

**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 THE COALITION OF HIGHER Education Assistance Organizations (COHEAO)

The Coalition of Higher Education Assistance Organizations submits these comments in support of the Petition for Rulemaking of ACA International (“ACA”) in the above referenced proceeding. Specifically, we 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 “auto dialers”); (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.

I. INTRODUCTION

COHEAO was founded in 1981 and has served as a partnership of colleges, universities, and organizations dedicated to promoting Federal Campus Based loan programs, student institutional and private loans, campus receivables, financial literacy as well as other student financial services. COHEAO serves as a primary source for informative and timely updates for its members for all aspects that define the relationship between the student and their campus in the areas of student financial aid, student financial services, compliance, and federal legislative and regulatory issues.

Members of our organization interact, assist, and support current and previous students in a variety of ways that frame the student experience. In these capacities, we appreciate and witness first-hand the difficulties and challenges caused to students who are unable to receive information and assistance due to the unintended consequences of outdated Commission rules promulgated under the TCPA. The populace being served by COHEAO members is dependent upon on their cellular telephones as their primary means for communication and as depositories to store information in order to conduct college business. TCPA rules that specifically prohibit the use of predictive dialer technology to contact these students on their cellular telephones without the borrower’s express consent has led to unnecessary and avoidable student loan defaults, missed notifications for entrance and exit interviews that provide vital information on loan obligations, missed notifications of approaching deadlines for class registrations, and many other campus activities that define the campus life experience for millions of students.

II. CLARIFICATION THAT PREDICTIVE DIALERS ARE NOT AUTOMATICALLY ATDS IS CRITICAL TO SERVING HIGHER EDUCATION STUDENTS TO PROVIDE THEM THE REQUIRED INFORMATION THEY NEED TO MANAGE THEIR STUDENT DEBTS, CURRICULUM PLANNING, AND CAREER COUNSELING.

Cellular telephone usage has replaced traditional landline phone service. The most recent report from the Center for Disease Control 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 cellular telephone dependence continues to expand, a high percentage of current and past higher education students will not receive the critical services and information they need if institutions of higher education, their servicers and contractors are prohibited from using the best technology to communicate with borrowers. Institutions of higher education and their servicers, and the Department of Education, have no other reliable means of communicating with many students and former students other than by calling cell phones.

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 auto dialers without their consent. There is a higher error ratio for manual dialers, and the usage of manual systems are less efficient thus reducing the number of students who can be reached within a given time period. Importantly, allowing the use of predictive dialers would not compromise consumer protections.

III. THE ADMINISTRATION HAS RECOGNIZED THE NEED FOR USING PREDICTIVE DIALERS TO REACH STUDENT LOAN BORROWERS AND SUPPORTS MODIFICATION OF 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 States. 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 supported this modification. 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 CBO has calculated a cost to taxpayers due to inefficiencies of manual versus automated dialing.

IV. Conclusion

All entities that participate in supporting and guiding the student experience for both current and previous higher education students have a critical need to communicate in the most efficient manner. The need to communicate and deliver information efficiently begins when a student completes an application for admission to an institution of higher education and continues through enrollment and graduation. Institutions and their service providers need to

ensure that students are promptly informed on issues such as financial aid, providing information related to the campus life experience, financial literacy, notification of registration deadlines and loan default prevention. Such information cannot be efficiently transmitted without the use of predictive dialers.

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 “auto dialers”); (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 auto dialer “wrong number” non-telemarketing calls to wireless numbers. We further urge the FCC to issue a clarification that formalizes and responsibly expands to the private sector the President’s TCPA modification proposal to authorize the use of predictive dialers in a manner consistent with the legal authority for automatic dialing of land-line phones. Doing so would acknowledge and promote efficiency by recognizing the ways today’s students and student loan borrowers communicate so as to utilize efficient technology and support the efforts of those in the higher education sector that work to help students succeed.

Respectfully Submitted,

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