

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Rules and Regulations Implementing the) CG Docket No. CG 02-278
Telephone Consumer Protection Act of 1991)
)
Petition for Rulemaking of ACA International)

To: The Commission

**COMMENTS OF CEANNATE CORP, COALITION OF HIGHER EDUCATION
ASSISTANCE ORGANIZATIONS, NATIONAL ASSOCIATION OF COLLEGE
AND UNIVERSITY BUSINESS OFFICERS, NATIONAL ASSOCIATION OF STUDENT
FINANCIAL AID ADMINISTRATORS AND NATIONAL
COUNCIL OF HIGHER EDUCATION RESOURCES**

Ceannate Corp (“Ceannate”), the Coalition of Higher Education Assistance Organizations (“COHEAO”), the National Association of College and University Business Officers (“NACUBO”), the National Association of Student Financial Aid Administrators (“NASFAA”), and the National Council of Higher Education Resources (“NCHER”) submit these comments in support of the Petition for Rulemaking of ACA International (“ACA”) in the above referenced proceeding. Specifically, these entities respectfully urge the Commission to exercise its discretion and expeditiously (1) clarify that not all predictive dialers are categorically automatic telephone dialing systems (“ATDS” or “autodialers”); (2) confirm that “capacity” under the TCPA means present ability; (3) clarify that prior express consent attaches to the person incurring a debt, and not the specific telephone number provided by the debtor at the time a debt was incurred; and (4) establish a safe harbor for autodialed “wrong number” non-telemarketing calls to wireless numbers.¹

¹ 47 U.S.C. §227.

I. INTRODUCTION

Ceannate Corp. and its subsidiaries engage at all points in the credit and loan program lifecycle, including Federal Student Aid (FSA) programs, and provide assistance to FSA's Default Collections Division, Federal Family Education Loan (FFEL) guarantors, post-secondary educational institutions, and hundreds of thousands of current and former students as they enter repayment and to help them avoid delinquency or default on their student loan obligations.

COHEAO was founded in 1981 and has served as a partnership of colleges, universities, and organizations dedicated to promoting Federal Campus-Based loan programs and other student financial services. COHEAO serves as a source for informative and timely updates for its members in light of the demand for information in the areas of student financial services, compliance, and federal legislative and regulatory issues.

NACUBO is a membership organization representing more than 2,500 colleges, universities, and higher education service providers across the country and around the world. The association's mission is to advance the economic viability and business practices of higher education institutions in fulfillment of their academic missions.

NASFAA has as its primary focus student aid legislation, regulatory analysis, and training for financial aid administrators in all sectors of post-secondary education. NASFAA supports the training, diversity, and professional development of financial aid administrators; advocates for public policies and programs that increase student access to and success in postsecondary education; and serves as a forum for communication and collaboration on student financial issues.

NCHER represents a nationwide network of guaranty agencies, secondary markets, lenders, loan servicers, collection agencies, schools, and other organizations involved in the

administration and servicing of federal and private education loans. NCHER members promote student access and choice for postsecondary education and training.

Collectively, our groups interact with and support almost every college and university in the United States in relation to financial aid processing and assistance for students. In these capacities, we have come to appreciate first-hand the harm caused to student loan borrowers, taxpayers, and the Federal government by the unintended consequences of outdated Commission rules promulgated under the TCPA. Specifically, the TCPA rules that prohibit the use of predictive dialer technology to contact student loan borrowers on their cellular telephones without the borrowers' express consent have led to hundreds of thousands, if not millions, of unnecessary and avoidable student loan defaults.²

II. CLARIFICATION THAT PREDICTIVE DIALERS ARE NOT AUTOMATICALLY ATDS IS CRITICAL TO SERVING STUDENT LOAN BORROWERS AND GETTING THEM THE INFORMATION THEY NEED TO MANAGE THEIR STUDENT LOANS.

Cellular telephone usage is replacing traditional landline phone service. The most recent report from the Centers for Disease Control³ documents that 54.1 percent of all American households now are exclusively or predominately wireless. Moreover, 83 percent of student loan borrowers are between the ages of 18 and 49. Seventy-six percent of individuals in this age group own cell phones and over half of them are in wireless only households. As the prevalence of exclusive and predominant cellular telephone usage grows, more and more student loan borrowers will not get the critical services and information they need if the Department of Education ("ED"), guaranty agencies, loan servicers, institutions of higher education, and their contractors are unable to use available technology to communicate with borrowers.

² Modifying the TCPA to Improve Services to Student Loan Borrowers and Enhance Performance of Federal Loan Portfolios – Quantria Strategies, LLC – July 2013

³ National Health Interview – National Center for Health Statistics, released June 2013.

TCPA rules do not prevent calling borrowers on their cell phones manually, or on their landlines using predictive dialers; rather, the rules prohibit calling borrowers on their cell phones using autodialers *without their consent*.⁴ However, manual dialing not only increases the likelihood for human error, it also is less efficient and more time consuming, resulting in fewer student loan borrowers who can be reached within a given time period. Moreover, allowing the use of predictive dialers would not compromise existing consumer protections.⁵

III. THE ADMINISTRATION HAS RECOGNIZED THE NEED FOR USING PREDICTIVE DIALERS TO REACH STUDENT LOAN BORROWERS AND SUPPORTS MODIFICATIONS TO THE CURRENT RULE.

The President has included in his last three budgets a proposal to modify the TCPA to allow the Federal government and its agents to use predictive dialing systems and prerecorded voice messages when contacting wireless phones in the servicing and collection of debt owed to or guaranteed by the United States⁶. The budget proposal clarifies that “this approach is consistent with the legal authority for automatic dialing for land-line phones.” All existing consumer protections and safeguards would remain in place. The Departments of Education and Treasury have also supported this modification.⁷ The Department of Education has noted the importance for it and its servicers to be able to communicate with student loan borrowers effectively as well as the fact that the costs of less effective, more expensive methods of communicating are passed on to student loan borrowers and the taxpayers. The Department of the Treasury has also stated that these TCPA restrictions have a significant impact on federal debt collection.

⁴ 47 U.S.C. § 227(b)(1)(A).

⁵ See, e.g., Federal Trade Commission Act, 15 U.S.C. §45 *et seq*; the Fair Debt Collection Practices Act, 15 U.S.C. §1681 *et seq*. (as amended by the Fair and Accurate Credit Transaction Act); and other federal, state, and local laws.

⁶ See, e.g., The Budget for Fiscal Year 2015, Table S-9 Mandatory and Receipt Proposals, Department of the Treasury (“Provide authority to contact delinquent borrowers via their cell phones.”).

⁷ See Department of the Treasury Comment to Proposed Amendments to the Telephone Consumer Protection Act Regulations, CG Docket No. 02-278 and United States Department of Education Ex Parte Notification – Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 – CG Docket No. 02-278.

IV. CONCLUSION

Collectively, our organizations represent a broad range of stakeholders in the higher education community who support students in their pursuit of their postsecondary goals from enrollment in college, financial aid processing, counseling, financial literacy and, eventually, loan repayment and default collection. We urge the Commission to exercise its discretion and expeditiously (1) clarify that not all predictive dialers are categorically automatic telephone dialing systems ("ATDS" or "autodialers"); (2) confirm that "capacity" under the TCPA means present ability; (3) clarify that prior express consent attaches to the person incurring a debt, and not the specific telephone number provided by the debtor at the time a debt was incurred; and (4) establish a safe harbor for autodialed "wrong number" non-telemarketing calls to wireless numbers. We further urge the FCC to issue a clarification that formalizes the President's TCPA modification proposal to authorize the use of predictive dialers in a manner consistent with the legal authority for automatic dialing land-line phones. Doing so would acknowledge and promote efficiency by recognizing the ways today's federal and non-federal student loan borrowers communicate so as to utilize efficient technology and support the efforts of those of us in the higher education sector who strive to help students be successful.

Respectfully submitted,



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On Behalf of the Commenters