epic.org/privacy/wireless/dirtest\\_904.html](https://epic.org/privacy/wireless/dirtest_904.html).

<sup>3</sup> <https://epic.org/privacy/telemarketing/tsrcomments.html>.

02-278 (2002);<sup>4</sup> EPIC et al., Comments on Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Docket Nos. CG 02-278, DA 05-1346, DA 05-1347, DA 04-3185, DA 04-3187, DA 04-3835, DA 04-3836, DA 04-3837, DA 05-342 (2005);<sup>5</sup> EPIC, Comments on Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Docket Nos. CG 02-278, DA 05-2975 (2006);<sup>6</sup> EPIC, Comments In the Matter of ACA International Petition for Expedited Clarification, Docket No. 02-278 (2006);<sup>7</sup> EPIC, Comments Concerning Implementation of the Junk Fax Prevention Act, Docket No. CG 05-338 (2006).<sup>8</sup>

EPIC intends to file an amicus brief of no more than 7,000 words, addressing points not made by Respondents, that will aid the Court's consideration of this case. EPIC's brief is necessary to address the privacy interests at stake in the TCPA and the Order under review, and to inform the Court about the impact of new technologies on consumer privacy rights. To consolidate arguments for this Court's consideration under Fed. R. App. P. 29(b)(1) and D.C. Circuit Rule 29(d), additional privacy groups may also join the proposed brief.

---

<sup>4</sup> <https://epic.org/privacy/telemarketing/tcpacomments.html>.

<sup>5</sup> <https://epic.org/privacy/telemarketing/tcpacomm7.29.05.html>.

<sup>6</sup> <https://epic.org/privacy/telemarketing/tcpacom11306.html>.

<sup>7</sup> [https://epic.org/privacy/telemarketing/fcc\\_aca\\_05-11-06.html](https://epic.org/privacy/telemarketing/fcc_aca_05-11-06.html).

<sup>8</sup> <https://epic.org/privacy/telemarketing/jfpacom11806.html>.

Respectfully submitted,

*/s/ Marc Rotenberg*

MARC ROTENBERG

ALAN BUTLER

Electronic Privacy Information Center

1718 Connecticut Ave. NW

Suite 200

Washington, DC 20009

(202) 483-1140

rotenberg@epic.org

Dated: December 16, 2015

## **CERTIFICATE OF SERVICE**

The undersigned counsel certifies that on this 16th day of December 2015, he caused the foregoing “Notice by Electronic Privacy Information Center of Intent to File Brief as Amicus Curiae in Support of Respondents” to be electronically filed using the Court’s CM/ECF system, which served a copy of the document on all counsel of record on the case.

*/s/ Marc Rotenberg*  
MARC ROTENBERG