

March 28, 2019

VIA ECFS

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

Re: Notice of Ex Parte Presentation – Nationstar Mortgage, LLC d/b/a Mr. Cooper - Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 - CG Docket No. 02-278, Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of DC Circuit’s ACA International Decision - CG Docket No. 18-152

Dear Ms. Dortch:

On March 26, 2019, Dana Dillard, Executive Vice President for Corporate Social Responsibility of Nationstar Mortgage, LLC d/b/a Mr. Cooper (“Mr. Cooper” or “Company”), John Fietz, Senior Vice President and Associate General Counsel of Mr. Cooper and Paul C. Besozzi and Eric J. Troutman, outside counsel for Mr. Cooper, met (in separate meetings) with (a) Commissioner Michael O’Rielly and Arielle Roth, Wireline Legal Advisor to Commissioner O’Rielly; (b) Zenji Nakazawa, Legal Advisor for Public Safety and Consumer Protection to Chairman Ajit Pai; (c) Evan Swarztrauber, Policy Advisor on Media Issues to Commissioner Brendan Carr; (d) Travis Litman, Chief of Staff and Senior Legal Advisor for Wireline and Public Safety to Commissioner Jessica Rosenworcel; and (e) Michael Scurato, Legal Advisor for Media and Consumer Protection to Commissioner Geoffrey Starks, to discuss Mr. Cooper’s positions on Telephone Consumer Protection Act (“TCPA”)-related regulatory issues currently being considered by the Commission.

More specifically, the presentations and discussions focused on (a) the background and nature of the Company’s mortgage servicing business, (b) the challenges to its compliance efforts in attempting to legitimately communicate with its customers consistent with TCPA requirements, and (c) recommended FCC actions on three key issues currently being considered in the post-*ACA International* decision proceeding: (i) the definition of an automated telephone dialing system (“ATDS”), (ii) the revocation of consent standard, and (iii) the scope of the debts- owed-to-or-

guaranteed-by-the-United States” provision added to the TCPA. The Company also advocated that the data submitted by the National Consumer Law Center and others related to robocall volumes is being misapplied to legitimate American businesses attempting to contact their customers and that other data sources demonstrate that as little as 2.1% of unwanted “robocalls” come from such callers.¹

More specifically, during the meetings the Company discussed the following:

1. **Background** – Mr. Cooper is a major presence in the U.S. mortgage servicing marketplace, with 3.3 million customers, over eighty-five percent (85%) of which are acquired.² The Company is the third largest non-bank mortgage service entity in the U.S. Mr. Cooper services one out of every fourteen mortgages in the U.S. Sixty percent (60%) of the mortgages that it services are Freddie Mac or Fannie Mae loans. During the housing crisis, the Company was extensively involved in handling default loans for both of these and other government lending agencies.

Through the Company’s extensive experience in servicing mortgage loans, the Company knows that early communication with customers who show signs of financial distress is key to helping the customers stay in their home. The earlier the Company reaches the customer the more solutions it has. Technology plays a key role in effectively communicating with these customers.

To effectively reach out to the Company’s large number of customers about all manner of issues relating to their mortgages (e.g., missed payments, possible insurance lapses, etc.), Mr. Cooper employs live agents and sophisticated automated technology that, when a customer picks up the phone, quickly allows the live agent to initiate conversation on the call. The equipment includes built-in features to ensure compliance with federal and state time-of day and other calling requirements. Although the Company employs pure manual dialing in certain instances, in the Company’s extensive experience, using automated technology provides the best chance for Mr. Cooper to reach a larger number of its customers more quickly.

2. **Key Challenges** – Mr. Cooper makes concerted efforts to obtain prior consent from each of its customers to use its automated technology to call them. Nevertheless, since the Company is servicing many loans originated by other entities, obtaining that consent, particularly to call wireless phones, is a challenge. Yet during a natural disaster such as the California Wildfires and Hurricane Harvey, when these customers may need help and have questions, wireless phones are frequently the only lifeline. Again, use of the Company’s automated technology is the most effective vehicle for successful outreach. Although Mr. Cooper scrubs wireless numbers, the Company’s efforts to reach existing customers have continued to expose it to plaintiffs’ TCPA lawsuits.

¹ These data were developed by Hiya, a Seattle-based company that provides caller profile information to help consumers identify incoming calls and block unwanted ones.

² This information, along with additional background information and the Company’s requests, are contained in the attached materials provided in each of the presentations.

A second challenge is the processing of consent revocation requests. Under the current “any reasonable means standard” the Company acts conservatively to honor literally any request (e.g., “don’t call me” written on the face of a mortgage payment voucher). When a called party states “don’t call me” in most cases there is no opportunity to validate that it is the actual customer who is giving the instruction. Moreover, there is usually no opportunity to find out what the customer actually means. For example, does it mean, “don’t call me” about anything relating to this account ever again? Does it mean “don’t call me” regarding the particular payment? Does it mean “don’t call me” on this phone number only? Does it mean “don’t call me” on other accounts Mr. Cooper might also be servicing? Interpreting the request in an overly broad manner will deprive a consumer of important and timely information in the future. But interpreting the request in an overly-narrow manner may lead to a lawsuit. Mr. Cooper—and servicers nationwide—should not be left to guess at a consumer’s intentions. Nor should they face suit from individuals claiming, *post hac*, that they revoked consent and making what they will of vague statements to support a lawsuit. Currently, Mr. Cooper must act extremely conservatively to avoid litigation and as a result, consumers missing payments after stating “do not call me” or words to that effect may subsequently face foreclosure proceedings without further telephonic notice—a development decidedly not in the interest of the customer or, for example, a guarantor of the loan.

The Company made two recommendations to address these challenges. A third recommendation related to the exemption from the TCPA consent requirements for calls made regarding debt “owed to or guaranteed by the United States.”³

3. The Definition Of An ATDS – A New Compromise Proposal – Mr. Cooper fully supports the Commission’s efforts to stop and combat illegal, scam robocalls using spoofed telephone numbers. Mr. Cooper is not a “robocaller” that should be lumped into that classification. Rather, the Company uses automated technology to reach out to and serve existing customers holding mortgages that it is servicing.

Mr. Cooper fully agrees that automated technology with the capacity to store or produce telephone numbers to be called using a random and sequential number generator is an ATDS under the TCPA. However, the Company does not agree that any and all automated technology, including that to which a list of customer numbers is uploaded and numbers are called with human intervention and live agents prepared to field calls, must also be so classified.

The Commission has previously articulated that an ATDS is a dialer that can call thousands of numbers in a short period of time without “human intervention.”⁴ The Ninth Circuit Court of Appeal has stated that an ATDS is a dialer with the capacity to call stored numbers “automatically.”⁵ Neither of these formulations require the statutory pre-requisites of random or sequential number generation and both pertain to the “automatic” function of a dialer—but neither define or provide guidance as to the meaning of the phrase.

³ 47 U.S.C. § 227(b)(1)(A)(iii).

⁴ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, 30 FCC Rcd 7961, 7975 (2015).

⁵ *Marks. v. Crunch San Diego, LLC*, 904 F.3d 1041, 1052 (9th Cir. 2018).

Currently the record on proposed ATDS formulations is fractured. TCPA reform advocates maintain that the statutory pre-requisites of random and sequential number generation are the hallmark of ATDS usage. While others advocate an opposing and extreme position that a call must be made via an agent dialing all ten phone numbers on a desk phone for a call to fall outside of statutory coverage.

Mr. Cooper preliminarily put forth a novel recommendation for the Commission to consider as a middle ground. The FCC should interpret the phrase ATDS to include dialers that randomly or sequentially generate numbers and dial them OR any system that dials automatically from a list without human intervention in that the system, as used, fails to achieve an abandonment rate of 3% or less of answered calls.

This formulation assures that legitimate businesses can continue to use advanced and accurate technology to efficiently contact consumers, but requires those businesses to assure enough man-power to field the calls it launches. It assures a positive consumer experience in that it reduces the number of abandoned calls consumers experience. It also harmonizes with existing telemarketing requirements regarding abandoned calls. See 47 C.F.R. § 64.1200(a)(7).

This proposal needs refinement and the Company plans to provide additional information in further meetings and ex partes. However, this compromise would harmonize customer outreach with an existing telemarketing standard and provide a target for legitimate businesses like Mr. Cooper who use such technology.

4. **Suggested Sanctioned Methods For Revoking Consent** – Mr. Cooper recommended that the FCC adopt a rule allowing servicers to direct consumers—through conspicuous disclosures—to a reasonable revocation channel, such as a website or a toll free number and rely on that channel. The Company asked the Commission to endorse one or more mechanisms that clearly would be “reasonable means” and permit companies like Mr. Cooper to specify one or more of these as the mechanisms to be used by customers. For example, the Company suggested a web site where the customer could selectively indicate the subjects for which he/she was revoking consent and no longer wished to be called. Similarly, a customer could use a toll-free number to then allow Mr. Cooper to verify the caller as the customer and make a record on what items the customer did not want to be called. This would help avoid the scenario where the called party simply says “don’t call me,” leaving Mr. Cooper without verification of customer’s wishes and to operationally assume that it applies to any call.

Additionally the Company asked the FCC to specifically confirm that companies, particularly financial services companies, can confirm the identity of a speaker using personal identifying information or via other reasonable means before it is required to honor a purported revocation of consent by an unverified call recipient. The Company explained that making changes on an account is not possible unless and until the customer’s identity has been validated and the Company’s agents know it is speaking with a person authorized to make changes to that account. The Commission should clarify, therefore, that a consumer who merely states “stop calling” and hangs up—without verifying their identity—has not revoked consent in a “reasonable manner.”

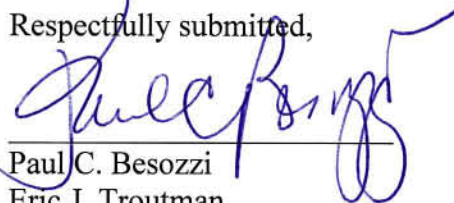
5. **Clarify The Scope of Debt Owed To Or Guaranteed By The United States** – Mr. Cooper recommended that the Commission provide more definition as to what types of debt

qualify as “owed to or guaranteed by the United States.” The Company expressly urged that Fannie Mae and Freddie Mac loans be included, as have others in the proceeding.⁶ This issue was left on the table by the prior Commission in 2016.⁷ The Company recommended that the issue be addressed in the expected upcoming ruling on TCPA issues.

Mr. Cooper urged the Commission to act on these issues, as the one-year anniversary of the initiation of CG Docket No. 18-152 approaches. The Company looks forward to having a continued dialogue on how to separate those true illegal robocallers from businesses, like Mr. Cooper, trying in good faith to provide services to their existing customers.

This notice is filed in accordance with Section 1.1206(b) of the Commission’s rules.⁸

Respectfully submitted,



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Enclosures

cc: Commissioner Michael O’Rielly
Arielle Roth
Zenji Nakazawa
Evan Swarztrauber
Travis Litman
Michael Scurato

⁶ See Comments of the American Bankers Association, CG Docket Nos. 02-278 and 18-152, June 28, 2018, at pp. 12-13.

⁷ *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 31 FCC Rcd 9074, 9082 ¶19. n. 54 (2016); see Dissenting Statement of Commissioner Michael O’Rielly, 31 FCC Rcd at 9130 n. 15.

⁸ 47 C.F.R. § 1.1206(b).

TCPA CREATES UNNECESSARY CHALLENGES

when helping 3.3 million customers.

Challenge 1:

PEOPLE **DON'T ANSWER THEIR PHONES ANYMORE.** WE ONLY TALK TO PEOPLE ABOUT

5% OF THE TIME

Challenge 2:

BY USING PREDICTIVE DIALERS, WE ARE ABLE TO

COMPLY

WITH STATE AND FEDERAL LAWS AND **HAVE A BETTER CHANCE OF REACHING OUR CUSTOMERS.**

Challenge 3:

BECAUSE **OVER 85% OF OUR CUSTOMERS ARE ACQUIRED,** GETTING PRIOR

CONSENT

TO CALL THEIR CELL ISN'T EASY.

Challenge 4:

DURING A DISASTER SITUATION, **CELL PHONES ARE THE ONLY**

LIFELINE

Challenge 5:

PROCESSING REVOCATION REQUESTS IS

COMPLEX...

DO THEY MEAN NO COLLECTION CALLS? DO THEY MEAN DON'T SOLICIT ME FOR A RE-FINANCE? DO THEY MEAN STOP EVERYTHING?

Challenge 6:

WE KNOW WHEN A CUSTOMER IS HAVING **FINANCIAL ISSUES,** THE EARLIER WE REACH THEM THE MORE

SOLUTIONS

WE HAVE, INCLUDING ON THE OVER 1.6 MILLION FEDERALLY INSURED/SPONSORED LOANS WE SERVICE.

Opportunity 1: ATDS DEFINITION CLARIFICATION

Solution 1: An ATDS is equipment with the present capacity to randomly or sequentially generate numbers and dial those numbers OR any system that dials automatically from a list without human intervention in that the system, as used, and fails to achieve an abandonment rate of 3% or less of answered calls.

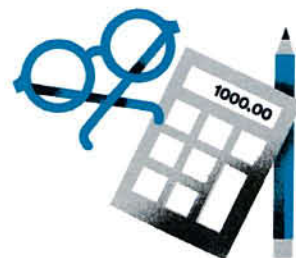
Opportunity 2: REVOCATION CLARIFICATION NEEDED FOR SERVICERS

Solution 2: Servicers may direct consumers through conspicuous disclosures to a reasonable revocation channel, such as a website or 800 number and rely on that channel even if a contractual term is not specifically available. Servicers may also require identity validation as a condition of treating a revocation as valid.

Opportunity 3: CLARIFICATION OF GOVERNMENT-BACK DEBT EXEMPTION NEEDED

Solution 3: Refine government-backed debt exemption to include Fannie Mae and Freddie Mac (in addition to the other government backed loans.)

Mr. Cooper GroupSM



BY THE NUMBERS

3.3 MILLION
CUSTOMERS¹

LARGEST
NON-BANK SERVICER
IN THE U.S.²

SERVICING PORTFOLIO:
\$548 BILLION
IN UNPAID PRINCIPAL BALANCE¹

3RD LARGEST
SERVICER
IN THE U.S.²

ORIGINATED
\$21.2 BILLION
IN LOANS³

16TH LARGEST
ORIGINATOR
IN THE U.S.²

\$1.2 BILLION
MARKET CAP⁴

WITH EXPERIENCE SPANNING MORE THAN 20 YEARS, MR. COOPER GROUP INC. HAS CAPABILITIES TO SERVE OUR CUSTOMERS AT EVERY POINT ON THEIR JOURNEY TO HOMEOWNERSHIP THROUGH OUR SERVICING, ORIGINATIONS AND REAL ESTATE SERVICES BRANDS.



¹ As of December 31, 2018.

² According to Inside Mortgage Finance as of December 31, 2018.

³ Refers to a 12-month period ended December 31, 2015.

⁴ Based on average stock price as of March 5, 2019.



KEEPING THE DREAM OF HOMEOWNERSHIP ALIVE

37,460

CUSTOMERS **HELPED** WITH
HARP REFINANCING &
MODIFICATIONS

SAVED CUSTOMERS
AN AVERAGE OF

\$2,265

ANNUALLY THROUGH
LOAN MODS

&

SAVED CUSTOMERS
AN AVERAGE OF

\$1,300

ANNUALLY THROUGH
HARP REFINANCING

63,000

CUSTOMERS
WHO GOT BACK ON TRACK
AND CURRENT ON THEIR
HOME LOAN

WE SERVICE LOANS FOR MANY INVESTORS BUT THE BULK OF OUR
CUSTOMERS **HAVE LOANS THAT ARE BACKED BY THE U.S. GOVERNMENT.**



1,175,000



822,859



692,960