
Peter F. Barry
pbarry@lawpoint.com

BARRY & HELWIG, LLC
CONSUMER RIGHTS LAWYERS

Patrick J. Helwig
phelwig@lawpoint.com

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

**RE: MORTGAGE BANKERS ASSOCIATION PETITION FOR TCPA EXEMPTION
CG Docket No. 02-278**

Ms. Dortch:

For my 20 years as a consumer rights lawyer in Minneapolis, and my 15 years as an adjunct professor teaching consumer rights law at Mitchell Hamline School of Law, I submit this letter on behalf of the thousands of low-income consumers I have represented in my career. Specifically, I write in opposition to the Mortgage Bankers Association (“Association”) Petition which seeks to exempt its members from certain requirements of the Telephone Consumer Protection Act (“TCPA”) 47 U.S.C. § 227 *et seq.* Specifically, I represent many consumers who are subjected to automated robo calls on their cellular telephones both by original creditors, such as these bankers, and by third-party debt collectors collecting on others’ accounts. I have handled hundreds of cases involving original creditors, such as the banker members of this Association, over the past decade. I have appeared in state and federal courts in individual cases in Alabama, Arizona, California, Colorado, Florida, Hawaii, Maryland, Michigan, Minnesota, Missouri, Nebraska, New York, Pennsylvania, Tennessee, Texas, Washington, West Virginia and Wisconsin. I am a current member of the National Association of Consumer Advocates and its 2005 Consumer Lawyer of the Year. I am currently representing several clients involving robo calls by mortgage bankers without the clients’ prior express consent and after the mortgage bankers had been told to stop calling.

Consumer clients are fed up with robo calls on their cell phones from these mortgage bankers. The calls from these banks come in sometimes before 8:00 a.m. and go on until after 9:00 p.m. No matter how many times my clients tell these banks to stop calling their cellular phones, the banks more often than not persist in robo calling. When a lawsuit is brought against these servicers, they claim every imaginable defense, regardless of whether or not these defenses are justified by the facts, by the law, or by FCC regulations. They hide evidence of their misconduct and demand protective orders. They invoke arbitration clauses that benefit them and hurt consumers. In my experience, the mortgage bankers represented in the Petition are some of the worst violators of the TCPA. It’s no wonder that their industry trade group wants to get them an exemption from TCPA liability.

Mortgage bankers engage in telephone harassment campaigns by relentlessly robo calling consumers after they have been told to stop. When the servicers get sued, they hide records of these robo calls and hide the recordings of the revocation of consent even after my clients repeatedly deliver to them. For these mortgage bankers, it is simply a cat-and-mouse-game. If you think that they are complying with the Commission’s current regulations that require prior express consent, think again. In the real litigation world that my clients and I live in, their cellular phones are blasted with automated robo calls by the members of this Association in blatant violation of the Commission’s TCPA regulations.

2701 University Ave SE
Suite 209
Minneapolis, Minnesota 55414

LAWPOINT.COM

Office (612) 379-8800
Facsimile (612) 379-8810
Toll Free (866) 714-8800

The FCC is the last line of defense for consumers. Private law firms like my office cannot possibly enforce the law for every violation of the TCPA, but your Commission can. A good start toward that enforcement goal is to deny the Mortgage Bankers Petition before you. Rather than permitting an onslaught of even more robo calls, which will inevitably lead to more litigation and more consumer frustration, the Commission ought to deny the Mortgage Bankers Petition because it has no justification in law or fact. In 1991, Congress was sick and tired of robo calls. Today, the same group of people who brought us the worst financial crisis since the 1920s, now wants you to give them a free pass to blast dial their customers' cellular telephones, without so much as a speck of legal accountability. The answer to that request by the Commission ought to be self-evident: No.

It is mystifying, given all of the data privacy laws surrounding consumer financial services, that the Mortgage Bankers think it is a good idea to make *more* automated robo calls (including leaving prerecorded messages to anyone who happens to answer the phone or check the voicemail). The Commission needs to stand up to this effort by the Association and reject it for what it is: a Trojan horse for debt collectors and others who want to waste consumers' cellular minutes, attention, and patience with these nuisance calls. Every industry wants to be treated as "special" and as though their "unique" business needs justify an exception to the TCPA rules issued by this Commission. But it's not because they *are* special or unique, but rather it's because they want to avoid the very real self-created legal liability for their TCPA violations. The Mortgage Bankers Association is no different. It is a parochial business interest that will commence blast dialing to millions of American homeowners who hold more than \$13.84 trillion in mortgage debt¹—only if this Commission makes the mistake of allowing it. Don't get hoodwinked by these bankers.

The idea that this Association is asking for an exemption to the prior express consent requirements for initiating automated calls to cellular telephones is frankly astonishing. Its members have already granted themselves a *de facto* exemption by flooding my clients' cellular telephones with unconsented and unwanted robo calls, regardless of what this Commission has previously ordered. This is not just one person's biased opinion—your own complaint database statistics bear this out. Just like my clients have a right to exclude uninvited guests from their homes, they ought to have the same right to exclude uninvited banks from robo calling their cellular phones while they eat, sleep, raise children, or relax at the end of a long day. For the past 200+ years, mortgage banks got along just fine sending their customers a letter when the subject was important enough. Now, those same banks want to eliminate the burden of regular mail in lieu of eliminating the burden of my clients' right to privacy. Just because something is technologically possible, i.e. robo calls with automated telephone dialing systems, does not mean it's good for society. Remember the file-sharing-music-theft-site Napster? If the Commission will not exempt well-meaning political robo calls—and it shouldn't—why in the world would it want to exempt robo calls from the very mortgage bankers who brought us to the financial brink in 2008? In truth, by filing this petition seeking a pass from the Commission's TCPA rules, the members of the Mortgage Bankers Association reveal how they see themselves: a moneyed interest, above the law.²

Respectfully,


BARRY & HELWIG, LLC

Peter F. Barry, Esq.
Attorney at Law

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¹ Source: <https://www.federalreserve.gov/econresdata/releases/mortoutstand/current.htm> (June 2016)

² "A banker is a fellow who lends you his umbrella when the sun is shining, but wants it back the minute it begins to rain." — Mark Twain