

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of )  
Blackboard, Inc. )  
Petition for Expedited Declaratory Ruling ) CG Docket No. 02-278  
)

Rules and Regulations Implementing the  
Telephone Consumer Protection Act of 1991

**Comments Of The Coalition Of Higher Education Assistance Organizations In Support Of Petition For  
An Expedited Declaratory Ruling of Blackboard Inc.**

The Coalition of Higher Education Assistance Organizations (“COHEAO”) was founded in 1981 and serves as a partnership of colleges, universities and servicing organizations dedicated to promoting federal campus based loan programs, student institutional and private loans, campus receivables, financial literacy, default prevention as well as other student financial services. The consumers being served by COHEAO members (higher education students and former students) identify with the national demographic data of those individuals who are entirely dependent on their cellular telephones as their primary if not only means for communication and as depositories to store information in order to conduct business of any kind, including important communications with the institution of higher education that they either currently attend or attended in the past.

COHEAO respectfully urges the Federal Communications Commission (“FCC or “Commission”) to grant Blackboard Inc.’s request for a declaratory ruling that the Telephone Consumer Protection Act of 1991 (“TCPA”) does not prohibit mass notifications sent by members of the school community and/or servicers who have been contracted by a school to students, alumni, parents, guardians, faculty, and any other members of the school community to provide education related, non-marketing information. The grant of Blackboard’s Petition is necessary because the threat of liability under the TCPA for educational pre-recorded message could inhibit – or is already inhibiting -- communications between educational institutions and the constituents they serve.

Educational institutions and their service providers do not send unwanted telemarketing calls or any other communication that may be considered as frivolous. Messages sent by educational institutions and their servicers provide time sensitive information that includes emergency weather closures, potential threat situations, event scheduling, notification of class registration deadlines, student outreach information, notifications for financial aid programs, student account/loan related requirements and deadlines, and other educated related messages. These are messages that are beneficial to the consumer and that consumers wish to receive. The inability to communicate this

information in a timely matter to a large segment of the educational institution's constituents would severely impact their ability to be fully informed of safety issues, deadlines that if missed might be detrimental to educational goals, missed opportunities, and lost educational benefits. COHEAO encourages the FCC to declare that autodialed, SMS, emailed, and prerecorded messages sent by educational institutions and/or their servicers to cellular telephones are for emergency purposes under the TCPA and are permissible under the Commission's rules as a "message made necessary in any situation affecting the health and safety of consumers" without the recipient's prior express consent.

The TCPA permits automated or prerecorded calls to be made to wireless devices for non-marketing purposes when the caller has obtained "prior express consent" from the called party. There have been a substantial number of lawsuits filed by consumers alleging that they have been the receiver of education related prerecorded communications on their wireless devices but are not the intended party. This phenomenon is causing harm to consumers who wish to be contacted and is a health and safety issue.

Educational institutions generally seek prior express consent to call cellular telephones while obtaining contact information during the admission process, enrollment periods, and execution of financial related documents. The consumers served by these educational institutions and their servicers authorize the institution to contact them via the communication platform of their choice, whether that be mobile phone, SMS (texting), email or surface mail. Such communication is vitally important as that is how the institution will contact students and others about emergency situations or to provide information the consumer needs. Consumers who have specified that their preferred means of communication is via a mobile device will often ignore communications sent by other means, such as email or postal mail.

However, it is not uncommon for students and former students to switch phone carriers, forward calls to other numbers without notifying the institution, and on occasion incorrectly input the number that was provided for contact. The wireless carrier may reassign an abandoned mobile phone number to another party who is not associated with the intended recipient. When this is done without the knowledge of the educational institution, the institution inadvertently may send a message or make a call to a wrong party.

The non-consenting recipient who receives a call in error despite the educational institution's good faith effort may file a lawsuit arguing that liability exists even in the case of an inadvertent error and even if the school subsequently blocks the recipient's number from future communication after being notified of the error. As a result of this unreasonable and anti-consumer risk of liability, COHEAO supports Blackboard's request that the prior express consent that educational institutions obtain before sending messages to wireless numbers, SMS (texting) or any other related electronic communication extend to: (1) the wireless telephone number provided to the educational institution and/or their servicers even if unbeknownst to the educational institution, the number has been reassigned by a wireless carrier to another user, or (2) the recipient the educational institution and/or their servicers intended to call and not to the person who inadvertently receives the call.

The greatest advantage in using automated messaging is to reach a large number of people as quickly as possible. TCPA rules and the accompanying threat of lawsuits inhibit or discourage communication between the educational institutions and consumers, even though consumers wish to receive such information, and it will benefit them. Accordingly, COHEAO urges the FCC to issue a Declaratory Ruling requested by Blackboard that will clarify that education related messages as described in these comments and those of the Blackboard petition be exempt from the requirements of the TCPA. In addition, we respectfully encourage the FCC to further declare that educational institutions and their

servicers who communicate educational messages are not subject to liability when the message is sent to a wireless number in error. Given the mobility of students, and alumni, and recognizing that education consumers use their mobile devices as their primary source of communication, we respectfully ask the FCC to grant the Blackboard petition.

COHEAO appreciates the opportunity to offer our comments in support of the Blackboard, Inc. petition, and will be pleased to provide any further information that will assist the Commission.

Respectfully submitted,

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