

June 6, 2016

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

Re: Comments on Notice of Proposed Rulemaking regarding robocalls made to collect debts owed to or guaranteed by the United States  
**CG Docket No. 02-278**

Dear Ms. Dortch:

These comments are submitted by the Institute for College Access & Success<sup>1</sup> regarding the Commission's proposed rule allowing robocalls to be made to cell phones without consent, *expanding* a student loan servicer or debt collector's ability to make robocalls and send robotexts to cell phones where borrowers have not provided prior consent. The Federal Communication Commission's (FCC) Notice of Proposed Rulemaking<sup>2</sup> (NPRM) initiated the implementation of Section 301 of the Bipartisan Budget Act.<sup>3</sup> Section 301 created an exception from the Telephone Consumer Protection Act's (TCPA) requirements for consent for calls "made solely to collect a debt owed to or guaranteed by the United States,"<sup>4</sup> *expanding* a student loan servicer or debt collector's ability to make robocalls and send robotexts to cell phones where borrowers have not provided prior consent.

Student and consumer advocates are understandably concerned about expanding robocall and robotext authority given abuses within the debt collection industry and a lack of evidence that robocalls are effective. Even under TCPA – the very law for which the FCC's proposed rule codifies an exemption – student loan servicers and debt collectors have frequently been subject to private suits for violations. For example, Nelnet was a defendant in a recent TCPA action,

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<sup>1</sup> An independent, nonprofit organization, the *Institute for College Access & Success* (TICAS) works to make higher education more available and affordable for people of all backgrounds. By conducting and supporting nonpartisan research, analysis, and advocacy, TICAS aims to improve the processes and public policies that can pave the way to successful educational outcomes for students and for society. One of TICAS' initiatives is the *Project on Student Debt*, which works to increase public understanding of this student debt and the implications for our families, economy, and society.

<sup>2</sup> Federal Communications Commission, Notice of Proposed Rulemaking, Released May 6, 2016, [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-16-57A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-57A1.pdf).

<sup>3</sup> Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 584 (Budget Act).

<sup>4</sup> Budget Act § 301(a)(1)(A) (amending 47 U.S.C. § 227(b)(1)(A)); see also *id.* § 301(a)(1)(B) (amending 47 U.S.C. § 227(b)(1)(B) to read, in part, that artificial- or prerecorded-voice calls cannot be made to a residential telephone line without the consent of the called party unless the call is "made solely pursuant to the collection of a debt owed to or guaranteed by the United States"). "Robocalls" include calls made either with an automatic telephone dialing system ("autodialer") or with a prerecorded or artificial voice. See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7694, para. 1 n.1 (2015) (2015 TCPA Declaratory Ruling and Order). The Commission has interpreted the TCPA to apply both to voice calls and to text messages. *Id.* at 8016-17, para. 107.

*Cooper v. Nelnet*, for contacting third parties' cell phones with pre-recorded messages in defiance of federal law.<sup>5</sup> In that case, the plaintiff received pre-recorded calls several times on his cell phone in addition to texts and other calls even though he did not have a student loan serviced by Nelnet.<sup>6</sup> Not being a consenting Nelnet customer, the plaintiff should not have received *any* of these calls or texts. The fact that he did shows that Nelnet disregarded protections afforded to consumers under federal law, and underscores the importance of strict limitations on robocall and robotext allowances as well as the importance of rigorous enforcement and oversight.

Debt collectors themselves have acknowledged that they routinely call student loan debtors hundreds of times, while at the same time acknowledging that these voluminous calls are often not successful in compelling debtors to begin making payments. Consider this story published May 31, 2016 by *Inside Arm*, a trade group for debt collectors:

This customer enrolled in a community college but then left school without a degree...during a 12-month period of missed payments, we attempted to contact her more than 250 times...[a]fter a year of zero payments, despite our multiple efforts, we could not reach her.<sup>7</sup>

Calling repeatedly does not guarantee success, and there is no evidence that providing broad authority to robocall and robotext borrowers will have positive effects on repayment outcomes.

These examples underscore the need for strong consumer protections if robocalls and robotexts will be allowed to call cell phones without prior consent. For these reasons, we are very supportive of the thoughtfully crafted consumer protections proposed by the Commission in this rulemaking. We also request two modifications to ensure that student loan borrowers are further protected.

We support the following consumer protections proposed in the FCC draft rule:

1. Calls will only be permitted to be made to the debtors themselves, not to family and friends;
2. The protections of the rule will apply to texts as well as to calls to cell phones;
3. Callers will be required to notify consumers of their right to request that calls stop;
4. Callers will be required to honor a request for the calls to stop;
5. The calls will only be permitted to be made after 8 a.m. and before 9 p.m.;
6. Calls will only be made to collect debts currently owed to or guaranteed by the United States;
7. Only one wrong number call, such as to a reassigned numbers, will be allowed.
8. Each initiated call counts as one call.

The Commission has also proposed two important provisions that we believe should be modified:

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<sup>5</sup> *Cooper v. Nelnet*, 6:14-cv-00314-GKS-DAB, (M.D. Fl.).

<sup>6</sup> *Ibid.*

<sup>7</sup> Stephanie Eidelman, *Navient CEO Shares Rarely Heard Stories About Student Debt Payment*, *Inside Arm*, May 31, 2016. Available at <http://www.insidearm.com/opinion/navient-ceo-shares-rarely-heard-stories-about-student-debt-payment/>.

1. Limit unconsented calls per borrower, not per loan. The Commission has proposed that the number of permitted calls be limited to three calls per month *per loan*. We instead recommend that the number of calls or texts permitted to be made without consent should be limited to three calls *per borrower* or, if that is not feasible, *per account*. A review by the National Consumer Law Center's (NCLC) student loan clients revealed that 80 percent of their clients have more than one loan, the average client has four loans, and over 10 percent of their clients have more than 10 loans.<sup>8</sup> If the regulations permit three calls per month *per loan*, many of these borrowers would be allowed to receive dozens of robocalls or robotexts per month.
2. Allow calls for borrowers delinquent in either payments or repayment plan recertification. In addition to allowing robocalls to borrowers delinquent in making payments, we propose allowing such calls when borrowers are delinquent in recertifying income to remain in an income-driven repayment plan (by providing documentation of their income and family size), during the 10-day window in which they have missed the deadline yet can still avoid the adverse consequences of the delinquency.

This modification is appropriate because a borrower's failure to provide the required information for recertification will have serious adverse consequences, including spikes in their monthly student loan and capitalization of interest. In 2015, the Department of Education provided data showing that over half of all borrowers in income-driven repayment fail to recertify on time.<sup>9</sup> There is a critical 10-day window between the formal deadline to recertify for income-driven student loan repayment plans and the triggering of these adverse consequences. We believe our proposed modification is a commonsense balance that would allow servicers to prevent adverse consequences for borrowers who forget to certify their income.

Lastly, we strongly urge the Commission to place the consumer protections in the body of the regulation itself, as this will facilitate enforcement of these rules. If the protections are left in the general material that precedes the regulation, it will be much harder for individuals, compliance attorneys or courts to understand the goal of the rules and protections the FCC intends them to provide.

We thank you for working to protect student loan borrowers from unwanted calls and texts. Please contact Jennifer Wang, DC Office Director for TICAS, at [jwang@ticas.org](mailto:jwang@ticas.org) for more information.

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<sup>8</sup> Margot Saunders, *Comment of the National Consumer Law Center on behalf of its low income clients*, June 6, 2016, CG Docket No. 02-278, submitted via <http://apps.fcc.gov/ecfs/upload/display>.

<sup>9</sup> U.S. Department of Education, *Sample Data on IDR Recertification Rates for ED-Held Loans*, <http://www2.ed.gov/policy/highered/reg/hearulemaking/2015/payee2-recertification.pdf>.