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**Before the  
Federal Communications Commission  
Washington DC 20544**

<b>In the matter of</b>	<b>CG Docket No. 02-278</b>
<b>Mortgage Bankers Association Petition for Exemption</b>	<b>Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991</b>
	<b>DA 16-883 3 August 2016</b>

**Gerald Roylance's Comments re Mortgage Bankers  
Association's Petition**

In DA 16-883,<sup>1</sup> the FCC seeks comment about the Mortgage Banker Association Petition.<sup>2</sup> MBA wants to invade consumer privacy with annoying “mortgage servicing” calls that have no emergency purpose and are not even urgency. MBA wants to be able to contact mortgage customers with automated calls wherever they might be. Furthermore, MBA wants to convert those contacts into their right and privilege and deny consumer privacy: consumers would not be able to turn the calls off. The petition is a benefit to mortgage bankers and infringement of consumers. The Petition should be denied.

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<sup>1</sup> FCC, 3 August 2016, *Consumer and Governmental Affairs Bureau Seeks Comment on Mortgage Bankers Association Petition for Exemption from the Prior Express Consent Requirement for Automated and Prerecorded Calls to Wireless Numbers*.  
<https://ecfsapi.fcc.gov/file/0803246612725/DA-16-883A1.pdf>

## I. Comment

MBA seeks to exempt “mortgage servicing” calls from the TCPA’s requirement of prior express consent.

The term “mortgage servicing” is both vague and all encompassing. To me, it sounds like “mortgage servicing” is a euphemism for debt collection rather than the polished pro-consumer messages whose goal is to preserve the American dream of home ownership. The MBA wants to make sure it gets paid.

The Petition also mischaracterizes the TCPA as solely wanting “to protect consumers against a growing food of invasive and unwanted *telemarketing* calls.” (Petition, page 2.) The TCPA also has a goal of protecting consumers from automated calls, and Congress has found such calls “to be a nuisance and an invasion of privacy” “regardless of the content or the initiator of the message”. (PL 102-243, finding (2)(10).)

The MBA notes that the calls it wants to make are currently exempt under the FCC regulations when they are sent to landlines because they are commercial calls that do not include an unsolicited advertisement. That such unwelcome calls can go to residential landlines does not mean they should have been permitted in the first place. The FCC got that wrong. But cell phone calls are more intrusive than land line calls, so they should get better protections. People are not at home when they are working or driving or going out or on vacation. The landline may ring, but nobody is there to hear it.. Automated calls to cellular telephones are much more intrusive because people carry their cell phones everywhere.

Lots of people have chucked their landlines completely. Part of that may be to avoid automated calls that are permitted to landlines but prohibited to cell phones. Election season is here, and that means political robocalling. Want to avoid automated political calls at dinner time? Then dump your landline and go cellular-only.

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<sup>2</sup> Mortgage Bankers Association, 16 June 2016, *Petition for Exemption*, <https://ecfsapi.fcc.gov/file/60002303090.pdf>

Unlimited access to cell phones is a bad idea. My sister is a high school math teacher, and she is not supposed to interrupt her classes with cell phone calls. The district wants the teachers to turn their phones off during class, but my sister worries about her children and family. If there is an emergency, then she wants to know. Consequently, she tells us her class schedule so we know to call her between classes. If other people, people who don't know her schedule, start calling her, then she'll have to turn the phone off while teaching. That could have a bad result.

I don't know about your experiences with emergencies, but my sister has been called for some bad playground accidents. In one, her young daughter's two front teeth had been knocked out. I'd want to know that right away. The neighbor's latch-key son was injured in a bicycle accident coming home from school; he had a 2-inch gash in his leg. I took Mark to the hospital, but we could not reach his parents, and the doctors would not do anything without his parent's consent. Mark wasn't dying, but he was on the table, in pain, and with an open wound. It was the theatre of the absurd: I could reach his father's phone, but I could only leave a voicemail because he was in a meeting. Mark and I spent two hours in a treatment room before dad finally got the message.

Privacy is another issue. Cubicles are not soundproof. At work, the guy in the cubicle next to mine got calls from debt collectors almost every day. I didn't want to listen, but stuff drifts through, and it is pathetic. It was also stealing time from our employer. Knowing about the debt collectors made me avoid the guy – which is also a bad result for our employer. His cubicle was adjacent to 5 others; I suspect the other 4 cubicle denizens had similar reactions to him.

Debt collectors are intrusive. The calls are so intrusive that many hapless debtors give up their cellular telephone number to stop the calls. But it doesn't work. The new number they get was dumped by another debtor, so they start receiving automated calls for someone else's debt. Then the creditors data-miners find the new number and start in again. Today, banks want prior express written consent to contact customers with

automated calls at not only numbers the customers provide, but also at any number that they can find, and have the consent apply to every account.<sup>3</sup>

## WE MAY CONTACT YOU

You authorize us (and our affiliates, agents and contractors) to contact you at any number you provide to us, from which you call us, or at which we believe we can reach you, and that we may contact you for any reason, including regarding any request you make for a loan or other product, to service or collect on every account you currently have with us or may have with us in the future and regarding any other products or services we are providing to you or which we provide to you in the future. You authorize us to contact you in any manner, including by means of automated dialing devices, prerecorded messages, wireless push notifications, or text messages, even if you are charged for receiving the communication and even if you will receive the communication on a mobile or wireless device. You agree that such calls are not unsolicited and that we may monitor and/or record them. You also agree to receive emails from us to any address where we reasonably believe that we may contact you.

Such an agreement violates the requirements of prior express written consent (it is not prominent and it is a condition of service), but it is now typical for the industry. The MBA Petition wants to take robocalls to cellular telephone out of the prior express written consent requirement and into a right for them whenever and as often as they please. The MBA wants to make prerecorded call contact an irrevocable condition of service.

The FCC should not continue down its slippery slope of providing content-based exemptions to a content-neutral prohibition. Each time the FCC does that, it jeopardizes the TCAP. Or maybe that has been the FCC's devious goal all along – neuter the TCPA completely by having it declared an unconstitutional restraint on Free Speech. The FCC certainly ignored Congressional wishes.

Recently, the FCC has exempted package delivery services. I don't agree with that exemption, but there is some urgency to the communication. If I know the package was delivered today and I didn't get it, then there should be some urgency in figuring out

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<sup>3</sup> Citizen's Bank, *Credit Card Agreement*, F03-U556-7, [https://www.citizensbank.com/pdf/creditcards/Clear Value Agreement Rates and Fees.pdf](https://www.citizensbank.com/pdf/creditcards/Clear_Value_Agreement_Rates_and_Fees.pdf)

what happened to the package. Maybe it was stolen. A healthcare exemption for treatments (doctor's appointments and prescriptions) can make sense because there can be some urgency in getting treated or taking required medication before the ailment gets worse. IIRC, the healthcare exemption does include payment/debt collection. That is not an urgent condition. Automated calls about possible credit card fraud are also an urgent condition. The issues require speed.

Package service notifications also have a need to be low-cost. It doesn't cost much to ship a package, so it would be foolish to make notification costs a significant percentage of that expense. That's not the case with mortgages; there's a lot more money at stake, so the absolutely cheapest form of fast communication is not needed. Houses are not foreclosed and repossessed overnight or even in a week. There's time to send a letter, and the postage is a small fraction of a typical mortgage payment. Where is MBA's sense of perspective?

Despite Congress' research and findings, the FCC believes consumers welcome automated calls as long as they don't contain advertisements. That is far from reality and a stupid move by the FCC. I bless you from the heart of my bottom every time every time I get an exempt prerecorded call. By the way, my state prohibits all such calls.

Congress has recently excluded debts owed to the US government from the TCPA. Mortgage debts are not US government debts. Congress did not intend to exclude all private debts from the TCPA. The FCC has recognized that there should be substantial constraints on automated calls collecting US debts. The Petition does not list any constraints on the calls it wants to make.

Yes, the federal and state governments have mandated meaningful communications between lenders and borrowers to stave off foreclosures. That does not mean the government intended that the telephone calls should be automated. The MBA seems intent on meeting the letter of the law about contacting lenders (make the required calls) without meeting the spirit of the law (two-way communication).

It's ironic that the Petition states that "Mortgage servicers ... are the personal interface between borrowers and the owners of their loans." (Petition, page 7.) But the Petition is all about removing the "personal" aspect of that communication and replacing it with automated, impersonal, one-way, communication. The Petition is disingenuous.

The discussion and nice chart on page 10 is about the benefits of "telephone contact", but do the same benefits result if the telephone contact is automated?

The TCPA does not prevent a mortgage servicer making a live call to a cellular telephone. When a statute or a government agency requires telephone or an in-person contact within a certain time period, the presumption should be that contact would be a real person rather than a machine. To put a point on it, using a robocall to meet a telephone contact requirement is like sending a robot to my house to fulfill an in-person contact. It does not make sense.

The Petition also represents an irrevocable right to make debt collection calls. When prior express written consent is required, then the debtor/recipient may revoke that consent orally and stop the automated calls. If the servicer has a right to call, then the recipient is essentially helpless to stop just the automated calls. The only recourse is to use the FDCPA to stop all communications, and that result may not be desired by either side.

## **II. Conclusion**

The Petition is a self-serving bad idea that is just for the benefit of the industry rather than being the pro-consumer measure suggested. It is a way for the industry to satisfy the letter of government requirements without fulfilling the intent of those requirements. A mortgage is a long-term commitment, so the servicers can easily arrange for prior express written consent from those borrowers who wish to provide it. If the mortgage services cannot get that consent, then the FCC has no business giving it to them. There is no essential need for speed in these communications; a payment default does not cause an instant foreclosure. There is no need for using the lowest cost communication channel when mortgages are for hundreds of thousands of dollars. A

prerecorded call is a penny. The mortgage servicer should be able to afford a live call that would meet the intent of government regulations. Deny the Petition. The MBA is not in dire straights. Their debts are secured.