

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Rules and Regulations Implementing the)
Telephone Consumer Protection Act of 1991) CG Docket No. 02-278

**PETITION FOR RECONSIDERATION OF GREAT LAKES HIGHER EDUCATION
CORP.; NAVIENT CORP.; NELNET, INC.; PENNSYLVANIA HIGHER EDUCATION
ASSISTANCE AGENCY; AND THE STUDENT LOAN SERVICING ALLIANCE**

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EXECUTIVE SUMMARY

In August 2016, the Federal Communications Commission (“Commission” or “FCC”) adopted rules to implement the Bipartisan Budget Act of 2015’s (“Budget Act”) amendments to the Telephone Consumer Protection Act (“TCPA”), which provide an exemption from the “prior express consent” requirements for calls “solely to collect a debt owed to or guaranteed by the federal government.” Congress passed the amendments to facilitate the repayment of student loans and other federal debts. **The rules adopted by the FCC, however, are contrary to Congress’s intent and are unsupported by the plain language of the statute and the record in this proceeding. The rules therefore should be reconsidered and revised.**

The FCC’s three-call attempt-per-month limit is drawn from thin air, is not supported by any data in the record, and ignores the wealth of empirical evidence provided by commenters and other federal government agencies – all of which pointed to a substantially higher limit. Moreover, any reasonable limit should be based on the number of live contacts with borrowers and not merely call attempts. And the phrase “solely to collect a debt” should include all calls to collect a federal student loan for which the repayment period has begun, as well as certain calls before that period begins.

The FCC’s prohibition on calls to anyone other than the debtor is also outside the scope of its rulemaking authority under the Budget Act, unsupported by the record, highly impractical to implement, and will frustrate Congress’s intent. Callers will also be effectively unable to rely on the exemption if only the first call to a reassigned number is protected due to the practical impossibility of determining if a number has been reassigned. Moreover, in contrast to the definition adopted by the FCC, calls to individuals other than the debtor made in an effort to

locate the debtor are calls “solely to collect a debt,” are consistent with the statute, and facilitate the collection of federal debt, and therefore should be covered by the exemption.

In addition, the FCC’s interpretation of its rulemaking authority under the amended TCPA is impermissibly broad. The FCC treats the amendments as a “blank check” to regulate federal debt collection calls to wireless numbers, including calls placed by entities that are not subject to the TCPA and calls that do not rely on the exemption. This is entirely impermissible given that the legislation seeks to make it easier to place such calls. The new rules also go far beyond any reasonable interpretation of Congress’s allowance that the FCC may adopt limits on the “number and duration” of calls.

The amendments are intended to and should be construed to authorize the full range of communication strategies that the federal government itself would undertake to service and collect its debts. This includes using autodialing technology and artificial and prerecorded voice messages to contact borrowers through their preferred communication channels (*e.g.*, cell phone calls and text messages). Allowing early, effective, and frequent contact will *reduce* the frequency of borrower delinquency and default. In contrast, the FCC’s narrow, arbitrary approach will impede federal student loan servicers’ ability to proactively inform borrowers of the repayment options that can keep them away from delinquency and default.

The FCC should reconsider all of the rules that are arbitrary, capricious, an abuse of discretion, or otherwise unlawful or contrary to the public interest and Congressional intent. Moreover, as appropriate, the FCC should adjust the rules’ applicability to federal student loan servicers based on the extensive record. Such steps are critical to effectuating the amendments’ purpose: helping federal student loan borrowers get the information they need while ensuring the timely repayment of billions of dollars of outstanding federal student loan debt.

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ASSISTANCE AGENCY; AND THE STUDENT LOAN SERVICING ALLIANCE**

Great Lakes Higher Education Corp. (“Great Lakes”); Navient Corp. (“Navient”); Nelnet, Inc. (“Nelnet”); the Pennsylvania Higher Education Assistance Agency (“PHEAA”); and the Student Loan Servicing Alliance (“SLSA”) respectfully submit this Petition for Reconsideration of the August 11, 2016 Report and Order (“*Order*”)¹ released by the Federal Communications Commission (“FCC” or “Commission”) in the above-captioned proceeding.² As discussed below, the rules adopted in the *Order* are arbitrary, capricious, and an abuse of discretion. Reconsideration of the rules is necessary to comply with the Administrative Procedure Act (“APA”)³ and fulfill Congress’s directive of enabling additional outreach to federal borrowers and the efficient collection of federal debts.

¹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 31 FCC Rcd 9074 (2016) (“*Order*”).

² See 47 C.F.R. § 1.429. Navient, Nelnet, Great Lakes, and PHEAA, as well as SLSA’s members, place calls to collect payment for federal student loan debts, and as a result are “interested persons” with standing to file this Petition. See 47 C.F.R. § 1.429(a); *Amendment of Section 73.202(b) et al.*, Memorandum Opinion and Order, 23 FCC Rcd 12790 ¶ 10 (MB 2008) (explaining that an “interested person” is one that faces a potential impact from the rules).

³ See 5 U.S.C. § 706.

I. INTRODUCTION.

The FCC adopted rules in the *Order* to implement the Bipartisan Budget Act of 2015's ("Budget Act") amendments to the Telephone Consumer Protection Act ("TCPA"), which provide an exemption to the "prior express consent" requirements for calls "solely to collect a debt owed to or guaranteed by the federal government."⁴ However, a significant disconnect exists between the FCC's rules and Congress's intent to help federal student loan borrowers while ensuring the timely repayment of billions of dollars of outstanding federal student loans.⁵

For example, the rules restrict the amendments' applicability to an arbitrary number of three call attempts per month, allow borrowers to unilaterally stop all calls, and impose without authority the same one-call window for reassigned and other wrong number calls that the FCC used in its 2015 *Omnibus TCPA Order*⁶ – all of which are contrary to the plain language and intent of the amendments and the record in this proceeding and, in many instances, create conflicts with other government laws and requirements. Indeed, the rules make it more difficult to place calls to collect federal debt than to place other types of calls – a direct affront to the straightforward exemption language and its purpose – to "ensure that all debt owed to the United States is collected as quickly and efficiently as possible."⁷ In addition, the FCC's interpretation of its rulemaking authority under the amended TCPA is impermissibly broad.

⁴ See 47 U.S.C. §§ 227(b)(1), (2).

⁵ The term "federal student loan[s]" is used throughout this petition to refer to student loans owed to or guaranteed by the United States, including loans made under the William D. Ford Federal Direct Loan Program (20 U.S.C. § 1087a *et seq.*) and the Federal Family Education Loan Program ("FFELP") (20 U.S.C. § 1071 *et seq.*).

⁶ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, et al.*, Declaratory Ruling and Order, 30 FCC Rcd 7961 ¶ 90 (2015) ("*Omnibus TCPA Order*").

⁷ *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2016*, at 128 ("*Analytical Perspectives*"), available at <http://bit.ly/2hoDkK9>.

The APA requires an agency action to be set aside if it is “arbitrary, capricious, [or] an abuse of discretion.”⁸ An agency acts arbitrarily and capriciously when it “fail[s] to consider an important aspect of the problem,”⁹ and agency action is an abuse of discretion if it has “no support in the record . . . or follows from a plainly implausible, irrational, or erroneous reading.”¹⁰ The FCC recognizes that reconsideration is appropriate when a petition “shows either a material error or omission.”¹¹ The FCC’s initial rules violate the APA, were the product of material error and omission, and should be revised.

The amendments’ clear driving purpose is to facilitate the repayment of student loan and other federal debts. As the Notice of Proposed Rulemaking acknowledged, student loan debt amounts to \$1.3 trillion and comprises a significant portion of the total debt owed to the United States.¹² More than 90 percent of outstanding student loans are directly owed to or guaranteed by the Department of Education (“Department”).¹³ The FCC’s narrow, arbitrary approach fails to implement the amendments as intended and could impede federal student loan servicers’ ability to regularly and proactively inform borrowers of their repayment options.¹⁴

The FCC should reconsider all rules adopted in the *Order* that are arbitrary, capricious, an abuse of discretion, or otherwise contrary to the public interest. Moreover, as appropriate, the

⁸ 5 U.S.C. § 706.

⁹ See *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

¹⁰ See *Planned Parenthood Ass’n of Utah v. Herbert*, 839 F.3d 1301, 1308 (10th Cir. 2016).

¹¹ See, e.g., *Reexamining of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Order on Reconsideration, 31 FCC Rcd 8007 ¶ 7 (WTB 2014). Reconsideration is also appropriate when a petitioner raises additional facts not known or not existing until after the petitioner’s last opportunity to respond. See *id.*

¹² *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking, 31 FCC Rcd 5134 ¶ 6, n. 24 (2016) (“NPRM”).

¹³ See, e.g., *Trends in Student Aid 2016*, THE COLLEGE BOARD 15 (2016), <http://bit.ly/2hQkmNF>.

¹⁴ See *Analytical Perspectives* at 128 (“The Budget proposes to clarify that the use of automatic dialing systems and prerecorded voice messages is allowed when contacting wireless phones in the collection of debt owed to or granted by the United States”); Press Release, The White House, Fact Sheet: A Student Aid Bill of Rights (Mar. 10, 2015), available at <http://bit.ly/1EULcHA> (directing the Department to “find the most innovative and effective ways to communicate with borrowers.”).

FCC should consider adjusting the applicability of its rules to federal student loan servicers based on the extensive record. Taking such actions is critical to effectuating the Budget Act amendments' purpose: helping federal student loan borrowers while also ensuring the timely repayment of billions of dollars of outstanding federal student loan debt.

II. THE RULES ARE NOT SUPPORTED BY THE TEXT OF THE STATUTE OR THE RECORD AND ARE CONTRARY TO CONGRESS'S INTENT.

The rules adopted in this proceeding are contrary to the text of the statute, the clear intent of Congress, and the record in this proceeding. As discussed below, the three-call attempt-per-thirty-day limit is not supported by any data in the record; the limits on who may be called contradict the text and intent of the statute and exceed the FCC's authority; and any limit on call numbers should be based on live contacts – not call attempts – to ensure that consumers realize the full benefits of direct contact with their federal student loan servicer.

A. The Three-Call Attempt-Per-Thirty-Day Limit Lacks Any Rational Basis and Will Stymie Borrower Contact.

The FCC limited the number of calls allowed under the exemption to three per 30 days. This limit lacks a rational basis and seems drawn from thin air. Worse, it will materially impede servicers' ability to help borrowers and facilitate repayment of federal debt. Indeed, this limit is impossible to square with the data from numerous stakeholders, including other federal agencies.

1. The limit did not flow from the record.

Rather than explain the choice of “three” or support it with empirical evidence from the record, the FCC states only that there was “no consensus” and that it must “engage in an exercise in line-drawing.”¹⁵ Although the FCC must sometimes engage in line-drawing, it must do so in a way that is reasoned and clearly supported by the record before it. Where, as here, the FCC acts

¹⁵ *Order* ¶¶ 34-35.

due to an express direction from Congress, the line-drawing must be consistent with Congress's intent.¹⁶ The three-call attempt limit is neither. Instead, this limit is arbitrary and capricious and contrary to Congress's goals of ensuring the effective collection of federal debts and helping federal borrowers who may not be aware of their repayment options.

As explained below, a materially higher limit – such as three calls per week or 10 calls per month – would help effectuate meaningful communication with consumers and the efficient collection of debts owed to the federal government. This is especially true in the student loan context, in which there are unique challenges in locating and connecting with borrowers who departed from a school campus years ago. Student loan borrowers have numerous diverse and flexible opportunities for repaying their loans, all of which assist them with avoiding the pitfalls of default and a damaged credit rating. The evidence shows that it is necessary for lenders to reach borrowers multiple times to explain and enroll them in these programs,¹⁷ and “[r]estricting calls to borrowers who have already fallen into loan delinquency or default could create a barrier between borrowers and the repayment plan that will best meet their needs.”¹⁸ A higher call limit would also be consistent with the recommendations of participants who critically evaluated the FCC's proposal (as opposed those who signed on to the FCC's proposal solely to allow as few calls as possible). Many explained that this limit would not allow callers to effectively reach

¹⁶ See, e.g., *Bell Atlantic Tel. Cos. v. FCC*, 79 F.3d 1195, 1202 (D.C.Cir.1996) (explaining that even where a statute opens a “large area for the free play of agency discretion,” agencies are “limited of course by the familiar ‘arbitrary’ and ‘capricious’ standard in the Administrative Procedure Act.”); see also *Cassell v. FCC*, 154 F.3d 478, 485 (D.C. Cir. 1998) (establishing that the courts will review line-drawing performed by the Commission if petitioners can demonstrate that the lines drawn are “patently unreasonable, having no relationship to the underlying regulatory problem.”); *Hercules Inc. v. EPA*, 598 F.2d 91, 107–08 (D.C. Cir. 1978) (stating that the question is “whether the agency’s numbers are within a ‘zone of reasonableness’”).

¹⁷ Reply Comments of Navient Corp., CG Docket No. 02-278, at vi (filed June 21, 2016) (“Navient Reply Comments”).

¹⁸ Reply Comments of Nelnet, Inc., CG Docket No. 02-278, at 5 (filed June 21, 2016) (quoting National Council of Higher Education Resources) (“Nelnet Reply Comments”).

federal borrowers and proposed alternatives to the limit,¹⁹ as the FCC noted but then failed to address.²⁰

2. Commenters, including federal agencies and federal loan servicers, demonstrated with extensive filings why more calls are needed to effectuate Congress’s intent.

The three-call attempt limit is also contrary to the record. Federal student loan servicers explained repeatedly why more contact with borrowers is necessary to effectively collect federal debt and supported their assertions with empirical evidence. Navient, for example, explained throughout this proceeding that it is able to help resolve delinquencies and prevent default more than 90 percent of the time that it has a live conversation with a borrower.²¹ Conversely, 90 percent of the borrowers who default on their federal student loans never had a live conversation with Navient, despite its efforts to reach them.²² Navient also reported that it was able to increase successful income-driven repayment (“IDR”) plan enrollment by 50 percent through outreach to previously delinquent borrowers’ cell phones.²³ Its data also shows that 25 percent of federal student loan borrowers require 40 or more call attempts to reach.²⁴

Nelnet’s data demonstrates that ten dials per month or approximately 2.3 calls per week can be an appropriate dial rate with borrowers.²⁵ It also aligns with SLSA’s comments that

¹⁹ See, e.g., Reply Comments of Edfinancial Services, LLC, CG Docket No. 02-278, at 2 (filed June 20, 2016) (proposing a limit of nine call attempts per seven day period); Reply Comments of The National Association of College and University Business Officers, CG Docket No. 02-278, at 2 (filed June 21, 2016) (arguing that a limit of nine to ten calls per month is more appropriate than a limit of three); Reply Comments of National Council of Higher Education Resources, CG Docket No. 02-278, at 2 (filed June 21, 2016) (arguing in favor of a limit of nine call attempts per seven day period).

²⁰ See Order ¶ 33.

²¹ Comments of Navient Corp., CG Docket No. 02-278, at 9-10 (filed June 6, 2016) (“Navient Comments”).

²² See *id.*

²³ See *id.* at 34.

²⁴ See *id.* at 42-43.

²⁵ See Nelnet Reply Comments at 5.

recommended “at least 10-13 attempts per month . . . to have a reasonable chance to speak to a borrower,” a number that consumer advocacy groups have previously supported.²⁶ Nelnet also showed that calling up to 10 times per month leads to 42 percent more live contacts compared to calling three times per month.²⁷ Further, within every stage of delinquency, the borrowers that Nelnet can autodial resolve at considerably higher rates.²⁸

The available data thus confirms that lack of live contact has concrete and negative consequences for borrowers. A lender cannot help a borrower at risk of delinquency enroll in a new repayment plan, for example, if the lender cannot connect with the borrower.²⁹ Because most borrowers with accounts more than 30 days past due will not self-resolve, each interaction is a pivotal opportunity to find a solution and bring the loan current. Nelnet has repeatedly found that fewer contacts lead to fewer resolutions for borrowers and an increased likelihood that borrowers will lapse into delinquency or default.³⁰ In setting the limit at three call attempts per month, the FCC ignored the copious data and policy rationales shared by lenders and servicers, which tell a clear story about the need for more outreach to borrowers.

The three-call attempt-per-thirty-day limit is also in direct conflict with the requirements of other federal agencies. The Department, for example, requires federal student loan servicers to place at least four calls in a 21-day period to certain IDR plan applicants, even if those borrowers are not yet delinquent.³¹ The Department also expects federal student loan servicers

²⁶ *See id.*; Comments of the Student Loan Servicing Alliance (SLSA), CG Docket No. 02-278, at 26 (filed June 6, 2016) (“SLSA Comments”); *see also* Navient Comments at 43 (noting that it “would take well over a year to reach [some borrowers] under the FCC’s proposal [who], during that time, could easily reach default status without having a conversation about their repayment, forbearance, and forgiveness options”).

²⁷ Comments of Nelnet, Inc., CG Docket No. 02-278 at 14 (filed June 6, 2016) (“Nelnet Comments”).

²⁸ *Id.* at 4.

²⁹ Navient Reply Comments at 23.

³⁰ Nelnet Comments at 4.

³¹ Department of Education, FSA Business Operations Change Request Form 3571.

to immediately reach out to borrowers when any issues arise.³² It even cautioned the FCC that three calls per month “would not afford borrowers sufficient opportunity to be presented with options to establish more reasonable payment amounts and avoid default, especially given that the proposal limits the number of initiated calls, even if the calls go unanswered.”³³ Fannie Mae and Freddie Mac, too, require one call every five days, and the Federal Housing Administration requires two calls per week.³⁴ Navient submitted a chart into the record that demonstrates many government entities require more than three calls per 30 days.³⁵ Commissioner O’Rielly attached it to his dissent.³⁶

Other federal agencies also provided empirical evidence demonstrating the need for more frequent calls. For example, a report released by Treasury’s Bureau of the Fiscal Service (“Fiscal”) highlighted the need for flexibility to place more than three calls per month.³⁷ It describes the results of the first year of a two-year pilot program in which Fiscal serviced defaulted student loan debt. Fiscal found this type of federal debt to be “very difficult to resolve” and enumerated many of the same challenges in reaching at-risk borrowers as other commenters in this proceeding, including for example that borrower contact information typically changes between applying for a loan and when the loan is referred for collection.³⁸

³² Memorandum from Ted Mitchell, Under Secretary, Department, Policy Direction on Federal Student Loan Servicing, at 13 (July 20, 2016), <http://bit.ly/2hxAx1y>.

³³ See Letter from Ted Mitchell, Undersecretary, the Department, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278, at 4 (July 11, 2016) (“Mitchell Letter”).

³⁴ See, e.g., Navient Reply Comments at 8.

³⁵ See, e.g., *Ex Parte* Notice from Mark W. Brennan, Counsel, Navient, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278, App. A (filed Aug. 2, 2016).

³⁶ *Order*, O’Rielly Dissent.

³⁷ BUREAU OF THE FISCAL SERVICE, U.S. DEPARTMENT OF THE TREASURY, REPORT ON INITIAL OBSERVATIONS FROM THE FISCAL-FEDERAL STUDENT AID PILOT FOR SERVICING DEFAULTED STUDENT LOAN DEBT (2016), available at <http://bit.ly/2gCCF3Q>.

³⁸ *Id.* at 5.

This report was submitted into the record, but the FCC did not address it.³⁹ Agencies have also recognized that innovative outreach programs encourage and assist borrowers to stay current on their accounts.⁴⁰

The White House has also encouraged agencies to improve federal debt collection and prevent student loan borrowers from becoming delinquent or defaulting. Prior budget proposals have included “common sense debt collection reforms that will significantly increase federal collections from individuals and businesses that have failed to pay their taxes or repay Government loans,” including TCPA exemption language similar to that passed by Congress.⁴¹

Agencies have also supported higher limits on the number of allowable debt collection calls. In the Fair Debt Collection Practices Act context, for example, the Consumer Financial Protection Bureau (“CFPB”) proposed in July 2016 to allow three calls per week to each of a borrower’s phone numbers, up to a total of six calls per week to a single borrower, when the caller has not confirmed contact with the borrower.⁴² Given Congress’s intent in passing specific legislation to facilitate additional calls to collect debts owed to or guaranteed by the federal government, there is no reason for the FCC to impose more severe limits on the number of calls allowed by the TCPA exemption than what the CFPB’s proposals would allow – especially

³⁹ See *Ex Parte* Notice from Mark W. Brennan, Counsel, Navient, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278, Attachment (filed July 8, 2016); *Order*.

⁴⁰ An interagency task force consisting of the Department, Treasury, the Office of Management and Budget, and the Domestic Policy Council released an August 2015 report recommending “a suite of technology-enabled communication and enhanced, ‘higher-touch’ servicing requirements for those at risk of default” and “contacting student loan borrowers at certain key times prior to delinquency, including by text message.” DEPARTMENT OF EDUCATION, RECOMMENDATIONS ON BEST PRACTICES IN PERFORMANCE-BASED CONTRACTING 10 (Aug. 28, 2015), <http://bit.ly/2gTVPP8>.

⁴¹ See, e.g., OFFICE OF MANAGEMENT AND BUDGET, FISCAL YEAR 2014 BUDGET OF THE U.S. GOVERNMENT 144 (Apr. 10, 2013); see also OFFICE OF MANAGEMENT AND BUDGET, FISCAL YEAR 2013 BUDGET OF THE U.S. GOVERNMENT 166 (Feb. 13, 2012).

⁴² See CFPB, *Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking: Outline of Proposals Under Consideration and Alternatives Considered* (July 28, 2016), http://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf.

when such calls are particularly important to U.S. fiscal matters and, in the student loan context, are designed to help borrowers avoid default and damage to their credit ratings.⁴³

The FCC suggests that callers can manually dial if they desire more than three call attempts during a 30-day period.⁴⁴ This, however, would introduce enormous inefficiencies into the federal debt collection process. Modern technology significantly increases servicers’ ability to contact, and help, the more than 40 million federal student loan borrowers. For example, Great Lakes’ agents talk to approximately six borrowers per hour when it uses a predictive dialer. When it uses a preview dialer, Great Lakes’ agents talk to only one or two borrowers per hour. It should come as no surprise, then, that the Department urged Congress to “change the law to ensure that servicers can contact borrowers using modern technology.”⁴⁵

The data also demonstrate that the FCC’s rules will materially harm the federal government. For example, the Department of Treasury (“Treasury”) loses more than \$565 million quarterly and more than \$2.2 billion annually because federal student loan servicers are sometimes unable to use advanced calling technologies to reach defaulted borrowers:⁴⁶

Able to Auto Dial Default Rate:	0.6%	On an Annual Basis, TCPA contributes up to \$2,261,900,761 in extra defaults
Unable to Auto Dial Default Rate:	4.6%	
Unable to Auto Dial: Q4 2014 Defaults:	\$651,520,108	
Qtrly Impact, Difference in Rate x Volume:	\$565,475,190	

The record is clear. A higher limit on the “number” of calls than three call attempts per 30 days would allow servicers to help more borrowers select the right repayment plan for their circumstances. All of this would support Congress’s efforts to help borrowers and ensure the collection of debts owed to the federal government.

⁴³ Unlike loan servicers, debt collectors collect only on debts that are already in default.

⁴⁴ See Order ¶ 37.

⁴⁵ Department, *Strengthening the Student Loan System to Better Protect All Borrowers*, 16 (Oct. 1, 2015), <https://www2.ed.gov/documents/press-releases/strengthening-student-loan-system.pdf>.

⁴⁶ Nelnet Comments at 6.

3. Any limits on the number of exempt calls should be based on the number of live conversations rather than call attempts.

As detailed in the record, any limit on the number of exempt calls should also be based on the number of live conversations that a caller has with the borrower – not the number of call attempts.⁴⁷ In amending the TCPA, Congress acted against the backdrop of a series of federal regulations and recommendations. The exemption reflects the significant amount of data that the Department and the Administration have gathered on the benefits of outreach to at-risk borrowers, and particularly the benefits of *live* contact with borrowers. The Department explained that many circumstances keep borrowers from answering the phone, and a three-call attempt limit will not “measurably increase the likelihood that [a loan servicer] would reach a borrower in order to provide them an opportunity to enroll in an income-driven repayment plan or take advantage of another federal student loan benefit.”⁴⁸ It takes servicers multiple attempts to reach a borrower before live contact is made, and then multiple live contacts to provide a borrower with the necessary information to resolve a delinquency or rehabilitate a default.

4. The exemption’s triggering phrase “solely to collect a debt” should include all calls to collect a federal student loan for which the repayment period has begun, as well as certain calls before that period begins.

The FCC’s definition of calls “solely to collect a debt,” which excludes many pre-delinquency periods, is short-sighted and will ultimately lead to greater rates of delinquency and default in the future. Like preventative medicine, federal student loan servicers’ ability to call borrowers well in advance of delinquency is critical in keeping borrowers on track and out of distress. Thus, with respect to federal student loan servicers, the exemption’s triggering phrase “solely to collect a debt” should be interpreted to include all calls made regarding a federal

⁴⁷ See, e.g., Navient Reply Comments at 15-16; Navient Comments at 10.

⁴⁸ See Mitchell Letter at 4.

student loan for which the repayment period has begun and for the life of the loan.⁴⁹ It should also include certain calls that occur before the repayment period begins, such as calls to high-risk borrowers during the six-month “grace period” that generally follows graduation. Allowing early contact aligns with the goal of the Budget Act amendments to protect federal assets by reducing delinquency and default rates of borrowers. Accordingly, the FCC should reconsider and broaden the scope of calls “solely to collect a debt.”

Post-default calls are critical, too. The challenge for helping defaulted federal student loan borrowers is that often there is limited contact information, and this information may not transfer when the loan itself is transferred from one servicer to another, so agencies reaching out to these borrowers must start over in locating the borrower and reaching them.⁵⁰ As a result, less than half of defaulted borrowers are reachable via telephone, and right party contact is extremely low.⁵¹ Congress’s amendments were intended to bring down the barriers to reaching these most distressed borrowers—those in default—and help them on a pathway to resolve their default, restore their eligibility for federal financial aid, and begin to repair their credit.

B. The Commission Erred in Limiting the Exemption to Calls to the Debtor.

The FCC’s prohibition on calls to anyone but the debtor is arbitrary and capricious and contrary to the record and Congress’s intent. Calls to reassigned or wrong numbers represent a substantial portion of the instances for which an exemption is critical. Further, calls to individuals who can help the loan servicer locate the borrower are calls made “solely to collect a debt” under the statute.⁵² Finally, the Budget Act amendment gave the FCC authority to adopt

⁴⁹ The repayment period of most federal student loans begins six months after the borrower has graduated or has ceased to be enrolled at least half-time as a student.

⁵⁰ *See, e.g.*, Navient Comments at 12-13.

⁵¹ *See, e.g., id.*

⁵² *See* 47 U.S.C. § 227(b)(1)(iii).

rules restricting the number and duration of calls, but did not give the FCC authority to adopt rules restricting who may be called.⁵³

1. Calls to reassigned and wrong numbers must be allowed to give meaning to Congress’s exemption.

Calls to reassigned or wrong numbers must be allowed under the exemption to avoid undermining Congress’s intent. In fact, calls to reassigned or wrong numbers are good examples of calls for which a caller may require an exemption. As Commissioner O’Rielly explained, the *Order’s* “outright prohibition on misdialed calls and calls to entities other than the borrower, as well as the effective ban on calls to reassigned numbers do not balance the benefits and concerns as the revised order claims. They run counter to the law.”⁵⁴

Congress’s exemption was intended to protect calls made to collect a federal debt for which the caller does *not* have prior express consent. In contrast, calls placed to the number provided by the borrower are calls for which the loan servicer *has* prior express consent, and for which the caller would not need an exemption. Calls requiring an exemption would logically include calls to reassigned or wrong numbers. And this exemption is especially necessary for reassigned numbers, given that it is impossible to determine with 100 percent accuracy whether a number has been reassigned. One hundred thousand wireless numbers are reassigned each day.⁵⁵ Even companies that act in good faith and with reasonable due diligence have no reliable way of knowing whether a number has been reassigned.⁵⁶ For example, if no one picks up the phone when a servicer calls, the servicer believes it is calling the borrower. No database in existence

⁵³ See Section III.B, *infra*.

⁵⁴ See *Order*, O’Rielly Dissent.

⁵⁵ See *Omnibus TCPA Order*, O’Rielly Dissent.

⁵⁶ See, e.g., United Healthcare Services Inc. Petition for Expedited Declaratory Ruling, CG Docket No. 02-278, at 3 (filed Jan. 16, 2014); Rubio’s Restaurant, Inc. Petition for Expedited Declaratory Ruling, CG Docket No. 02-278, at 4-5 (filed Aug. 11, 2014).

can reliably verify the continued accuracy of a borrower’s wireless number or account for business or family plans where the named subscriber associated with a given wireless number may be different from the borrower.

Importantly, calls to a reassigned or wrong number are calls made “solely to collect a debt,” consistent with the statutory text. As the amendments’ plain language makes clear, the exemption applies based on the purpose of the call, not the number dialed. Even if a caller finds out that a phone number has been reassigned, the purpose of the call was nonetheless “solely to collect a debt.” Servicers receive no benefit from calling numbers that they know have been reassigned.⁵⁷ They simply have no incentive to spend time calling the wrong numbers, and every incentive to ensure they call the right ones.⁵⁸ The FCC has no rational basis for adopting overly proscriptive rules to curtail behavior in which callers have no pecuniary interest in engaging.

Moreover, the FCC does not need to follow the same approach to reassigned numbers in this proceeding as it did in the 2015 *Omnibus TCPA Order* because that order did not interpret the specific exemption at issue here, which turns on why the call is made.⁵⁹ By prohibiting calls to reassigned or wrong number calls, the FCC has eviscerated the objectives of the amendments.

2. Calls to individuals other than the borrower are made “solely to collect a debt,” and, therefore, are necessarily exempt.

The FCC similarly had no rational basis for prohibiting calls to individuals other than the borrower when those calls are placed in an effort to locate the borrower. Such calls are made “solely to collect a debt.”⁶⁰ Congress’s instructions could not be clearer: if the purpose of the call is to collect federal debt, then the call is exempt from the prior express consent requirement,

⁵⁷ *Ex Parte* Letter from Debra J. Chromy, Ed.D, President, Education Finance Council, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278, at 2-3 (filed June 6, 2016).

⁵⁸ *See, e.g.*, Navient Comments at 40-41; Navient Reply Comments at 26-27.

⁵⁹ *See, e.g.*, *Omnibus TCPA Order* ¶¶ 71-97.

⁶⁰ *See* 47 U.S.C. § 227(b)(1)(A)(iii).

including in situations where a number has been reassigned. Simply put, because the purpose of each one of these calls – regardless of the identity of called party – is “solely to collect a debt,” the exemption is triggered.

Further, Congress’s intent in amending the TCPA was to help facilitate efficient and effective collection of federal debt by allowing for additional calls. Excluding reassigned and wrong number calls runs contrary to that purpose. Navient found that one of the most effective avenues for locating a borrower can be reaching out to references listed on the borrower’s loan application.⁶¹ Because student loan borrowers are highly transitory and technologically progressive, the phone number they provide on their loan applications, which may be that of their parents’ home, has often changed by the time they enter repayment. And obtaining telephone numbers through skip-tracing is sometimes the only way to find a borrower.⁶² Limitations on calls to specific individuals other than the borrower hamstring, rather than facilitate, callers’ attempts to locate a debtor and collect a debt.

Indeed, as detailed in the record before the FCC, some government agencies require loan servicers to contact individuals other than the borrower, such as relatives or individuals who endorsed a loan.⁶³ For example, the Department’s rules require FFELP lenders to contact every “endorser, relative, reference, individual, and entity” in a delinquent borrower’s loan file in the due diligence conducted to collect the loan.⁶⁴ The same rules require FFELP lenders to use commercial skip-tracing techniques to identify current contact information for a borrower.⁶⁵

⁶¹ Navient Comments at 36.

⁶² *Id.*

⁶³ *See* 34 C.F.R. § 682.411(h).

⁶⁴ *Id.*

⁶⁵ *Id.*

Based on these considerations and the express language of the exemption, covered calls should include calls to individuals other than the borrower.

III. THE FCC’S INTERPRETATION OF ITS RULEMAKING AUTHORITY IS IMPERMISSIBLY BROAD.

The FCC’s interpretation of its jurisdiction under the amended TCPA is impermissibly broad in at least two respects. First, the FCC treats the Budget Act amendments as a “blank check” to regulate comprehensively all federal debt collection calls to wireless numbers, including calls placed by entities that are not subject to the TCPA and calls that do not rely on the exemption. Had Congress wanted to make the FCC the nation’s federal debt collections regulator, it would have done so by means other than a two-line exemption from the TCPA’s prior express consent requirement. Second, the FCC has impermissibly adopted rules that impose limits beyond the “number and duration” of exempt calls.

A. Section 227 Allows the FCC to Limit the Number and Duration of Exempt Calls – Not to Regulate All Federal Debt Collection Calls.

1. The FCC’s interpretation cannot be squared with the statutory text.

The FCC’s interpretation of its rulemaking authority is completely untethered from the text of the TCPA. Congress added three provisions to create an exemption for federal debt collection calls. Sections 227(A)(iii) and (B) exempt federal debt collection calls from the “prior express consent” requirements – equating them with emergency calls.⁶⁶ This is the first time in the twenty-five years since the TCPA was passed that Congress has expressly and categorically exempted non-emergency calls from the consent requirements applicable to calls to wireless

⁶⁶ See 47 U.S.C. §§ 227(b)(1)(A)(iii), (B).

telephone numbers. Section 227(b)(2)(H) then gives narrow authority to the FCC to adopt rules that limit the “number and duration” of the exempt federal debt calls.⁶⁷

Section 227(b)(2)(H) does not, as the FCC asserted, provide the agency with expansive, untethered authority to regulate federal debt collection calls.⁶⁸ The FCC’s position ignores the preface to Section 227(b)(2)(H), which limits the FCC’s new rulemaking authority by tying it to the requirements listed in Section 227(b)(1).⁶⁹ The preface plainly states that the FCC may adopt rules only if it is “implementing the requirements of this subsection”:

*In implementing the requirements of this subsection, the Commission . . . may restrict or limit the number and duration of calls made to a telephone number assigned to a cellular telephone service to collect a debt owed to or guaranteed by the United States.*⁷⁰

The “requirements” referenced in the preface are listed in Section 227(b)(1).⁷¹ The statutory text thus limits the FCC’s new rulemaking authority to situations where it implements a requirement in Section 227(b)(1), such as the prior express consent requirement (or the new exemption to it). Commissioners Pai and O’Rielly both stressed this point in their dissents.⁷²

Yet, despite this preamble, the *Order* treats Section 227(b)(2)(H) as a separate grant of authority that is not tethered to any of Section 227(b)(1)’s requirements. Even more incredulous, the *Order* takes the position that, unlike the requirements in Section 227(b)(1), the FCC’s new

⁶⁷ See 47 U.S.C. § 227(b)(2)(H).

⁶⁸ See, e.g., *Order* ¶¶ 61-66.

⁶⁹ See 47 U.S.C. § 227(b)(2).

⁷⁰ *Id.* (emphasis added).

⁷¹ See 47 U.S.C. §§ 227(b)(1), (2); *Order*, Pai Dissent and O’Rielly Dissent. These requirements apply only to “persons.” See 47 U.S.C. § 227(b)(1).

⁷² See *Order*, Pai Dissent and O’Rielly Dissent.

rulemaking authority is not limited to the activities of “persons.”⁷³ As Commissioner O’Rielly explained, this interpretation is “absurd.”⁷⁴

2. The FCC’s interpretation contradicts Congress’s intent.

The Budget Act amendments were designed to make it easier to place calls to collect federal debts. Instead, the FCC used the amendments to create new, unprecedented restrictions on federal debt collection calls that apply even where the exemption does not (*e.g.*, calls by the federal government and certain federal contractors).

The FCC’s approach perversely makes it more difficult to place federal debt collection calls. As the FCC explained, it views its new rulemaking authority as necessarily broader than the exemption.⁷⁵ For example, the exemption applies only to calls that are placed by “persons” and are “solely” to collect a federal debt. Yet the FCC’s new rules are not similarly limited. These rules apply even if the call is not made “solely” to collect a federal debt, including where the call contains other content or precedes the specified time period for calls exempted from the consent requirement.⁷⁶ The restrictions also apply even if the caller is not a “person.” This approach turns Congress’s goal of reducing barriers to borrower outreach on its head by adding only restrictions, with no offsetting exemption, for many federal debt collection calls.

The FCC’s approach also illogically assumes that Congress has authorized it to regulate calls that are not subject to the TCPA, such as calls by the federal government and certain federal contractors. The Supreme Court confirmed earlier this year that “[t]he United States and its

⁷³ *See, e.g., id.* ¶ 64 (“While one of the requirements in subsection (b) is set forth in paragraph (b)(1), which hinges on whether the caller is a ‘person,’ another requirement in subsection (b) appears in new subparagraph (b)(2)(H).”).

⁷⁴ *See id.*, O’Rielly Dissent.

⁷⁵ *See, e.g., id.* ¶ 31.

⁷⁶ *See id.* (“[T]he rules we promulgate under this authority apply to any autodialed, prerecorded-voice, and artificial-voice calls that reasonably relate to the collection of a covered debt and therefore apply even if the calls are not ‘calls made solely to collect a debt.’”).

agencies . . . are not subject to the TCPA’s prohibitions.”⁷⁷ The Court also confirmed that government contractors “obtain certain immunity in connection with work they do pursuant to their contractual undertakings with the United States” when they “perform[] as directed.”⁷⁸ The FCC reached a similar conclusion in July 2016, finding that “the TCPA does not apply to calls made by or on behalf of the federal government” because the federal government and certain contractors are not “persons” under the TCPA.⁷⁹ The Budget Act amendments do not change the TCPA’s definition of “person” or non-application to calls placed by non-persons, such as the federal government and certain federal contractors.

3. The FCC’s interpretation leads to absurd consequences.

The FCC’s interpretation of its rulemaking authority leads to absurd consequences. For example, federal debt collection calls – including those that do not rely on the exemption – are now potentially subject to restrictions that do not apply to other debt collection calls. This means that an autodialed call to a wireless number would, among other things, potentially need to disclose the debtor’s right to opt-out of future calls and occur during certain hours of the day if it is placed to collect a debt owed to the FCC or Treasury.⁸⁰ Yet the same call would not need to do either if placed to collect a private debt. It simply cannot be the case that Congress created the exemption to make it easier to place calls to collect *private* student loans than *federal* ones.

Additionally, under the FCC’s reasoning, it would now have the authority to regulate **all** federal debt collection calls to wireless numbers, including: (1) calls by non-“persons,” such as

⁷⁷ *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663, 666, 672 (2016).

⁷⁸ *Id.*

⁷⁹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al.*, Declaratory Ruling, 3 FCC Rcd 7394 (2016).

⁸⁰ *See* 47 C.F.R. § 64.1200(i).

federal agencies; (2) calls made with prior express consent; and (3) calls made without the use of an autodialer or prerecorded voice.

Moreover, to the extent that the new rules apply to calls placed by non-“persons” or with prior express consent, the FCC has deprived the public of a chance to provide input and is in violation of the APA’s notice and comment requirements.⁸¹ As Commissioner Pai observed, the FCC never proposed to extend its rules to non-“persons.”⁸² The FCC also never proposed to extend its rules to calls placed with prior express consent.⁸³

4. The FCC’s interpretation ignores sovereign immunity.

Finally, the FCC’s interpretation of its rulemaking authority is flawed because it suggests that the United States has waived its sovereign immunity under the TCPA. In fact, the United States has not. Federal law does not apply to the sovereign absent “some affirmative showing of statutory intent to the contrary.”⁸⁴ No such showing of statutory intent is present here. At the same time, “the United States obviously has not delegated authority to the FCC to waive federal sovereign immunity,” as Commissioner Pai observed.⁸⁵

The Supreme Court’s decision in *Campbell-Ewald* confirms that sovereign immunity shields the federal government from TCPA liability.⁸⁶ It also confirms that federal government contractors are similarly immune if: (1) the authority to carry out the work was validly conferred by Congress to the government; and (2) the contractor performed the work as the government

⁸¹ See 5 U.S.C. § 553(b).

⁸² See *NPRM*; see also *Order*, Pai Dissent (explaining that the *NPRM* “apparently recognized that the TCPA did *not* extend beyond persons and instead asked the converse question.”).

⁸³ See *NPRM*.

⁸⁴ *Vermont Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 781 (2000).

⁸⁵ See *Order*, Pai Dissent.

⁸⁶ “The United States and its agencies . . . are not subject to the TCPA’s prohibitions because no statute lifts their immunity.” *Campbell-Ewald Co. v. Gomez*, 136 S.Ct. 663, 672 (2016).

directed.⁸⁷ Put another way by the Supreme Court, a federal government contractor enjoys similar immunity from suit under the TCPA except where: (1) the government’s authority “was not validly conferred”; (2) the contractor “exceeded [its] authority” under the contract; or (3) the contractor “knew or should have known that [its] conduct violated a right ‘clearly established’ at the time of the episode in suit.”⁸⁸ The Budget Act amendments do not modify or limit the immunity enjoyed by the federal government and contractors who perform work as directed, as recognized by the Supreme Court in *Campbell-Ewald*.

The *Order* misconstrues Congress’s intent. It erroneously states that there is “no support” for the position that the Budget Act amendments were “designed to protect federal agencies and their contractors from liability when they make calls without consent . . . [or] use modern dialing equipment.”⁸⁹ The Budget Act’s legislative history does not address this point. Even if the *Order*’s assertion were true, however, it would not suggest that Congress intended the FCC to be able to restrict the activities of other federal agencies or subject the federal government to significant new TCPA liability exposure.

But the *Order*’s assertion is not true. As Commissioner O’Rielly put it, the FCC would understand the amendments’ purpose “[i]f only [it] would read the *text of the law itself*.”⁹⁰ Congress amended the TCPA to exempt federal debt collection calls from the prior express consent requirement – not to authorize new rules that are significantly broader than the scope of the exemption and sweep in entities, such as federal agencies, that are not subject to the TCPA.

B. The Commission Cannot Limit Anything But the “Number” and “Duration” of Calls Under the Exemption.

⁸⁷ *Id.* at 673.

⁸⁸ *Id.*

⁸⁹ *Order* ¶ 62, n.178.

⁹⁰ *Id.*, O’Rielly Dissent.

The FCC’s decision is also impermissibly broad because it limits things other than the “number” and “duration” of calls placed under the exemption. Here, too, the statutory text is clear on its face. The Budget Act’s amendments allow the FCC to limit only the “number” and “duration” of calls.⁹¹ Instead, the FCC adopted a host of other rules – from who can be called to what must be said during calls.⁹² These rules have no basis or authority and must be removed.

The FCC’s rules are an abuse of discretion to the extent that they extend to elements beyond the “number” and “duration” of federal debt collection calls placed under the new exemption. Congress did not authorize the FCC to impose any other restrictions. For example, restricting who may be called is not limiting the “number” or “duration” of calls. Neither is requiring certain things to be said during calls or imposing an opt-out requirement. As SLSA previously explained, “[t]he FCC does not have the authority to stop all calls to the consumer” because “[w]hile the FCC may limit the number [and duration] of calls, Congress did not confer the authority to stop the calls altogether.”⁹³

These unlawful restrictions are inconsistent with Congress’s instructions and will interfere with its objectives. For example, federal student loan servicers could far more effectively help at-risk and disadvantaged student loan borrowers if they were able to contact the individuals in delinquent borrowers’ loan file as part of due diligence efforts (as required by the Department in many cases).⁹⁴ Contacting such individuals and locating the borrower’s current

⁹¹ Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 301, 129 Stat. 584 (2015).

⁹² See, e.g., *Order* ¶ 40 (requiring disclosure of the borrower’s right to opt out of future calls during every completed autodialed call with a live caller).

⁹³ SLSA Comments at 30-31. Allowing borrowers to opt out of informational calls about their loans is inconsistent with other government requirements, such as the Department’s requirement that federal student loan servicers make certain reminder and follow up calls to a borrower who is in the process of applying for a federal student loan irrespective of whether that borrower has provided consent. It is also inconsistent with the terms of the federal student loan agreements, and antithetical to Congress’s intent of keeping borrowers out of delinquency and default.

⁹⁴ See, e.g., Navient Comments at 36; 34 C.F.R. § 682.411(h).

number through skip tracing (which is also required by the Department in some instances) are sometimes the only way to reach a borrower, especially when more than a decade may have passed since the borrower took out the student loan and initially provided her number.⁹⁵ Further, the FCC's rules hamstringing federal loan servicers' ability to comply with the Department's call requirements; the FCC should be working with the Department and not in contravention to it.

IV. ONE POTENTIAL SOLUTION IS TO ADJUST THE FRAMEWORK FOR FEDERAL STUDENT LOAN SERVICERS.

The FCC should consider modifying the rules as appropriate for federal student loan servicers. Federal student loan servicers face different challenges than others who call to collect federal debts. Yet, while the FCC purports to protect borrowers from unsolicited and unwanted marketing and advertising calls, its unnecessarily restrictive approach does not address the technological, demographic, or other factors that distinguish federal student loan borrowers.

Student loan servicers rely on calling wireless numbers more often than other types of loan servicers. Student loan borrowers are typically younger than other types of borrowers, often ranging between 18 and 30 years old.⁹⁶ This demographic is far more likely to live in wireless-only households. The Centers for Disease Control found that, at the end of 2015, approximately 73 percent of adults aged 25-29 and 61 percent of adults aged 18-24 live in households with only wireless telephones.⁹⁷ Young adults are also more likely to rely on smartphones for bill payment

⁹⁵ See, e.g., Navient Comments at 36.

⁹⁶ See *Ex Parte* Notice from Mark W. Brennan, Counsel, Navient, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278 (filed June 11, 2015).

⁹⁷ Stephen J. Blumberg and Julian V. Luke, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July-December 2015*, NATIONAL CENTER FOR HEALTH STATISTICS (May 2016), <http://bit.ly/27e0RzD>.

and other “information seeking and transactional activities.”⁹⁸ Contacting wireless numbers is thus the best – and often only – way to reach many student loan borrowers.

In a similar vein, it is often more difficult to maintain current contact information for student loan borrowers. One hundred thousand wireless numbers are reassigned each day, and many years can pass between a student loan’s origination and when the borrower is required to begin repayment or becomes delinquent. During that time, student loan borrowers are also more likely than other types have borrowers to move to a new city, leave a family plan, or switch to a work-provided telephone number, without updating their contact information. In Navient’s experience, contacting relatives or references listed on a borrower’s student loan application can be the best – or only – way to reach a borrower. Student loan servicers therefore have a greater need to reach individuals other than the debtor in some situations.

Federal student loan borrowers also enjoy a far more complex array of repayment options than other types of federal borrowers. More than a dozen different repayment plan options, as well as 32 deferment, forbearance and forgiveness options, can be available.⁹⁹ Put another way, there are nearly 50 offerings designed to protect federal student loan borrower from delinquency, default, and impaired credit ratings. It is therefore critical to have a live conversation to discuss these options and tailor repayment plans to meet the needs of each borrower. For example, it typically takes Navient four or more conversations with a borrower to explain the borrower’s options, select the right repayment plan, and finalize the requisite paperwork.¹⁰⁰ Nelnet, too, introduced data in the record that demonstrated that the rate of resolution of borrower

⁹⁸ See Aaron Smith, *U.S. Smartphone Use in 2015*, PEW RESEARCH CENTER (Apr. 1, 2015), <http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/>.

⁹⁹ See *Ex Parte* Notice from Mark W. Brennan, Counsel, Navient, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278 (filed Mar. 29, 2016).

¹⁰⁰ See *Ex Parte* Notice from Mark W. Brennan, Counsel, Navient, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278 (filed Mar. 4, 2016).

delinquency increases significantly with each additional contact in a given month.¹⁰¹ A strict limit on the numbers of calls that may be placed to borrowers would therefore pose greater difficulties for student loan servicers than for other types of servicers.

Among other things, the FCC should adjust the three-call attempts-per-month limit, defining any limit on the “number” of calls to a limit on live contacts and not call attempts. The FCC should also revise the prohibition on calls to individuals other than the debtor, including calls to reassigned and wrong numbers, and eliminate borrowers’ ability to opt out of all future calls. By so doing, the FCC would acknowledge the unique nature of student loans and allow federal student loan servicers to help borrowers stay current, resolve delinquencies, and avoid the potentially devastating financial consequences of default.¹⁰²

V. CONCLUSION.

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. No group stands to gain more from the exemption than at-risk and disadvantaged federal student loan borrowers. However, the FCC’s rules hamstring student loan servicers and keep borrowers from the information they need to repay their loans. Key restrictions, including the three-call-per-month limit and prohibition on calls to individuals other than the debtor, violate the APA and are contrary to the record, text of the statute, and Congress’s intent. In addition, the FCC’s interpretation of its rulemaking authority is impermissibly broad. We urge the FCC to reconsider these rules, especially for federal student loan servicing calls.

¹⁰¹ Nelnet Comments at 14.

¹⁰² *See, e.g.*, Navient Comments at v, 2 (explaining that Navient is able to resolve a loan delinquency more than 90% of the time that it has a live conversation with a borrower).

Respectfully submitted,

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