February 13, 2017

Marlene H. Dortch
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CG Docket No. 02-278; Report No. 3066

Dear Ms. Dortch:

The American Financial Services Association ("AFSA")[1] appreciates the opportunity to comment on the Petition for Reconsideration filed by Navient Corp., Nelnet Servicing LLC, Great Lakes Higher Education Corporation, Higher Education Assistance Agency, and Student Loan Servicing Alliance (the "Petition"). In this letter, we express support for the Petition and ask that the Federal Communications Commission (the "Commission") grant the Petition. In addition, we take this opportunity to respond to the opposition to the Petition expressed by the National Consumer Law Center ("NCLC") and Consumers Union ("CU").

I. The Commission should grant the Petition.

As the Petition notes, this past August, the Commission adopted rules implementing the amendments to the Bipartisan Budget Act of 2015 ("Budget Act"). The amendments to the Budget Act provide an exemption from the Telephone Consumer Protection Act ("TCPA") for calls to collect a debt owed to or guaranteed by the federal government in order to facilitate the repayment of student loans and other federal debts.

The Commission should honor the Congressional intent of the exemption by reconsidering and revising the rule. "In an age where more and more Americans rely on cell phones, often exclusively," the White House said in a statement upon the passage of the Budget Amendment, "it is important to be able to alert those who owe money to the government if they are in danger of default, which can harm their ability to secure credit long term. In the case of Federal student loan debt, if loan services are able to contact a borrower, they have a much better chance at helping that borrower resolve a delinquency or default."[2]

AFSA agrees. As our members know, early intervention helps consumers. Although consumers may not relish receiving debt collection calls, those calls can help the consumer work out a manageable payment plan. By talking with a creditor or servicer, the consumer may avoid default and the negative consequences to the consumer's credit rating that follow. Although we agree with many of the issues raised in the Petition, we are focusing on two specific items: the three-call limit and narrow definition of calls made solely to collect a debt.

The Petition emphasizes that the three-call attempt-per-thirty-day limit lacks any rational basis and will stymie borrower contact. As anyone who has tried to reach a delinquent borrower knows, three calls per month are rarely

[1] Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.
[2] Trujillo, Mario. *Dems to Push Bill Repealing Robocall Provision of Budget Deal.* The Hill. Oct. 30, 2015. http://thehill.com/policy/technology/258670-dems-to-push-bill-to-repeal-robocall-provision-of-budget-deal.

sufficient, especially if those calls are not answered. It may take several calls to determine what problems the consumer may be facing, re-establish a relationship, and determine what solution might be best. In addition, a consumer may withdraw consent to receive the calls at any time.

We also urge the Commission to include debt servicing calls in its definition of calls made "solely to collect a debt." It is of course paramount for the Commission to ensure that the rules implementing the Budget Act meet Congress' intent. As the Petition emphasizes, "Congress specifically amended the TCPA for the first time in years to allow federal debt calls without prior express consent. It did so to help borrowers prevent and manage delinquency and avoid the effects of default."[3] But by excluding debt servicing calls, the definition in question is almost certain to have the unintended consequence of actually causing greater rates of delinquency and default.[4] Debt servicing calls present a moment when the interests of the collector and the consumer are aligned: their purpose is precisely to help consumers avoid trouble before it starts, keep their good credit ratings, or improve bad ones. The Commission should reconsider the rules implementing the Budget Act to meet Congress' intent.

II. Arguments by NCLC and CU are misleading.

In a misleading attempt to draw sympathy for their arguments, NCLC and CU are conflating the "robocalls" from spammers ignoring the do-not-call-list restrictions with autodialed calls from businesses with whom the customer has a relationship. They also misleadingly claim that TCPA lawsuits are increasing due to abuses, not the boon that TCPA class actions have become to plaintiffs' attorneys.

There is a difference between "robocalls" with prerecorded messages from spammers such as "Rachel from account services" and calls from a company with which the consumer has an account made using modern technology. NCLC seems to deliberately misunderstand this, writing, "But consumers object particularly to robocalls, and for good reason: the absence of a human on the line, the inability to get the calls to stop, the dead air, the abandoned calls, and their huge number. It is entirely reasonable to restrict robocalls more than other calls, and that is exactly what the TCPA does."[5] That may be what the TCPA was intended for, but it has been applied to have very different and more far-reaching effects. The TCPA should indeed stop call-spammers, such as "Rachel from accounts services" who flagrantly abuse the do-not-call list and continue to call even after the consumer has specifically (and possibly repeatedly) asked for the phone calls to stop. What the TCPA has been used to do, though, is punish businesses trying to contact their customers for the best and most benign of reasons – to help them avoid default. The TCPA was not intended to prohibit calls from businesses to their customers. However, because of the expansive definition of autodialer (just about any phone except a rotary phone), it has become almost impossible for a company to use a telephone system that does not qualify as an autodialer.

To be clear, AFSA members often make calls using live operators, they stop calling customers when requested, and they do not want dead air or abandoned calls. The Commission may be surprised that some consumers file complaints with creditors when the creditor fails to call them when their payment is about to be delinquent. Autodialed calls are an efficient way to let creditors' customers know they should contact the creditor or review their accounts. Well-programmed autodialers will efficiently deliver a message without dropping the call or greeting the customer with dead air. AFSA members simply want to contact their customers in an efficient manner, the way that many prefer – often the only way they can be reached – on their cell phones without facing enormous litigation risk.

This brings us to our second point. TCPA litigation is not increasing because of abuses, it is increasing because plaintiffs' attorneys have realized that a dated statute, whose language has been interpreted so as to necessarily include even cell phones, and which provides destructively high penalties, is a great money-maker.

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[3] Petition at 25.
[4] Petition at 11.
[5] NCLC at 11.

NCLC claims, "If the history of these Petitioners were different, and there were not a plethora of cases against them illustrating their repeated harassment of both known debtors and people who had nothing to do with the debtors, there might be more justifications for their grumbling. But they have refused to comply with the current law – which already clearly prohibits these calls."[6] As the TCPA has recently been interpreted, (including the expansive definition of an autodialer, along with other issues) responsible industry participants are nearly at a loss to know how to efficiently and appropriately make the customer contacts so crucial to those customers' own best interests. Harsh penalties of up to $1,500 per call make it obviously attractive for plaintiffs' attorneys looking to make millions. Given this environment, plain common sense suggests that the increase in lawsuits represents a "bounty" environment rather than abuses by responsible lenders. In fact, some plaintiffs' attorneys target particular phone numbers or particular creditors. For example, a phone number that belonged to a creditor's customer could be switched to another consumer. The consumer, encouraged by an attorney, may purposefully refrain from telling the creditor that the phone number no long belongs to a customer. Thus, the calls to the phone number continue. Then, a demand is made upon the creditor for statutory damages. Even though it was never the intention of the creditor to call a party other than its customer, the creditor ends up paying out enormous penalties. The creditor never has a chance to correct the number it is calling.

There is one area of agreement we emphasize. NCLC states, "The problem of calling the wrong number is one that can be solved if the Commission maintains the pressure on industry to solve it. … To ease compliance with the requirement not to make robocalls to reassigned numbers, we urge the Commission to establish a mandatory database…"[7] AFSA members support the creation of a database.

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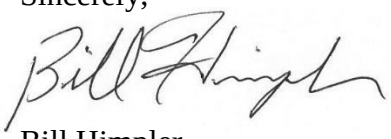
AFSA thanks the Commission for the opportunity to comment. Please contact me by phone, 202-466-8616, or email, bhimpler@afsamail.org, with any questions.

Sincerely,



Bill Himpler
Executive Vice President
American Financial Services Association

[6] NCLC at 13-14.
[7] NCLC at 16.