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March 3, 2017

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20054

RE: Notice of Ex Parte Meeting Regarding the Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; CG Docket No. 02-278

Dear Ms. Dortch:

On March 1, 2017, Justin Wiseman, Director of Loan Administration Policy, Public Policy and Industry Relations at the Mortgage Bankers Association ("MBA"); Lauren Campisi of McGlinchey Stafford PLLC, counsel to the MBA; Nicole Ehrbar, Vice President of Public Policy at Quicken Loans, Inc. ("Quicken Loans"); Gary Weingarden, Senior Counsel at Quicken Loans; and Joe Habib, Senior Compliance Specialist at Quicken Loans, met with Amy Bender, Legal Adviser to Commissioner Michael O'Rielly of the Federal Communications Commission (the "Commission") to discuss MBA's Application for Review it filed on December 15, 2016 (the "Application"). Enclosed please find the materials we provided during our meeting.

In its Application, the MBA respectfully requests that the Commission reverse an Order issued by the Consumer and Governmental Affairs Bureau (the "Bureau") on November 15, 2016, summarily denying MBA's Petition for Exemption from the "prior express consent" requirements under the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, for certain non-telemarketing residential mortgage servicing calls[1] to cellular telephone numbers (the "Petition").

The Order was an inappropriate exercise of delegated authority. By regulation, the Commission has delegated authority to its staff "to act on matters which are minor or routine or settled in nature and those in which immediate action may be necessary." 47 C.F.R. § 0.5(c). As we discussed during our meeting, the Order was an inappropriate exercise of delegated authority because the Petition presented a novel legal issue of first impression deserving of full Commission consideration, not a minor or routine matter or one that is settled in nature for the Bureau to decide.

[1] Consistent with the Application and Petition, the references to "calls" within this letter are intended to include text messages.

For this reason alone, the Petition deserves full consideration by the Commission untainted by the Bureau's hasty Order.

The Order is not supported by the TCPA or the record. This unprecedented exercise of delegated authority resulted in a legally and factually unsupported ruling. The Bureau denied the Petition on the ground that the MBA failed to demonstrate its members could make free-to-end-user calls. However, the free-to-end-user nature of the calls is a statutory prerequisite to any exemption granted under 47 U.S.C. § 227(2)(C). The petitioner does not bear any burden of proving its ability to make free-to-end-user calls. Even if this showing was a threshold requirement, it was satisfied. Mortgage servicers are just as capable of placing free-to-end-user calls as package delivery services, financial institutions and healthcare providers who received exemptions. The Bureau also found mortgage servicing calls are not sufficiently time-sensitive to warrant an exemption. This finding is unsupported by the record and conflicts with prior rulings by the Commission and wholly disregards comments submitted by the Federal Housing Finance Agency ("FHFA").

Mortgage servicing calls help borrowers. MBA seeks an exemption from the prior express consent requirements under the TCPA for residential mortgage servicing calls because these communications help consumers. The requirements to place these calls and their benefits to consumers are undisputed. Mortgage servicers must be able to speak to a delinquent borrower as early as possible after a payment default to explain available options. These calls directly benefit borrowers by allowing the mortgage servicer to work with the borrower to, among other things:

- determine the reason for the delinquency and whether the reason is temporary or permanent in nature;
- determine whether the borrower has abandoned or vacated the property;
- determine the borrower's current perception of their financial circumstances and ability to repay the debt;
- set payment expectations and educate the borrower on the availability of alternatives to foreclosure;
- provide homeowner counseling information;
- discuss options upon the death of a borrower;
- discuss missing documentation needed to complete a loss mitigation application; and

- address misconceptions or misinformation about the effect of not making payments and other bad advice from debt relief scams.

The sort of timely, real-time interaction that occurs on a telephone call is particularly important. Length of delinquency is the second-most significant factor that drives the performance of the loan modifications necessary to keep a consumer in his or her home. In fact, one mortgage servicer's internal review noted a 50% increase in borrowers who became current on their loan when the servicer made up to five calls in the two weeks prior to the customer becoming 60 days delinquent, compared to those customers who were not called during the same time period.[2] Time is of the essence in loss mitigation efforts, and discouraging telephone contact creates obstacles to a borrower getting a modification or keeping his or her home.

The Commission should grant the requested exemption. MBA seeks an exemption from the prior express consent requirements under the TCPA for residential mortgage servicing calls because these communications help consumers. The requirements to place these calls and their benefits to consumers are undisputed. These mortgage servicing calls facilitate live communications between borrowers and their servicers to explain their accounts, answer questions, help them cure delinquencies, create manageable repayment opportunities in the event of a financial issue, receive homeownership counseling, and keep their families in their homes. Nothing in the record of this Petition provides any support that should allow the TCPA, which was not enacted to regulate these communications, to have the unintended consequence of adversely impacting mortgage borrowers, loss mitigation communications, or homeownership preservation. It would be particularly unfortunate if the Bureau's cursory review of the Petition allowed the TCPA to frustrate the efforts of the agencies to which Congress has delegated discretion to set policy regarding the best methods of aiding mortgage borrowers in financial distress. MBA urges the Commission to remove these impediments and reverse the Order, which would facilitate the ability of mortgage servicers to best fulfill their federal and state requirements and to communicate with borrowers, increasing the likelihood that they will avoid foreclosure and remain in their homes.

Pursuant to Section 1.1206(b) of the Commission's rules, the MBA is filing this notice electronically in the above-referenced docket. Please do not hesitate to contact me directly with any questions.

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[2] Comments of Quicken Loans Inc. to the Commission's Notice of Proposed Rulemaking on the TCPA's Budget Act Amendment, CG Docket No. 02-278 (filed June 6, 2016), at page 3.

Sincerely,

McGlinchey Stafford

Lauren Campisi

Lauren E. Campisi

cc: Amy Bender