

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Advanced Methods to Target and Eliminate)	CG Docket No. 17-59
Unlawful Robocalls)	

**COMMENTS OF THE STUDENT LOAN SERVICING ALLIANCE (SLSA)
TO THE SECOND NOTICE OF INQUIRY**

The Student Loan Servicing Alliance (“SLSA”) respectfully submits these comments in response to the Second Notice of Inquiry in the above-captioned proceeding.¹ SLSA supports the Commission’s efforts to establish a robust, comprehensive reassigned numbers database and strongly urges the adoption of a reasonable and effective safe harbor. The establishment of a database should not, however, deter the Commission from promptly revising, in an appropriate proceeding, its current unworkable approach to reassigned numbers.

I. Introduction and Background.

SLSA is a nonprofit trade association made up of approximately 20 federal student loan servicers, who collectively service over 95% of the outstanding student loans in the two chief federal student loan programs, the William D. Ford Federal Direct Loan Program (“Direct Loan Program”) and the Federal Family Education Loan Program (“FFELP”).² SLSA members also service the vast majority of private education loans. Federal student loans, however, represent

¹ *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Notice of Inquiry, FCC 17-90, CG Docket 17-59 (rel. July 13, 2017) (“*NOP*”).

² See Congressional Research Service Report, “Federal Student Loans Made Under the Federal Family Education Loan Program and the William D. Ford Federal Direct Loan Program: Terms and Conditions for Borrowers” by David Smole, dated June 7, 2013, for a description of the two programs. <https://www.fas.org/sgp/crs/misc/R40122.pdf>.

by far the largest share of the almost \$1.4 trillion student loan market, comprising 92% of outstanding student loans.

Outstanding federal student loans have more than doubled since the beginning of the economic downturn in 2008, sometimes referred to as the “Great Recession”; the total has gone from less than \$600 billion in 2008 to \$1.332 trillion today.³ The Direct Loan Program, which comprises the largest share of federal loans, represents over \$1 trillion, whereas the outstanding loan balance of the FFELP program is just over \$320 billion.⁴ There are over 40 million borrowers with loans currently in one or both of these two programs. Private loans make up less than 8% (\$108 billion) of the student loan market.⁵

Serving this massive loan portfolio requires substantial communications with borrowers. Servicers routinely make telephone calls to borrowers to educate them on and facilitate the use of myriad repayment options, and federal loan servicers are required by regulation to make calls to delinquent borrowers.⁶ Because of the large universe of student loan borrowers, student loan servicing needs to be highly efficient, and many servicers use advanced calling technologies in order to successfully reach as many borrowers as possible. The master promissory notes for the federal student loan programs collect borrower contact information, including phone numbers,

³ Federal Student Aid Portfolio Summary for the second quarter of FY 2017, U.S. Department of Education, *available at* <https://studentaid.ed.gov/sa/about/data-center/student/portfolio>.

⁴ *Id.*

⁵ The MeasureOne Private Student Loan Report, MeasureOne, reporting as of end-March 2017, *available at* <https://www.measureone.com/downloads/MeasureOne%20Private%20Student%20Loan%20Report%20Q1%202017.pdf>.

⁶ The minimum due diligence requirements for telephone calls by servicers in the FFELP Program are found at 34 CFR 682.411(d). The U.S. Department of Education follows these minimum standards in the Direct Loan Program as well.

and expressly obtain consent from borrowers to contact their cell phones, including with an autodialer or an artificial or prerecorded voice, in connection with their student loans.⁷

II. The Commission Should Establish a Comprehensive, Robust Reassigned Numbers Database.

SLSA shares the Commission's goal of helping to reduce the number of unwanted calls to reassigned telephone numbers and thus welcomes the Commission's initiation of a process to provide tools, such as a reassigned numbers database, to reduce the incidence of calls to reassigned numbers. The issue of reassigned numbers is particularly complex in the student loan context, as there is frequently a span of several years or more between when the borrower obtains a loan and provides his or her contact information, including phone number, and when the payments are due. This passage of time increases the likelihood that the borrower may change his or her telephone number and not think to notify the servicer as he or she is required to do by the master promissory note for the loan.⁸

⁷ Sample master promissory note for the Direct Loan Program, *available at* <https://studentloans.gov/myDirectLoan/subUnsubHTMLPreview.action> ("I authorize my schools, ED, and their agents and contractors to contact me regarding my loan request or my loan, including repayment of my loan, at any cellular telephone number I provide now or in the future using automated dialing equipment or artificial or prerecorded voice or text messages."); sample master promissory note for a Federal Stafford Loan under FFELP, *available at* <https://ifap.ed.gov/dpcletters/attachments/FP0904StaffordHEOExp073111.pdf> ("I authorize the school, the lender, the guarantor, the Department, and their respective agents and contractors to contact me regarding my loan request(s) or my loan(s), including repayment of my loan(s), at the current or any future number that I provide for my cellular telephone or other wireless device using automated telephone dialing equipment or artificial or prerecorded voice or text messages.").

⁸ For example, the master promissory note for a Direct Loan Program loan requires the borrower to report to the servicer certain changes in the borrower's personal information:

7. INFORMATION YOU MUST REPORT TO US AFTER YOU RECEIVE YOUR LOAN

You must notify your servicer and/or the financial aid office at your school about certain changes.

SLSA's members undertake substantial efforts to ensure calls reach the intended recipient – the borrower in most cases.⁹ Unlike telemarketers who are advertising their goods or services to anyone who might wish to use them and, therefore, may not necessarily care whom they reach, student loan servicers make informational calls and have no incentive to reach anyone other than the intended recipient of a call.¹⁰ We are interested in reaching a specific individual to help them successfully repay their student loan and avoid the significant adverse financial consequences of delinquency and default; we do not want to call a number that does not reach the customer – or, just as bad, causes us to think we have reached the customer when in fact we have not. Once we are made aware that a number has been reassigned or is not the correct number, we immediately cease calling that number. It is a waste of our time and resources (and ultimately, taxpayer resources, in the case of federal student loan servicing calls) to call a number that does not connect us to the intended party.

Today, student loan servicers utilize the Number Portability Administration Center (NPAC) portability database in order to ensure that they are aware of whether a borrower's

Until you graduate or otherwise leave school, you must notify your school's financial aid office if you:

- Change your address or telephone number;

. . . .

You must also notify your servicer if any of the above events occur at any time after you receive your loan.

Id.

⁹ The Department of Education requires federal student loan services to contact individuals other than the borrower in order to locate the borrower in some cases.

¹⁰ As Commissioner O'Rielly noted in his statement accompanying the NOI, "...not every robocall is problematic. In fact, many are extremely beneficial to consumers, providing information they want and expect to receive from trusted companies. The Commission's job should be to ensure that it doesn't prevent or squash legitimate robocalls in its ferocious quest to curtail unlawful ones." *NOI*, Statement of Commissioner Michael O'Rielly.

telephone number is associated with a landline or a cellphone. Most loan servicers employ a service to scrub their borrowers' phone numbers against the NPAC database on a regular, periodic basis. Similarly, to help prevent calls to reassigned numbers, many servicers utilize a reassigned-number service to attempt to ensure that they are complying with the TCPA's restrictions on calls to cell phones.¹¹ As the Commission recognizes, however, these reassigned-number resources, while helpful, are incomplete and "lack guaranteed methods to discover all reassignments immediately after they occur."¹²

In light of the Commission's existing, erroneous interpretation of the called party as the current subscriber to the number, instead of the intended recipient, the lack of any "guaranteed" ability to determine if a number has been reassigned places SLISA's members at substantial risk of costly class action litigation or FCC enforcement.¹³ SLISA members thus would welcome a robust, comprehensive and accurate database of reassigned numbers that would allow them to scrub their borrowers' numbers. To ensure that the database is comprehensive, all voice providers should report number changes to the database and they should do so in real time, to the extent practicable. Moreover, access should be affordable.

III. The Commission Should Adopt an Effective Safe Harbor.

The Commission should exempt from TCPA liability entities that demonstrably access the reassigned numbers database before making calls. In contrast to the unrealistic "one-call safe

¹¹ For example, Neustar operates a TCPA compliance database intended to provide information about a number's status. *See* Neustar TCPA Compliance, <https://www.neustar.biz/risk/compliance-solutions/tcpa>

¹² *NOI*, ¶ 6.

¹³ As Chairman Pai noted in his dissent to the 2015 TCPA Order, interpreting "called party" to mean "intended recipient" is "by far the best reading of the statute." *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act*, 30 FCC Rcd, 7961, 8078 (2015), Dissenting Statement of Commissioner Ajit Pai.

harbor” adopted by the Commission in the 2015 TCPA Order, the Commission should create a safe harbor that truly minimizes the threat of litigation that currently overhangs the industry.

The Commission’s one-call attempt “safe harbor” for calls to reassigned numbers is demonstrably unworkable and provides no protection at all, as there are many reasons why a single call may not result in the caller having actual knowledge of the reassignment. The call may simply go unanswered; it may go to a voicemail message which does not identify the recipient of the call; it may go to a phone on a “friends and family plan” where the owner of the phone is not the same person as the user of the phone. With a text message, there is not even the possibility of receiving a voicemail message or other hint that the called party is not the intended recipient. It is enormously frustrating and downright scary to be potentially liable for a TCPA violation when you are calling your customer to provide them with important information, using the number provided to you by the customer, and want only to speak to that person, and to no one else.

Additionally, struggling student loan borrowers may seek to avoid contact from the lender by not answering the phone or failing to return messages. In this way, the behavior of a distressed borrower is similar to the behavior of a subscriber of a reassigned number who fails to return a message or otherwise fails to inform the caller that it is calling the wrong number. Failure to respond to a lender’s outreach efforts thus cannot necessarily be interpreted as a change in number, and the lender reasonably will continue to try to contact the borrower, as is required in many cases by statute or another federal agency’s rules. The creation of a database that provides up-to-date and accurate information on when a number has been reassigned will mitigate this problem, and an effective safe harbor will help ensure that it used.

The establishment of a realistic safe harbor is particularly critical for SLSA's members given the importance of reaching borrowers. As SLSA and some of its members informed the Commission in connection with its implementation of the Bipartisan Budget Act (BBA),¹⁴ we are not calling merely to demand payment, but to find out whether there is a manageable repayment plan that will help struggling borrowers avoid further delinquency and default. The student loan program is enormously complex, with a plethora of options designed to help borrowers afford their student loan debt payments (15 possible repayment plans, including 6 different income-driven repayment plans; 21 types of deferments; 13 types of forbearance; 8 different loan forgiveness/discharge options). These options are so complex that many borrowers are overwhelmed and need help navigating their choices. Live contact is absolutely key to helping federal student loan borrowers select their best repayment option and stay current on their loans. In its comments in the BBA proceeding, Navient provided data that is both widely known and widely true throughout the student loan industry – if a student loan servicer can speak to a borrower in person, then nine out of ten times, we can resolve the borrower's problem.¹⁵ And nine out of ten borrowers who default have never spoken with their student loan servicer, despite our many efforts to reach them by phone.¹⁶ An effective safe harbor that lifts the risk of litigation not only protects the caller, but helps ensure that borrowers obtain this important information.

¹⁴ Petition for Reconsideration of the August 11, 2016 Report and Order of Great Lakes Higher Education Corp.; Navient Corp.; Nelnet, Inc.; the Pennsylvania Higher Education Assistance Agency; and the Student Loan Servicing Alliance, CG Docket No. 02-278, at 4-8 (filed Dec. 16, 2016).

¹⁵ Comments of Navient Corp., CG Docket No. 02-278, at 9-10 (filed June 6, 2016).

¹⁶ *Id.*

Conclusion

SLSA's members are very interested in and supportive of the Commission's efforts to explore the possibility of a reassigned number database. SLSA members would use such a database so long as it is accurate, economical, and would provide a safe harbor against TCPA liability. Such a resource, however, may take some years to implement and become operational. In the meantime, given the pressing need to reach struggling student loan borrowers in order to help them avoid delinquency and default, SLSA urges the Commission to adopt a more immediate solution to address the issue of reassigned numbers by revising the misguided definition of "called party" to mean the intended recipient.