Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

Opposition To Petition For Reconsideration Submitted by
Great Lakes Higher Education Corp.; Navient Corp.; Nelnet, Inc.; Pennsylvania Higher Education Assistance Agency; and the Student Loan Servicing Alliance

by

National Consumer Law Center

on behalf of its low-income clients and

Americans for Financial Reform
Center for Responsible Lending
Consumer Action
Consumers Union
National Association of Consumer Advocates
National Association of Consumer Bankruptcy Attorneys
National Center for Law and Economic Justice
National Legal Aid & Defender Association
Public Knowledge
U.S. PIRG

North Carolina Justice Center, Raleigh, NC
Public Good Law Center, Berkeley, CA
Public Justice Center, Baltimore, MD
Public Law Center, Santa Ana, CA
South Carolina Appleseed, Columbia SC
Virginia Poverty Law Center, Richmond, VA
Mountain State Justice, Charleston, WV

February 1, 2017

Summary

Petitioners argue that the Budget Rules[1] are arbitrary and capricious and unsupported by either the language of the statute or the record. This is not the case. The record abundantly supports each feature of the Budget Rules. In fact, the Budget Rules are a textbook balancing act by the Federal Communications Commission of the competing goals of the statute: to allow some unconsented-to automated calls to collect federal debt, while protecting call recipients from invasive and costly calls consistent with the purposes of the Telephone Consumer Protection Act (TCPA)[2].

Petitioners complain about the Budget Rules' limitation of three robocall calls per month. Yet this limit falls squarely within the Commission's discretionary authority in 47 U.S.C. § 227(b)(2)(H) to "limit the number ... of calls." Petitioners simply don't like the number. In setting this number, the Commission recognized both the harassment that consumers suffer from debt collectors, and the particular annoyance and invasion of privacy caused by autodialed calls.

Petitioners also protest that the call limit should be based on live contacts rather than attempts. But the entire point of limiting the calls is to address the annoyance and invasion of privacy caused by robocalls. The ringing telephone triggers the TCPA's purpose of protecting consumers from that annoyance and invasion of privacy, not just when the consumer chooses to answer the phone. It would be a significant break from longstanding interpretation of TCPA protections to measure that annoyance only in terms of when the consumer answered the phone.

Petitioners also criticize the Commission's interpretation of the statute's words "solely to collect a debt."[3] The Commission has quite properly determined that these words only permit

---

[1] In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 31 FCC Rcd. 9074 (Rel. Aug. 11, 2016), *available at* https://ecfsapi.fcc.gov/file/08111407302175/FCC-16-99A1.pdf.

[2] 47 U.S.C. § 227.

[3] 47 U.S.C. § 227(b)(1)(A)(iii).

collectors to make unconsented-to calls to the debtor, not anyone else. Although Petitioners want to be able to call every "endorser, relative, reference, and entity" in the consumer's file, those calls do not meet the statutory requirement of being "solely to collect the debt."

Petitioners also protest the application of the rule on reassigned numbers from the 2015 Omnibus Order[4] to these unconsented-to calls. Petitioners are already failing to comply with the current law—which already clearly prohibits these calls. There would be no stopping these calls at all—and no redress for Petitioners' refusal to stop making these calls—if these callers were permitted, as they have been requesting, to call reassigned numbers without consent.

The Order establishing the Budget Rules and the 2016 ruling in the Broadnet case[5] are inextricably linked. While there is no good reason for the Commission to reconsider the Budget Rules, there are strong reasons to reconsider the Broadnet Ruling and correct its errors.

[4] In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 30 FCC Rcd. 7961, 8006-8011 ¶¶ 85-93 (2015).

[5] In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Petitions for Declaratory Ruling by Broadnet Teleservices LLC, National Employment Network Association, RTI International, CG Docket No. 02-278, Declaratory Ruling, FCC 16-72 (July 5, 2016), *available at* https://ecfsapi.fcc.gov/file/0705087947130/FCC-16-72A1.pdf.

Table of Contents

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

Opposition To Petition for Reconsideration

I. Introduction

The National Consumer Law Center,[6] on behalf of its low-income clients, and the seventeen additional national and state organizations listed on the cover page, submit this Opposition to the Petition for Reconsideration (Petition)[7] filed by several student loan collectors and servicers seeking modification of the August 11, 2016 Report and Order (Order)[8] released by the Federal Communications Commission (FCC or Commission). The Budget Rules adopted in the FCC's Order implemented section 301 of the Bipartisan Budget Act,[9] which created an exception from the prior express consent requirement of the TCPA for robocalls[10] that are "made solely to collect a debt

[6] The National Consumer Law Center (NCLC) is a nonprofit corporation founded in 1969 to assist legal services, consumer law attorneys, consumer advocates and public policy makers in using the powerful and complex tools of consumer law for just and fair treatment for all in the economic marketplace. NCLC has expertise in protecting low-income customer access to telecommunications, energy and water services in proceedings at state utility commissions, the FCC and FERC. We publish and annually supplement nineteen practice treatises that describe the law currently applicable to all types of consumer transactions, including *Access to Utility Ser*vice (5th ed. 2011), covering telecommunications generally, and *Federal Deception Law* (2d ed. 2016), which includes a chapter on the Telephone Consumer Protection Act.

[7] Petition for Reconsideration of Great Lakes Higher Education Corp.; Navient Corp.; Nelnet, Inc.; Pennsylvania Higher Assistance Agency; and the Student Loan Servicing Alliance of the Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, FCC 16-99 (Rel. Aug. 11, 2016) [hereinafter Petition], *available at* https://ecfsapi.fcc.gov/file/1217190700960/Petition%20for%20Reconsideration.pdf.

[8]. In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 31 FCC Rcd. 9074 (Rel. Aug. 11, 2016) [hereinafter Order].

[9] Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 584 [hereinafter Budget Act].

owed to or guaranteed by the United States."[11]

Contrary to what is stated in the Petition, the FCC comprehensively analyzed and documented the basis for each part of the Budget Rules, and the rules appropriately fulfill congressional intent. As Congress intended, the Commission struck the right balance between the significant invasion of privacy caused by unconsented-to robocalls and the goal of allowing some limited calls to assist in the collection of federal debt. The Budget Rules are neither arbitrary nor capricious, and they appropriately effectuate congressional intent to allow these calls in limited circumstances.[12] There is no good reason for the Commission to revisit the Budget Rules, and the Petition for Reconsideration should be denied.

II. The Budget Rules are neither arbitrary nor capricious and are well-supported in the record.

There is nothing arbitrary or capricious about the Commission's Budget Rules. They are well-reasoned and completely supported by the record. The limits imposed on robocalls to collect government debt are clearly necessary to protect consumers from unwanted and invasive robocalls, which would be unstoppable without the Commission's rules. The Commission appropriately

---

[10] We are using the term "robocalls" to refer to calls made with either an automatic telephone dialing system ("autodialer") or with a prerecorded or artificial voice, or with both. *See* In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 30 FCC Rcd. 7961, 7964 [hereinafter 2015 TCPA Declaratory Ruling and Order].

[11] Budget Act § 301(a)(1)(A) (amending 47 U.S.C. § 227(b)(1)(A)); *see also id.* at § 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"). The Commission has interpreted the TCPA to apply both to voice calls and to text messages. 2015 TCPA Declaratory Ruling and Order at 8016-17 ¶ 107.

[12] It should be kept in mind that it is likely that federal debt collection robocalls will provide little extra to the U.S. Treasury. As pointed out in one news article, the Congressional Budget Office projects that debt collection robocalls will raise, at most, $500,000 per year over the next ten years. Chris Morran, *Government's Own Budget Analysis Shows that Allowing Debt Collection Robocalls is Pointless,* Consumerist, Oct. 28, 2015, *available at* https://consumerist.com/2015/10/28/governments-own-budget-analysis-shows-that-allowing-debt-collection-robocalls-is-pointless/.

recognized that robocalls are a significant intrusion into the lives of those called and, through its regulation, sought to produce a balanced system of permitting these unconsented robocalls.

As the Commission noted in its Order, the record included ample evidence of not just "the public's general dislike for robocalls and their desire for the Commission to provide them greater protection against unwanted calls,"[13] but also:

- Over 15,700 individuals filed comments directly in the record;
- Over 12,500 of those comments expressed a general dislike for robocalls;
- Approximately 2,500 comments included more pointed comments regarding debt collection and calls by the federal government;
- Consumers Union submitted a petition containing 4,800 signatures asking the FCC to stop robocalls to cellphones; and
- Americans for Financial Reform submitted a petition containing 5,346 comments in support of the FCC's proposed limitations on calls.[14]

The Order, citing the letter to the FCC from Senator Sherrod Brown, also pointed out that "because the Budget Act amendments could expose an additional 47 to 61 million people to robocalls that previously required consent, the Commission must consider these concerns and the increase in the magnitude of these concerns."[15]

Finally, the Commission noted just a few of the individual comments of the many thousands of commenters concerned about allowing more robocalls:

- "Seniors are being frightened, coerced, and financially exploited by these calls. Their emotional and even physical health is very often compromised on a daily basis by the un-ending personal intrusion, anxiety, and harassment of these callers, particularly the debt collectors who are bent on collection of debts not even belonging to the targeted person. These calls are truly a new form of elder abuse." (Jeanette Burket Comments at 1);
- "Scammers will gleefully join the robocall party to target seniors, and to prey on the feeble. Don't sanction mass-harassment of ordinary citizens." (LL Price Comments at 1);

---

[13] Order at 9078 ¶ 9.

[14] *Id.*

[15] *Id.* (citing Letter from Sherrod Brown, Ranking Member, United States Senate Committee on Banking, Housing, and Urban Affairs, to Marlene H. Dortch, Secretary, FCC at 2 (Mar. 28, 2016) (on file in CG Docket No. 02-278).

- "It's especially unsafe to receive these annoying calls when driving." (Alan Rosenfeld Comments at 1).[16]

These comments illustrate that every one of the specific elements of the Budget Rules is supported in the record, including the four specific elements that are the subject of Petitioners' objections.

A. The TCPA directs the FCC to closely limit robocalls.

Petitioners, all servicers of federal student loan debt, find it cost-effective and more efficient to use automated equipment to reach consumers to collect debts. They point out recurrently in their petition how important it is for them to be able to call consumers repeatedly until they reach them, and to keep calling until they are able to persuade consumers to make payments on their debts.[17]

We do not dispute that calling consumers repeatedly is likely to push more of them to make payments on their debts. And we do not dispute that informing consumers about their options to repay federal loans can provide them with important information. That is why we have supported some of these calls, even before the debts are actually delinquent.[18] We differ from Petitioners only with respect to how many calls are appropriate and who can be called without consent pursuant to the Budget Act amendments.

We, along with dozens of other advocacy groups and the over 15,000 individual previous commenters, have pushed for strong limits on the number of unconsented-to calls. Robocalls are a nuisance and an invasion of privacy. They can be expensive, and even dangerous, to consumers.

---

[16] Order at 9078 ¶ 9 n.35.

[17] *See, e.g.,* Petition at 6 (Navient "shows that 25 percent of federal student loan borrowers require 40 or more call attempts to reach" and 9 ("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.").

[18] *See* Reply Comments of National Consumer Law Center on behalf of its low-income clients, et al., CG Docket No. 02-278, at 6-7 (June 21, 2016), *available at* https://ecfsapi.fcc.gov/file/10622234478653/NCLC%20Reply%20Comments.pdf.

When Congress passed the TCPA Act in 1991, it intended for the Act to be the primary *consumer protection* against these unwanted robocalls. It passed the TCPA in direct response to "[v]oluminous consumer complaints about abuses of telephone technology—for example, computerized calls dispatched to private homes."[19] Yet 25 years later, the complaints are still pouring in. Robocalls are very inexpensive to make. A single company can make tens of millions of robocalls over the course of a day at a fraction of a penny per call.[20]

In 2016, there were more 3.4 million complaints made about robocalls to the Federal Trade Commission.[21] Indeed, some estimate that 35 percent of all calls placed in the U.S. are robocalls.[22] The problem is escalating: there were *three times as many* complaints in 2016 as there were in 2010.[23] More than half of these complaints were about calls that occurred after the consumer requested the company stop calling.[24]

B. The Commission has properly exercised its authority to regulate unconsented-to robocalls made to collect federal debt.

There are clearly important tensions at play here. First: how many calls to consumers who have not consented to being called are appropriate to facilitate debt collection versus the number of calls that are harassing and should be declared too many. Second: in case of doubt about where to draw the line between consumer protections and allowing more calls, how should the balance be

---

[19] *Mims v. Arrow Fin. Servs., L.L.C.*, 565 U.S. 368 (2012).

[20] *See, e.g.,* Call-Em-All Pricing's website, https://www.call-em-all.com/pricing (last accessed May 13, 2016), which quotes pricing from a high of 6 cents per call to $7.50 per month "for one inclusive monthly fee. Call and text as much as you need."

[21] Federal Trade Commission, National Do Not Call Registry Data Book for Fiscal Year 2016, at 5 (2016) [hereinafter FTC's Do Not Call Registry], *available at* https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2016/dnc_data_book_fy_2016_post.pdf.

[22] *See Rage Against Robocalls*, Consumer Reports (July 28, 2015), *available at* http://www.consumerreports.org/cro/magazine/2015/07/rage-against-robocalls/index.htm.

[23] *See* FTC's Do Not Call Registry at 4.

[24] *See id.* at 5.

struck between the competing desires of industry to make calls more efficiently and of consumers to be free of harassing robocalls.

The TCPA is a consumer protection statute. It was passed only, and explicitly, to protect consumers from the annoyance and expense of too many automated calls.[25] In case of doubt, it is perfectly clear that the balance should be tipped toward protecting consumers.[26]

Congress passed the Budget Act amendments to permit some debt collection robocalls to be made without consent, thereby creating an exception to the previous strict requirement of prior express consent except for emergency calls. But Congress also *required* the Commission to prescribe regulations to implement the Budget Act amendments:

> Not later than 9 months after the date of enactment of this Act, the Federal Communications Commission, in consultation with the Department of Treasury, shall prescribe regulations to implement the amendments made by this section.[27]

Notably, this general rulemaking authority, which the Petition never cites or even acknowledges, is *in addition to* the Commission's more specific discretionary authority set forth in § 227(b)(2)(H) to restrict the number and duration of these calls. This general rulemaking authority parallels the rulemaking authority created by § 227(b)(2), which also uses the language "the Commission shall prescribe regulations to implement the requirements [of § 227(b)]." However, the pre-existing rulemaking authority set forth in § 227(b)(2) is hedged in by numerous restrictions and requirements, while the new authority in § 301(b) is not. If Congress wanted the Commission to regulate just the

---

[25] *See* Pub. L. No. 102-243, 105 Stat. 2394, § 2 (Dec. 20, 1991) (congressional findings). *See also Mims v. Arrow Fin. Servs., L.L.C.*, 565 U.S. 368 (2012).

[26] *See, e.g.*, Barnes v. Fleet Nat'l Bank, N.AA., 370 F.3d 164, 171 (1st Cir. 2004) ("We construe consumer protection statutes liberally in favor of consumers."); Legg v. Voice Media Group, Inc., 990 F. Supp. 2d 1351, 1354 (S.D. Fla. 2014) ("because the TCPA is a consumer protection statute that is remedial in nature, it should be construed liberally in favor of consumers"); Ramirez v. Apex Fin. Mgmt., L.L.C., 567 F. Supp. 2d 1035, 1040 (N.D. Ill. 2008) (as a consumer protection statute, the FDCPA is liberally construed in favor of consumers to effect its purpose").

[27] Pub. L. No. 114-74, 129 Stat. 584, § 301(b) (Nov. 2, 2015) (emphasis added).

number and duration of calls, § 301(b) would be entirely superfluous. The entire Budget Rules fall within the scope of the Commission's discretionary authority to limit the number and duration of calls, but even if it did not, the Budget Rule would be well within the general authority conferred by § 301(b).

III. The Budget Rules' limits on these unconsented-to robocalls realize and fulfill congressional intent.

Limit on the Number of Calls. Petitioners complain about the Budget Rules' limitation of three robocalls per month. Yet this limit falls squarely within the Commission's discretionary authority to "limit the number ... of calls" in 47 U.S.C. § 227(b)(2)(H). Petitioners simply don't like the number. In setting this number, the Commission recognized both the harassment that consumers suffer from debt collectors, and the particular annoyance and invasion of privacy caused by robocalls.

Petitioners repeatedly denigrate the Commission's statements that callers can make manually dialed real-voice calls if they want to make more calls than the permitted three per month.[28] But consumers object particularly to robocalls, and for good reasons: 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. Nor does the fact that the Consumer Financial Protection Bureau (CFPB) is considering a higher limit on all collection calls,[29] not just robocalls, undermine the Commission's position. While Petitioners conflate all contacts with automated calls, the fact is that the Commission, the CFPB, and consumers see important distinctions among them.

---

[28] *See* Petition at 10.

[29] *See* Consumer Financial Protection Bureau, Small Business Review Panel for Debt Collector and Debt Buyer Rulemaking: Outline of Proposals under Consideration and Alternatives Considered (July 28, 2016), *available at* http://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf (July 28, 2016).

Petitioners claim that the Commission ignored data in the record showing that they should be able to make more than three unconsented-to robocalls a month. Yet Petitioners ignore the enormous volume of submissions in the record showing the extent to which consumers object to these calls and want a low limit on their number. The Commission was well within its authority to consider and balance *both* sources of information.

Limit on Call Attempts. Petitioners also protest that the limit should be based on live contacts, rather than attempts. But the entire point of limiting the calls is to address the annoyance and invasion of privacy caused by the autodialed calls. A ringing telephone is an annoyance and an invasion of privacy whether or not the consumer chooses to answer the phone.[30] It would be a significant break from longstanding interpretation of TCPA protections to measure that annoyance only when the consumer answered the phone. Moreover, unanswered calls are often charged to the called party, particularly when a voice message is left.

Indeed, Petitioners' own data provides compelling support for a limit of three attempted calls per month. According to Nelnet, calling up to ten times per month leads to 42% more live contacts than calling three times per month. In other words, a *233% increase* in the number of calls produces only a 42% increase in the number of live contacts. Thus, Petitioners' own data shows that while increasing the number of robocalls from three to ten comes at little financial cost for the debt

---

[30] *See* King v. Time Warner Cable, 113 F. Supp. 3d 718, 725–726 (S.D.N.Y. 2015); Castro v. Green Tree Servicing, L.L.C., 959 F. Supp. 2d 698, 720 (S.D.N.Y. 2013) ("[F]or purposes of Plaintiffs' TCPA claim, it is immaterial whether the Plaintiffs picked up all of Defendants' calls or whether several of the calls went unanswered."); Fillichio v. M.R.S. Associates, 2010 WL 4261442, at *3 (S.D. Fla. Oct. 19, 2010) (The TCPA "does not include [ ] a requirement . . . that the recipient of a call must answer the phone or somehow be aware of the call in order for there to be a violation"). *See also* Satterfield v. Simon & Schuster, Inc., 569 F.3d 946, 953–954 (9th Cir. 2009) (holding that "to call" in the TCPA means "to communicate with or try to get in communication with a person by telephone"); In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 31 FCC Rcd. 9074, 9086-9087 ¶ 28 (Rel. Aug. 11, 2016) (a call is any initiated call; the call need not be completed and need not result in a conversation or voicemail).

collector, it causes a significantly heightened level of harassment, aggravation, and invasion of privacy for the person and family on the receiving end. This data makes it obvious that repeated robocalls produce rapidly diminishing returns that do not justify the additional harassment, invasion of privacy, and costs that would be caused by tripling the number of calls.

Prohibiting Unconsented-to Robocalls To Persons Other Than the Debtor. Petitioners also object to the Commission's refusal to allow them to make unconsented-to robocalls to persons other than the debtor. They want to be able to robocall "every 'endorser, relative, reference, and entity'" in the consumer's file,[31] and they want to be able to robocall wrong numbers with impunity.

The Budget Act's authorization for these calls does not exempt *all* calls related to the debt collection process from the consent requirement. The statute specifies that the calls must be "solely" to collect the debt. If the word "solely" is to be given any meaning—as statutory construction principles require—then the authorization must encompass something less than calls for any reason simply associated with the collection of the debt.

The extent of the problems that would be caused if Petitioners' position were accepted is illustrated by Petitioners' own data. They state that "less than half of defaulted borrowers are reachable by telephone, and right party contact is extremely low."[32] To authorize unconsented-to robocalls to non-debtors would unleash a tsunami of robocalls to wrong numbers, affecting millions of non-debtors.

The problem of wrong-number calls is exacerbated by the fact that Petitioners have shown that even when they do know that the people they are calling are not those who provided consent, they not only keep calling, but they keep calling relentlessly. If the history of these Petitioners were different, and there were not a plethora of cases against them illustrating their repeated harassment

[31] Petition at 15.

[32] Petition at 12.

of both known debtors and people who had nothing to do with the debtors, there might be more justification for their grumbling. But they have refused to comply with the current law—which already clearly prohibits these calls.

In one case currently being litigated in Florida against Petitioner Navient, the consumer—who was making payments on his student loans—received 756 robocalls from Navient to his cell phone. Indeed, 525 of these calls were received after the consumer had repeatedly asked that the calls stop.[33] Navient insisted that it would keep calling him despite these requests, and repeatedly called this consumer, on his cell phone, at work, even though he was making payments, despite his repeated requests that these calls to his cell phone stop:

> MR. C--: Well, I'm already making payments. Look at -- online. Don't call me anymore. If you call me anymore, I'm going to report you that you're harassing me. I'm at work right now.
> NAVIENT REPRESENTATIVE: Well, you can report it.
> MR. C--: So don't call me --
> NAVIENT REPRESENTATIVE: You can report it.
> MR. C--: -- anymore.
> NAVIENT REPRESENTATIVE: Well, you gave us permission --
> MR. C--: Okay.
> NAVIENT REPRESENTATIVE: -- so we'll call you again.
> MR. C--: I'm -- I'm making payments, so --
> NAVIENT REPRESENTATIVE: All right.
> MR. C--: -- don't call me anymore.
> NAVIENT REPRESENTATIVE: Talk --
> MR. C--: Goodbye.
> NAVIENT REPRESENTATIVE: Okay. Talk to you later.[34]

Below are two additional examples—out of many—of federal student loan servicers repeatedly and *knowingly* calling people who are *not* the debtors, and refusing to stop these calls despite repeated requests:

---

[33] Cedeno v Navient, 0:16-CV-61049-UU (S.D. Fla. filed May 16, 2016). The Appendices to these Opposition Comments includes 1) a joint stipulation from both the consumer and Navient admitting to these calls (Appendix A), and 2) two short transcripts of the conversations in which the consumer specifically requested that Navient stop calling him on that line (Appendix B).

[34] *Id.; see* Appendix C.

- Petitioner Nelnet called one consumer over 185 times, leaving recorded messages clearly indicating that, while the message purported to be for a Leonor Vargas, Nelnet knew that it was not calling that person. Nelnet contended that it had consent because the intended recipient was the person it was trying to call—the real debtor.[35] But the text of the robocalls themselves revealed that Nelnet knew these calls were not reaching the debtor. The calls gave the person receiving the calls no opportunity to explain that he was not the debtor, that he did not know the debtor, and that he wanted the calls to stop.

- In a case brought by a client of the law firm Greenwald Davidson Radbil P.L.L.C. of Boca Raton, Florida and Austin, Texas,[36] one of the petitioners--a large collector of federal student loan debt—placed numerous autodialed phone calls to the client looking for another person, the debtor on the loan it was trying to collect. The client notified the collector on numerous occasions that his cellular telephone number did not belong to the debtor the collector was attempting to reach. Although the collector recorded the client's calls explaining that the calls were to a wrong number, and the collector said it marked the number as a "wrong number," the calls did not stop. Discovery revealed that this collector placed scores of calls to the cellular telephones of consumers throughout the country after dates on which it knew that the numbers called were the wrong number.

In these cases, a business entity set loose an automated system that called a non-debtor's cell phone multiple times, even after the consumer's repeated attempts to stop the calls. In each case, the caller had simply decided that it was more cost-effective to ignore the clearly expressed wishes of these consumers for these calls to stop, and to continue to make these automated calls.

The mandate[37] by Congress to the Commission to regulate these calls clearly justifies application of the rule limiting calls to reassigned numbers to these unconsented-to calls. These calls

---

[35] *Cooper v. Nelnet*, 6:14-cv-00314-GKS-DAB (M.D. Fla. filed Feb. 25, 2014)). An example of the recorded messages Mr. Cooper received is: "Hello, this is an important message for Leonor Vargas from Nelnet, calling on behalf of the US Department of Education. We do not have a current address, phone number, or email on file for Leonor Vargas. Without current contact information, we are unable to provide important information about their student account. Please contact Nelnet 24/7 at 888-486-4722 or visit us at www.nelnet.com. This matter requires your immediate attention. Thank you."

[36] These facts are described more fully in Comments filed by Aaron Radbil in the related Broadnet proceeding, which is available at https://ecfsapi.fcc.gov/file/10816887018145/GDR%20Reply%20Comments%20in%20Favor%20of%20A%20Stay%20Pending%20Reconsideration%20.pdf.

[37] *See* Budget Act § 301(a)(1)(H).

have such a remote and tangential relationship to collection of the debt that they cannot be considered to fall within the Budget Act amendments at all. And if they do, limiting them to zero would be clearly within the Commission's authority to regulate their "number," even if it did not have the more general rulemaking authority of § 301(b).

Robocalls to non-debtors are also extremely unlikely to produce information that would be useful in reaching the actual debtor. If the collector is not sure that the number being called is actually that of the debtor, it should have a human make the call, so that the human can find out whether the number is the debtor's. If a collector is seeking information about the debtor's location, robocalling third parties rather than having a live person call them is unlikely to produce it.

As we have pointed out in other comments, the industry already has numerous ways to avoid calling reassigned numbers.[38] The problem of calling the wrong number is one that can be solved if the Commission maintains the pressure on industry to solve it. The alternative is many millions of wrong-number calls to consumers who will have no redress—surely not the intent of Congress, which is well aware of the public anger about robocalls.

To ease compliance with the requirement not to make robocalls to reassigned numbers, we urge the Commission to establish a mandatory database, as was recently suggested in a Senate hearing on the TCPA.[39] A database would be fully accurate and relatively inexpensive to operate and access by callers if it has the following components:

1. All cell phone providers would participate by providing timely and regular information about the dates that cell phone numbers that change ownership;

---

[38] *See* Reply Comments of National Consumer Law Center on behalf of its low-income clients, et al., CG Docket No. 02-278, at 8 ¶ 6 (June 21, 2016), *available at* https://ecfsapi.fcc.gov/file/10622234478653/NCLC%20Reply%20Comments.pdf.

[39] *See* Hearing on The Telephone Consumer Protection Act at 25: Effects on Consumers and Business Before the United States Senate Comm. on Commerce, Science and Transportation, 114th Cong., 2d Sess. (May 18, 2016) (statement of Monica Desai, Partner, Squire, Patton Boggs), *available at* https://www.commerce.senate.gov/public/_cache/files/11ba8b7f-dea2-4c81-a515-7e312a50f40f/E74117FDEE42CEBCE9832497DF2AB5CB.monica-desai-testimony.pdf. The suggestions were made by both by both the National Consumer Law Center and Monica Desai.

2. Callers could access the database easily online and simply ask: "For telephone number XYZ, when was the last time it changed ownership?"; and
3. The fees charged to callers for accessing the information would pay for the maintenance of the database.

The Chairman of the Senate Commerce Committee has commented favorably on the idea of creating a database.[40] A mandatory database would be a practical solution that would eliminate all excuses for making wrong-number robocalls and would be cheered by consumers nationwide.

IV. Consumers need to be protected from unconsented-to debt collection robocalls.

A. Tens of millions of consumers have limited-minutes cell phone plans.

Estimates indicate that approximately 76 million Americans, just over a third of U.S. cell phone owners, use limited-minutes prepaid plans.[41] Many of these consumers maintain essential telephone service through the federal Lifeline Assistance Program, which permits only 250 minutes a month for an entire household.[42] A flood of unwanted calls would be devastating for households struggling to afford essential telephone service. Unwanted calls use up the minutes on which the entire household depends to access health care, transportation and other essential services, to find jobs or accept work assignments, to respond to family emergencies, to call police or fire departments, and to avoid social isolation.

---

[40] *See* Kate Tummarello, *Thune may seek repeal of government debt robocall exemption,* Politico, May 18, 2016.

[41] The research firm Ovum has stated that it expected the number of American prepaid customers to increase to 29% of overall wireless subscribers by 2016. *See* Brian X. Chen, *Prepaid Cellphones Are Cheaper. Why Aren't They More Popular?,* New York Times (Aug. 2, 2012), *available at* http://bits.blogs.nytimes.com/2012/08/02/prepaid-phone-plans/. If 90% of adults own cell phones, as the Pew Research Center has estimated, this figure would come to 218 million people, and 29% of that number would be 63 million people. *See* Pew Research Center, Mobile Fact Sheet, *available at* http://www.pewinternet.org/fact-sheets/mobile-technology-fact-sheet/. Thus we estimate that 63 million Americans have prepaid phones, including 13 million who maintain essential telephone service through the Lifeline program. *See* Universal Service Administrative Company, LI08 Lifeline Subscribers by State or Jurisdiction - January 2015 through December 2015, *available at* http://www.usac.org/about/tools/fcc/filings/2016/q2.aspx.

[42] *See* Universal Service Administrative Company, LI08 Lifeline Subscribers by State or Jurisdiction - January 2015 through December 2015, *available at* http://www.usac.org/about/tools/fcc/filings/2016/q2.aspx.

B. Debt collectors are *known* for abusive calling patterns.

The collection industry routinely makes multiple calls a day.[43] For example, the industry recommended to the CFPB that six calls a day should not be considered abusive.[44] And the CFPB has found that credit card issuers regularly authorize four to 15 calls per day.[45]

It is the telephone ringing multiple times a day from debt collectors that make these calls enormously stressful. The calls are highly intrusive. Multiple collection calls interfere with daily life. The calls themselves, the dread of future calls, and the fear of the dissemination of personal, embarrassing information to friends, neighbors, co-workers and employers permeate the lives of consumers struggling to make ends meet. Indeed, in some cases aggressive collection efforts have caused such significant emotional distress so as to cause physical illness.[46] Multiple calls may also

---

[43] *See, e.g.,* CashCall, Inc. v. Morrisey, 2014 WL 2404300, at *4 (W. Va. May 30, 2014) (unpublished) (84,371 calls to 292 consumers); Krapf v. Nationwide Credit, Inc., 2010 WL 2025323, at *2 (C.D. Cal. May 21, 2010) (four to eight calls daily for two months); Press Release, Consumer Financial Protection Bureau, CFPB Survey Finds Over One-In-Four Consumers Contacted By Debt Collectors Feel Threatened (Jan. 12, 2017) (17% of consumers who received debt collection calls reported that a creditor or debt collector called them eight or more times per week), *available at* http://www.consumerfinance.gov/about-us/newsroom/cfpb-survey-finds-over-one-four-consumers-contacted-debt-collectors-feel-threatened/. *See also* Meadows v. Franklin Collection Serv., Inc., 414 Fed. Appx. 230, 233 (11th Cir. 2011) (approximately 300 calls over a two and a half year period); Rucker v. Nationwide Credit, Inc., 2011 WL 25300, at *2 (E.D. Cal. Jan. 5, 2011) (approximately 80 phone calls in one year).

[44] *See* Letter from Patrick Morris, Chief Executive Officer, ACA International, to Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, at 40 (Feb. 27, 2014) ("Although the FDCPA does not define a specific call frequency to a consumer, ACA supports a standard to limit the number of collections call attempts to no more than six times per day per unique debt . . ."). .

[45] *See* Consumer Financial Protection Bureau, The Consumer Credit Card Market 249 (Dec. 2015), *available at* http://files.consumerfinance.gov/f/201512_cfpb_report-the-consumer-credit-card-market.pdf.

[46] *See, e.g.*, Latimore v. Gateway Retrieval, L.L.C., 2013 WL 791258, at *2 (N.D. Ga. Feb. 1, 2013) (stress from collection call threatening plaintiff with jail caused gastroesophageal reflux disease symptoms to reactivate), *report and recommendation adopted*, 2013 WL 791308 (N.D. Ga. Mar. 4, 2013); Gilmore v. Account Mgmt., Inc., 2009 WL 2848278, at *11 (N.D. Ga. Apr. 27, 2009) (awarding damages to plaintiff who experienced chest pains after repeated collection calls and other FDCPA violations), *report and recommendation adopted as modified*, 2009 WL 2848249 (N.D. Ga. Aug. 31, 2009),

push consumers to make payments to the loudest or most persistent debt collector just to end the harassment, sometimes even for debts they do not owe.[47] Such payments will often be at the expense of paying the rent or meeting other, more important financial obligations.

Excessive phone calls from debt collectors are a recurrent source of consumer complaints to regulatory agencies. As the CFPB noted just this past month:

- **Three in four consumers report that debt collectors did not honor a request to cease contact.** About 40 percent of consumers contacted regarding a debt in collection said they asked at least one debt collector or creditor to stop contacting them. Of these consumers, three in four said that the debt collector did not honor the request to cease contact attempts.
- **More than half of consumers report incorrect contact for at least one debt.** Fifty-three percent of consumers contacted about a debt in the year prior said at least one collection effort was mistaken in some way. These consumers reported that the creditor or collector sought the incorrect amount, that the debt was not owed, or that the person owing the debt was not them but a family member.
- **Over one third of consumers report being contacted at inconvenient times.** Thirty-six percent of consumers contacted about a debt in collection said that the creditor or collector who most recently contacted them called between 9 p.m. and 8 a.m. Debt collectors generally cannot call at times they know to be inconvenient unless the consumer specifically agrees to it.
- **Nearly 40 percent of consumers report that a debt collector called four or more times per week.** Thirty-seven percent of consumers contacted about a debt in collection report that the most recent creditor or collector to contact

---

aff'd in part, vacated in part, 357 Fed. Appx. 218 (11th Cir. 2009); Margita v. Diamond Mortgage Corp., 406 N.W.2d 268 (Mich. Ct. App. 1987) (stress from telephone collection efforts including phone calls aggravated paroxysmal atrial tachycardia); Turman v. Central Billing Bureau, Inc., 568 P.2d 1382 (Or. 1977) (affirming tort verdict; blind consumer rehospitalized with anxiety and glaucoma complications after repeated collection calls); GreenPoint Credit Corp. v. Perez, 75 S.W.3d 40 (Tex. App. 2002) (affirming jury verdict of $5 million in compensatory damages against debt collector; elderly consumer suffered severe shingles-related sores, anxiety, nausea, and elevated blood pressure due to repeated telephone and in-person harassment over a debt she did not owe).

[47] *See, e.g.,* Press Release, Federal Trade Commission, FTC Takes Action to Stop Phantom Debt Scam That Targeted Spanish-Speaking Consumers Nationwide (Oct. 23, 2014) (describing more than $2 million in payments made by consumers on non-existent debts due to aggressive collection tactics), *available at* http://www.ftc.gov/news-events/press-releases/2014/10/ftc-takes- action-stop-phantom-debt-scam-targeted-spanish-speaking; Rachel Nolan, *Behind the Cover Story: Jake Halpern on Debt, HBO and His Mother*, New York Times, Aug. 18, 2014 describing how Jake Halpern's mother paid off an insistent debt collector for a debt that she did not owe in order to get the collector to stop harassing her), *available at* http://6thfloor.blogs.nytimes.com/2014/08/18/behind-the-cover-story-jake-halpern-on-how-his-mom- inspired-an-investigation-into-debt-collection/.

> them usually did so four or more times in a week. About 20 percent of consumers approached by debt collectors reported calls by debt collectors, usually four to seven times per week. Another 17 percent said that a creditor or debt collector called them eight or more times per week.[48]

While the federal Fair Debt Collection Practices Act (FDCPA)[49] provides some protections to consumers being harassed by debt collectors, that law does not apply to many of the activities of the Petitioners collecting federal debts, so the Commission cannot rely on its strictures to protect consumers from harassing robocalls. The FDCPA applies only to the collection of debts that are in default when the collector initiates collection;[50] many of the Petitioners are collecting debts that were not in default when their servicing was initiated.

C. Student loan collectors and servicers repeatedly violate debt collection and other consumer protection laws.

There have been numerous borrower complaints about abuses by debt collection agencies to the Department of Education.[51] Additionally, just this past month, the CFPB filed suit against Navient, one of the Petitioners in this proceeding. The CFPB explained that it was suing Navient—

> for systematically and illegally failing borrowers at every stage of repayment. For years, Navient, formerly part of Sallie Mae, created obstacles to repayment by providing bad information, processing payments incorrectly, and failing to act when borrowers complained. Through shortcuts and deception, the company also illegally cheated many struggling borrowers out of their rights to lower repayments, which caused them to pay much more than they had to for their loans.[52]

---

[48] *See* Press Release, Consumer Financial Protection Bureau, CFPB Survey Finds Over One-In-Four Consumers Contacted By Debt Collectors Feel Threatened (Jan. 12, 2017), *available at* http://www.consumerfinance.gov/about-us/newsroom/cfpb-survey-finds-over-one-four-consumers-contacted-debt-collectors-feel-threatened/.

[49] 15 U.S.C. §§ 1692 through 1692p.

[50] 15 U.S.C. §1692a(6).

[51] *See* Deanne Loonin and Persis Yu, National Consumer Law Center, Pounding Student Loan Borrowers: The Heavy Costs of the Government's Partnership with Debt Collection Agencies (Sept. 2014), *available at* http://www.nclc.org/images/pdf/pr-reports/report-sl-debt-collectors.pdf.

[52] Press Release, CFPB Sues Nation's Largest Student Loan Company Navient for Failing Borrowers at Every Stage of Repayment (Jan. 18, 2017) (emphasis added), *available at* http://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-nations-largest-student-loan-company-navient-failing-borrowers-every-stage-repayment/.

In 2014, separate reports by the Government Accountability Office (GAO) and the Department of Education's Office of the Inspector General (OIG) found that the current system of collecting student loan debt heavily favors high-pressure collection and debt collector profits to the detriment of financially distressed borrowers.[53]

According to the FTC, in fiscal years 2011 and 2012 consumers filed almost 10,000 complaints against the 22 student loan collection companies that contract with the Department of Education.[54] In July 2013, the FTC settled charges against Expert Global Solutions, another debt collector of federal student loans, and its subsidiaries, for a civil penalty of $3.2 million.[55] This was the largest settlement the FTC had ever reached against a third-party debt collector. According to the complaint filed by the FTC, Expert Global Solutions and its subsidiaries violated the law by:

- Calling consumers multiple times per day;
- Calling even after being asked to stop;
- Calling early in the morning or late at night;
- Calling consumers' workplaces despite knowing that the employers prohibited such calls;
- Leaving phone messages that disclosed the debtor's name and the existence of the debt to third parties; and
- Continuing collection efforts without verifying the debt, even after consumers said they did not owe it.[56]

On May 13, 2014, Petitioner Navient reached an agreement with the Department of Justice

---

[53] U.S. Dep't of Education, Office of Inspector General, Handling of Borrower Complaints Against Private Collection Agencies 1, 11 (July 2014), *available at* https://www2.ed.gov/about/offices/list/oig/auditreports/fy2014/a06m0012.pdf.

[54] For a breakdown of the complaints by collection agency, see Deanne Loonin and Persis Yu, Pounding Student Loan Borrowers: The Heavy Costs of the Government's Partnership with Debt Collection Agencies Appx. B, National Consumer Law Center (Sept. 2014), *available at* http://www.nclc.org/images/pdf/pr-reports/report-sl-debt-collectors.pdf.

[55] *See* Press Release, Federal Trade Commission, World's Largest Debt Collection Operation Settles FTC Charges, Will Pay $3.2 Million Penalty (July 9, 2013), *available at* https://www.ftc.gov/news-events/press-releases/2013/07/worlds-largest-debt-collection-operation-settles-ftc-charges-will.

[56] *Id.*

requiring Navient to pay $60 million to compensate student loan debtors for interest overcharges that violated the Servicemembers Civil Relief Act (SCRA).[57] On the same day, the FDIC announced a separate $96.6 million settlement with Navient for manipulating the allocation of students' payments in order to maximize late fees, misrepresenting and inadequately disclosing how borrowers could avoid late fees, and violating SCRA requirements.[58]

Moreover, in 2014 testimony to Congress about problems with student loans, the CFPB's Student Loan Ombudsman stated:

> Loan servicers are the primary point of contact on student loans for more than 40 million Americans. . . .
>
> The Bureau has received thousands of complaints from borrowers describing the difficulties they face with their student loan servicers. Borrowers have told the Bureau about a range of problems, from payment processing errors to servicing transfer surprises to loan modification challenges.[59]

Student loan collectors and servicers have also frequently been subject to private suits for TCPA violations. For example, Sallie Mae was the defendant in *Cummings v. Sallie Mae*,[60] a case involving allegations that Sallie Mae called people who were references for the students' loans with prerecorded debt collection messages. Sallie Mae had no relationship with these references in regard to the accounts that were the subject of the calls.

---

[57] *See* Press Release, Justice Department Reaches $60 Million Settlement with Sallie Mae to Resolve Allegations of Charging Military Servicemembers Excessive Rates on Student Loans (May 13, 2014), *available at* http://www.justice.gov/opa/pr/justice-department-reaches-60-million-settlement-sallie-mae-resolve-allegations-charging.

[58] *See* Press Release, FDIC Announces Settlement with Sallie Mae for Unfair and Deceptive Practices and Violations of the Servicemembers Civil Relief Act (May 13, 2014), *available at* https://www.fdic.gov/news/news/press/2014/pr14033.html. While this matter involved private student loans, rather than the federal student loans for which section 301 provides a carve-out, the behavior of student loan servicers is relevant to the discussion.

[59] Hearing on the Impact of Student Loan Debt on Borrowers and the Economy Before the United States Senate Comm. on the Budget, 113th Cong., 2d Sess. (June 4, 2014) (testimony of Rohit Chopra, Assistant Director & Student Loan Ombudsman, Consumer Financial Protection Bureau) (emphasis added).

[60] 12-cv-09984 (N.D. Ill. final approval of settlement entered May 30, 2014).

Moreover, student loan debt collectors themselves acknowledge both that they routinely call student loan debtors hundreds of times, and that these voluminous calls are often not successful in compelling debtors to begin making payments. Consider this story published on May 31, 2016 by Inside ARM, a trade group for debt collectors, in which the collector admitted to contacting the consumer over 250 times, without success.[61] The 250 attempted contacts not only did not guarantee success, but they may even have made the situation worse.

This evidence demonstrates that the Commission's Budget Rules are neither arbitrary nor capricious, and they are entirely appropriate given the congressional intent to allow some unconsented-to calls to cell phones to collect federal debt, but to closely regulate and limit those calls to ensure that consumers are fully protected.

V. A reconsideration of the Budget Rules necessitates a simultaneous reconsideration of the Broadnet Ruling

The National Consumer Law Center, on behalf of our low-income clients, and fifty legal aid and national, state and local public interest organizations, has filed a Petition for Reconsideration of Declaratory Ruling and Request for Stay Pending Reconsideration of the Broadnet Ruling.[62] We maintained (in our Reply Comments[63]) that the Broadnet Ruling must be reconsidered because of the contradictions between that ruling and the Budget Act Rules,[64] the Broadnet Ruling's

---

[61] *See* 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/.

[62] Petition of National Consumer Law Center et al. for Reconsideration of Declaratory Ruling and Request for Stay Pending Reconsideration, CG Docket No. 02-278 (filed July 26, 2016), *available at* https://ecfsapi.fcc.gov/file/10726059270343/NCLC%20Petition%20for%20Reconsideration%20of%20Broadnet.pdf.

[63] *See* Reply Comments of National Consumer Law Center on behalf of its low-income clients, et al., CG Docket No. 02-278 (Aug. 16, 2016), *available at* https://ecfsapi.fcc.gov/file/10622234478653/NCLC%20Reply%20Comments.pdf.

[64] In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 31 FCC Rcd. 9074 (Rel. Aug. 11, 2016)

misinterpretation of the U.S. Supreme Court case *Campbell-Ewald Co. v. Gomez*,[65] and the danger that the ruling presents of irreparable financial harm to low-income consumers and to the privacy of all cell phone users. The Broadnet Ruling seriously undermines the Commission's commitment to protecting privacy and reducing the economic impacts from unwanted robodialed calls to cell phones, most recently illustrated in the Budget Rules and in the 2015 Omnibus Order.[66]

The amendment made by the Budget Act[67] specifically illustrates that Congress intended for government contractors to be covered by the TCPA. Section 301 of the Budget Act creates an exception from the requirement for robocalls that are "made solely to collect a debt owed to or guaranteed by the United States."[68] The only callers that would possibly be making calls to collect debts owed to or guaranteed by the United States are either the agencies of the government or its contractors. There would have been no need for the exception created by the Budget Act if these calls, made by government contractors, were not covered by the TCPA. This change to the TCPA, made only a few months before the Broadnet Ruling was issued, contradicts the Broadnet Ruling's sweeping determination that the TCPA does not apply to government contractors. If the Broadnet Ruling is correct, then there would have been no reason for Congress to add the exception for the federal government and its agents to make robocalls to cell phones without consent. This issue is articulated well in the Dissent filed by Chairman Pai.[69]

---

[65] 136 S. Ct. 663 (2016).

[66] *See* 2015 TCPA Declaratory Ruling and Order.

[67] *See* Budget Act § 301.

[68] Budget Act § 301(a)(1)(A) (amending 47 U.S.C. § 227(b)(1)(A)); *see also id.* at § 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"). The Commission has interpreted the TCPA to apply both to voice calls and to text messages. 2015 TCPA Declaratory Ruling and Order at 8016-17 ¶ 107.

[69] *See* Order at 9123 through 9127(Dissenting Statement of Commissioner Ajit Pai).

Moreover, the Broadnet Ruling appears to have relied on a fundamental misunderstanding of the express language and the holding in the *Campbell-Ewald Co. v. Gomez* case.[70] The Supreme Court did *not* hold that the government is not a person covered by the TCPA, but only that the doctrine of sovereign immunity protects the government from a suit for damages for violating the TCPA. Likewise, the Court did *not* hold that contractors for the federal government enjoy "derivative immunity." Quite the opposite. The Court stated:

> [G]overnment contractors obtain certain immunity in connection with work which they do pursuant to their contractual undertakings with the United States." *Brady v. Roosevelt S.S. Co.,* 317 U.S. 575, 583, 63 S.Ct. 425, 87 L.Ed. 471 (1943). That immunity, however, unlike the sovereign's, is not absolute. Campbell asserts "derivative sovereign immunity," but can offer no authority for the notion that private persons performing Government work acquire the Government's embracive immunity. When a contractor violates both federal law and the Government's explicit instructions, as here alleged, no "derivative immunity" shields the contractor from suit by persons adversely affected by the violation.[71]

Since the issues addressed by the Broadnet Ruling are intertwined with the Budget Rules, the Commission should correct the errors in the Broadnet Ruling at the same time as it rules on the Petitioners' Petition.

VI. Conclusion

When Congress amended the TCPA as part of the Budget Act to permit some unconsented-to calls to cell phones, it did so only after requiring that the Commission issue implementing rules and authorizing the Commission to place further limits on those calls. The Budget Rules explicitly follow congressional instructions to balance the needs of consumers to be protected from the invasions of privacy and additional costs of too many of these calls with the facilitation of some calls to collect government debt. The Commission perfectly exercised its statutory authority and mandate in issuing the Budget Rules. They should not be reconsidered. However, whether or not the

[70] 136 S. Ct. 663 (2016) (internal citations omitted).

[71] *Id.* at 672 (2016) (emphasis added).

Commission reconsiders the Budget Rules, it should also reconsider its ruling in the Broadnet order.

Respectfully submitted by:

_____

Margot Saunders
National Consumer Law Center
1001 Connecticut Avenue, NW
Washington, D.C.
202 452 6252
msaunders@nclc.org

February 1, 2017

On behalf of the low income clients of the **National Consumer Law Center**, and Americans for Financial Reform, Center for Responsible Lending, Consumer Action, Consumers Union, National Association of Consumer Advocates, National Association of Consumer Bankruptcy Attorneys, National Center for Law and Economic Justice, National Legal Aid & Defender Association, Public Knowledge, U.S. PIRG, North Carolina Justice Center, Raleigh, NC, Public Good Law Center of Berkeley, CA, Public Justice Center of Baltimore, MD, Public Law Center of Santa Ana, CA, South Carolina Appleseed of Columbia SC, Virginia Poverty Law Center of Richmond, VA, and Mountain State Justice, Charleston, WV.