



March 16, 2015

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

RE: In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278; Petition for Declaratory Ruling and/or Clarification Brought By Citizens Bank, N.A.

Dear Ms. Dortch:

The Student Loan Servicing Alliance (SLSA) and the Student Loan Servicing Alliance Private Loan Committee (SLSA PLC) submit the following comments in strong support of the Petition for Declaratory Ruling and/or Clarification Brought By Citizens Bank, N.A.(Citizens) on January 16, 2015. Citizens' petition seeks clarification and/or a declaratory ruling from the Commission on the scope of "prior express consent" where a called party has released her cell phone number to the public for use in normal business communications.

Background: Who We Are and Why We Care. SLSA is a non-profit trade association made up of approximately 25 major student loan servicers whose members service both federal student loans and private education loans. The SLSA PLC is a committee made up of over 55 organizations (some of whom are not SLSA servicers) involved in financing, lending, servicing, and collecting private education loans. Student loan service providers are responsible for a range of services, including the processing of loan applications, communications with consumers, the provision of disclosures and billings, the processing of payments, and the collection of payments.

Many SLSA members service both federal and private student loans. Federal student loans represent by far the largest share of the \$1.2 trillion student loan market, comprising over 93% per cent of outstanding student loans, and that share is rapidly increasing each year. Over the past seven years, outstanding federal student loans have increased from under \$600 billion in 2008 to more than \$1 trillion today. During the same period, outstanding private loan balances have grown at a much slower pace and have basically leveled off since 2011.

It is important to note that federal loan servicers are stewards of government loans in their care. The primary concern of federal loan servicers is to explore ways to resolve delinquencies in a manner that aids borrowers and preserves government assets. That is difficult to do when regulatory requirements make it difficult and expensive for servicers to perform their obligations. Anyone imposing extra costs on federal loan servicers should recognize the cost to government loan programs funded by taxpayer money. If servicers are to effectively help student borrowers, minimize the costs of loan servicing, and ensure cash flow for federal student loan programs, they must be able to communicate regularly with borrowers about changes in loan status, opportunities to change repayment plans, and new government initiatives to help borrowers. Calls to borrowers using prerecorded messages and other automated technologies are important means of customer communication in our industry.¹

Cell phones are rapidly becoming the only phone service utilized by many individuals, and that fact is especially true of our borrower population. Preliminary results from the January–June 2014 National Health Interview Survey (NHIS) indicate that the number of American homes with only wireless telephones continues to grow. More than two in every five American homes (44.0%) had only wireless telephones during the first half of 2014—an increase of 3.0 percentage points since the second half of 2013. And the numbers are even larger when one considers the younger end of the demographic: More than two-thirds of adults aged 25–29 (69.3%) lived in households

¹ The current Administration has recognized the importance of these tools, and has proposed in recent budgets to expand the use of automatic dialing systems and prerecorded voice messages to contact wireless phones in the collection of debt owed to or guaranteed by the Federal Government.

with only wireless telephones. The rate for those 18–24 is 57.8% (probably lower because many are living with parents who still have a landline) and the rate for those 30–34 was 64.9%.² Student loan borrowers tend to be young adults who live in the wireless-only households described by the NHIS. Given the continuing increases in the number of borrowers who are wireless-only, it is becoming ever more important to be able to reach them on their cell phones without undue barriers.

Student loan servicers do not make telemarketing calls as part of their servicing activities; all of our telephone contacts are informational and non-telemarketing in nature. Servicers must communicate with their customers by telephone, which means, for most of our borrowers, by cell phone. Servicers collect payments, but they also assist borrowers in successfully managing their student loan debt. They provide information on various repayment plans, and help borrowers ascertain whether they are eligible for deferment or forbearance. Federal student loan servicers are required to make repeated attempts to contact delinquent borrowers³ to see if there are ways that the servicer can assist the borrower in avoiding delinquency and default – Is the borrower entitled to a deferment? Is there a new repayment plan that would help the borrower meet his/her obligation to repay? Would a temporary forbearance help the borrower through a difficult period?

The ability to use prerecorded messages and other automated technologies for groups of borrowers who are on the same payment schedule or covered by similar program changes is critical to student loan servicers in terms of effective outreach. Servicers frequently organize outgoing call campaigns to reach out to particular classes of borrowers to provide the important types of non-telemarketing consumer information enumerated above. One servicer has estimated that using automated technologies allows it to reach six times more borrowers than by dialing manually. It is important that we be able to speak to as many borrowers as possible in order to help them avoid default by

² Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics, “*Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January–June 2014*”

³ See 34 CFR 682.411 which requires lenders in the federal student loan programs to make a certain number of phone calls to delinquent borrowers at various phases of delinquency.

changing their repayment plan, or by applying for a deferment or forbearance. Auto-dialing helps ensure that we reach the correct consumer, and that we are able to contact them expeditiously. The math is simple: the more borrowers we can reach, the more borrowers we can help. And if we can't reach them, then we can't help them.

Support for Citizens' Petition: SLSA and the SLSA PLC support Citizens' petition for clarification/declaratory ruling and believe that it is consistent with the stated aims of the TCPA to protect the privacy of consumers and to protect them against the costs of unwanted telemarketing calls. Where an individual has advertised a cell phone number to the public as a business number, and invited calls to that number from the general public, it seems clear that the individual has no reasonable expectation of privacy or concerns about the cost of communications to that number.

The Citizens petition details the numerous places that the called party provided her cell phone number for use by the public: on her website, in advertisements, on her business cards and customer receipts, as well as with providing the number as a contact to various agencies.⁴ The Commission has long recognized the principle that the knowing release of a telephone number is in effect an invitation to call that number. In its 2006 "Junk Fax" Order, the Commission stated that "a number obtained from the recipient's own directory, advertisement, or internet site was voluntarily made available for public distribution...For instance if the sender obtains the number from the recipient's own advertisement, that advertisement would serve as evidence of the recipient's agreement to make that number available for public distribution."⁵ It seems disingenuous at best for the consumer in the Citizens lawsuit to publicly distribute her cell phone number, and then to object when she is called at that number. A recent federal court decision has upheld this common sense approach; it found that a telephone subscriber who lists a residential line

⁴ See *Citizen Bank's Petition for a Declaratory Ruling and/or Clarification*, CG Docket No. 02-278 (January 16, 2015), pp. 2, 4-6.

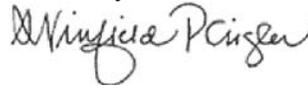
⁵ *Federal Communications Commission, Rules and Regulations Implementing the Telephone Consumer Protections Act of 1991, Junk Fax Prevention Act of 2005*, CG docket Nos. 02-278, 05-338, Report and Order and Third Order on Reconsideration, 21 FCC Rcd 3787, 3795, para. 15 (2006)

in the Yellow Pages and other business directories as a business line loses the protections of the TCPA.⁶

The increasing number of lawsuits, including large class actions, being brought under the TCPA is having a chilling effect on the ability and willingness of student loan servicers to communicate with their borrower customers by telephone. The pending disaster posed by the current state of affairs is demonstrated by the numerous TCPA petitions currently pending before the Commission. When one googles the TCPA, the first entry that pops up is an ad by a plaintiff's attorney. If the Commission would address issues such as the issue raised here by Citizens, calls made to transferred numbers,⁷ and what constitutes an autodialer,⁸ it would solve most of the problems caused by an over-zealous plaintiffs' bar, and bring the number of cases back to a reasonable level, in line with the original intent of the TCPA.

We respectfully request that the FCC grant Citizens' petition and confirm and/or clarify that a called party has provided prior express consent under the TCPA to receive non-telemarketing, informational calls made using an autodialer to a wireless telephone number where the called party has held that number out to the public as available for regular use in normal business communications.

Sincerely,



Winfield P. Crigler
Executive Director
Student Loan Servicing Alliance
1850 M Street, NW, Suite 920
Washington, DC 20036

⁶ See *Bank v. Independence Energy Group LLC and Independent Energy Alliance LLC*, 2014 U.S. Dist. LEXIS 141141 at *9 (October 2, 2014).

⁷ See *United Healthcare Services, Inc. Petition for Declaratory Ruling Regarding Reassigned Wireless Telephone Numbers*, CG Docket No. 02-278 (filed January 16, 2014)

⁸ See *Communication Innovators, Petition for Declaratory Ruling*, CG Docket No. 02-278 (filed June 7, 2012)