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FOR THE DISTRICT OF COLUMBIA CIRCUIT

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

FILING DEPOSITORY

RITE AID HDQTRS. CORP., )  
)  
Petitioner, )  
v. )  
)  
FEDERAL COMMUNICATIONS )  
COMMISSION, )  
)  
Respondent. )

Case No. 15-1313

UNITED STATES COURT OF APPEALS  
FOR DISTRICT OF COLUMBIA CIRCUIT  
FILED  
SEP - 4 2015  
CLERK

PETITION FOR REVIEW

Pursuant to 5 U.S.C. § 706, 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342(1) and 2344, and Federal Rule of Appellate Procedure 15(a), Petitioner Rite Aid Hdqtrs. Corp. ("Petitioner") hereby petitions this Court for review of the Federal Communication Commission's ("Commission's") order styled, *In re Matter of Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling & Order, CG Docket No. 02-278, WC Docket No. 07-135, FCC 15-72 (released July 10, 2015) ("*Declaratory Ruling & Order*"). A copy of the *Declaratory Ruling & Order* is attached hereto as Attachment A. Venue is proper in this Court under 28 U.S.C § 2343.

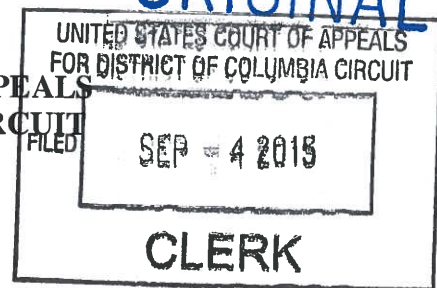
In the *Declaratory Ruling & Order*, the Commission subjected pre-recorded telephone or autodialed calls concerning the same critical subject – "health care" messages protected under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. No. 104-191, 110 Stat. 139 (1996) – to different and confusing standards for purposes of compliance with the Telephone Consumer Protection Act of 1991 ("TCPA"), 47 U.S.C. § 227. Under the *Declaratory Ruling & Order*, calls delivering HIPAA-protected health care messages, when placed to residential lines, are exempt from any consent requirement, while the very same calls

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**PETITION FOR REVIEW**

Pursuant to 5 U.S.C. § 706, 47 U.S.C. § 402(a), 28 U.S.C. §§ 2342(1) and 2344, and Federal Rule of Appellate Procedure 15(a), Petitioner Rite Aid Hdqtrs. Corp. (“Petitioner”) hereby petitions this Court for review of the Federal Communication Commission’s (“Commission’s”) order styled, *In re Matter of Rules & Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling & Order, CG Docket No. 02-278, WC Docket No. 07-135, FCC 15-72 (released July 10, 2015) (“*Declaratory Ruling & Order*”). A copy of the *Declaratory Ruling & Order* is attached hereto as Attachment A. Venue is proper in this Court under 28 U.S.C § 2343.

In the *Declaratory Ruling & Order*, the Commission subjected pre-recorded telephone or autodialed calls concerning the same critical subject – “health care” messages protected under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Pub. L. No. 104-191, 110 Stat. 139 (1996) – to different and confusing standards for purposes of compliance with the Telephone Consumer Protection Act of 1991 (“TCPA”), 47 U.S.C. § 227. Under the *Declaratory Ruling & Order*, calls delivering HIPAA-protected health care messages, when placed to residential lines, are exempt from any consent requirement, while the very same calls

when placed to wireless telephone numbers are subject to a prior express consent requirement. *See Declaratory Ruling & Order* ¶ 148. Furthermore, the Commission carves out for further special treatment wireless HIPAA-protected health care messages “for which there is exigency and that have a healthcare treatment purpose.” *See id.* ¶ 146. This carve-out excludes calls otherwise permitted under HIPAA. The FCC’s disparate treatment of residential and wireless telephone calls delivering HIPAA-protected health care messages and carve out for “exigent” messages are irrational and unsupported and sure to spawn further confusion and wasteful litigation against legitimate providers and disrupt the provision of important health care services.

For these and other reasons, the *Declaratory Ruling & Order* is arbitrary, capricious, an abuse of discretion, in excess of the FCC’s statutory authority, and contrary to the federal Constitution and other laws. Accordingly, Petitioner respectfully requests the Court to:

1. Hold unlawful, set aside, and vacate all unlawful aspects of the *Declaratory Ruling & Order*;
2. Remand all unlawful aspects of the *Declaratory Ruling & Order* for further action by the Commission consistent with the Court’s opinion; and
3. Provide all further relief the Court deems appropriate.

Dated: September 4, 2015

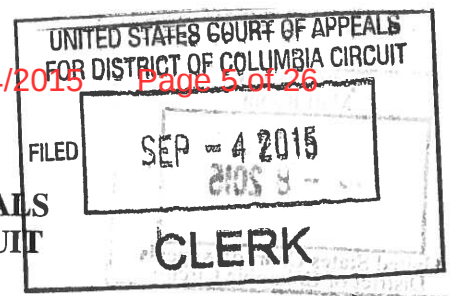
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Case No. 15-1313

**RULE 26.1 CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and this Court's Circuit Rule 26.1, Petitioner Rite Aid Hdqtrs. Corp. states that Rite Aid Hdqtrs. Corp. is a nationwide drugstore chain. Rite Aid Hdqtrs. Corp. is a wholly-owned subsidiary of Rite Aid Corporation, which is publicly traded on the New York Stock Exchange.

Dated: September 4, 2015

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**CERTIFICATE OF SERVICE**

Within one business day of this petition for review being filed:

- a.) I will cause a copy of this petition to be served by hand on these parties:

The Honorable Loretta E. Lynch  
The Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
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Office of the General Counsel  
Federal Communications Commission  
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- b.) I will cause a copy of this petition to be served by first-class mail, postage prepaid, on these parties admitted to participate in the agency proceedings:

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