

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

In the Matter of the)
)
Rules and Regulations Implementing)
) **CG Docket No. 02-278**
the Telephone Consumer Protection)
)
Act of 1991)

Joe Shields Comment on the Numerous Nelnet Ex Parte Presentations

I hereby respectfully file these comments on the numerous¹ Ex Parte presentations of Nelnet² which seek to lower cell phone numbers to the same level as land lines. As a threshold matter Nelnet is nothing more than a debt collector that seeks permission from the Commission to harass those with student loans with automatically dialed or prerecorded/text message calls to cell phones. Nelnet claims to be providing “...valuable information about their loans...” which is a deceptive way of describing debt collection related calls.

Under the fixation of defining “person” which ignores Congressional intent to protect cell phone users from all automatically dialed or prerecorded/text message calls to cell phones regardless of content or purpose, Nelnet is seeking an exemption from the TCPA requirement of prior express consent that would open the floodgates for debt collection calls, political calls and surveys ostensibly made on behalf of a public agency to cell phones without consent of the called party.

¹ June 15th, 2015, June 4th, 2015, June 2nd, 2015, May 22nd, 2015, April 23rd, 2015, March 17th, 2015 and March 12th, 2015

² Nelnet is composed of numerous companies and affiliated companies that offer financial services, asset management, student loans, financial planning, educational planning and resume services to name a few.

The Ex Parte presentations of Nelnet are part of an intensive effort by the debt collection industry to either exempt debt collectors from the TCPA entirely or eliminate the TCPA's prior express consent of the called party requirement. The debt collection industry has repeatedly attacked the definition of autodialer, the definition of called party, definition of consent and the definition of person with the intent of obtaining broad exemptions from the TCPA. Simply put every word in the TCPA is being unreasonably challenged by the debt collection industry.

In the most recent Ex Parte presentation of Nelnet filed June 15th, 2015 Nelnet cites to previous Commission Declaratory Rulings, Memorandum Opinion and Order, and Order **that dealt with calls to land line numbers** and not calls to cell phone numbers. See June 15th, 2015 Nelnet Ex Parte Presentation, footnotes 3 through 6. Obviously, Nelnet would have the Commission treat cell phone numbers the same as land line numbers.

The Ex Parte presentations of Nelnet suggest that federal agencies are above the law and that federal consumer protection laws do not apply to federal agencies or those acting on behalf of such federal agencies. Nelnet is seeking to broadly expand public agency immunity to its debt collection calls.

One court addressing Nelnet's immunity claim held that: "Where immunity lies, "[a]n injured party with an otherwise meritorious tort claim is denied compensation," which "contravenes the basic tenet that individuals be held accountable for their wrongful conduct." *Westfall*, 484 U.S. at 295. Accordingly, immunity must be extended with the utmost care. The record contains sufficient evidence that the text messages were contrary to the Navy's policy permitting texts only to persons who had opted in to receive them.

Consequently, we decline the invitation to craft a new immunity doctrine or extend an existing one.” *Gomez v. Campbell-Ewald Co.*, No. 13-55486, 2014 WL 4654478 (9th Cir. Sept. 19, 2014)

See my comments filed on October 20th, 2014 on the National Employment Network Association petition and my comments on the RTI International petition filed on December 23rd, 2014 seeking exemptions for employment and survey automatically dialed or prerecorded/text message calls to cell phone numbers.. As I pointed out to the Commission in those comments public agencies are not above the law.

Nelnet openly admits that federal law applies to their businesses³. On Nelnet’s Anonymous Reporting web page⁴ Nelnet provides the following statement: “In compliance with Section 301 and 806 of the Sarbanes-Oxley Act, for the receipt, retention, and disposition of anonymous concerns or complaints related to financial reporting, internal controls, auditing matters, and other governance-related concerns for all Nelnet businesses.” This statement contradicts Nelnet’s erroneous assumption that the TCPA should not apply to Nelnet’s businesses⁵.

More importantly, the TCPA provides for an exemption for debt collection calls, political calls and survey calls in the section of the TCPA dealing with calls to land line numbers. There is no such exemption in the section of the TCPA dealing with automatically dialed or prerecorded/text message calls to cell phone numbers. Clearly, Congress did not intend to exempt anyone, including public agencies, from the prior

³ Some of the calls Nelnet wants the Commission to exempt deal with calls advertising the financial services of Nelnet.

⁴ <https://www.nelnet.com/pages/concernform.aspx> last visited on 06-16-15

⁵ See also the Fair Labor Standards Act (FLSA) dealing with the federal minimum wage.

express consent requirements of the TCPA for automatically dialed or prerecorded/text message calls to cell phone numbers.

The Commission must reject all attempts by a wide range of industry to lower cell phone numbers to the same level as land line numbers. The Commission must reject all attempts by a wide range of industry to eliminate prior express consent for automatically dialed or prerecorded/text message calls to cell phone numbers.

The Commission must deny the numerous petitions to exempt automatically dialed or prerecorded/text message calls to cell phone numbers made on behalf of public agencies. The exemption as sought by Nelnet will open the floodgates to a wide range of industry automatically dialed or prerecorded/text message calls to cell phone numbers made on behalf of public agencies. Such an exemption will thwart Congressional intent to protect consumers from automatically dialed or prerecorded/text message calls to cell phone numbers without consent of the called party⁶.

Respectfully submitted,

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⁶ These comments apply equally to the Ex Parte presentations filed by RTI International and Navient on June 11th 2015 which are part of an overall campaign by debt collectors and survey companies to eliminate prior express consent for automatically dialed or prerecorded/text message calls to cell phone numbers.