

April 9, 2020

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

Re: Notice of *Ex Parte* Presentation, CG Docket No. 02-278

Dear Ms. Dortch:

This *ex parte* Notice is filed by the **National Consumer Law Center** on behalf of its low-income clients and **Americans for Financial Reform Education Fund, Consumer Federation of America, Consumer Reports, Consumer Action**, and the **National Association of Consumer Advocates**.¹ This Notice relates to the requests made by a coalition of lenders led by the American Bankers Association (ABA) in a petition filed with the Federal Communications Commission (FCC or Commission) on March 30.² The petition seeks:

an expedited declaratory ruling, clarification, or waiver stating that phone calls and text messages placed by banks, credit unions, and other customer-facing financial services providers (collectively, financial institutions) using an automatic telephone dialing system (autodialer) or prerecorded or artificial voice on matters related to the COVID-19 pandemic are “call[s] made for emergency purposes,” and thus may be placed without the consent of the called party, pursuant to 47 U.S.C. § 227(b)(1)(A) (Emergency Purposes Exception, or Exception).³

The signatories to this letter—six national advocacy organizations representing low- and middle-income consumers—write to support part of the ABA’s request in these extraordinary times—provided it is clearly limited in time and scope. **Specifically, we support the FCC allowing, during the declared national emergency, limited numbers of automated calls from the described institutions for the purposes of alerting their customers to the callers’ offers of the following specified kinds of relief related to the COVID-19 pandemic:**

- Forbearance on loans secured by homes or vehicles;
- Payment deferrals on loans secured by homes or vehicles;
- Fee waivers on loans secured by homes or vehicles;
- Extension or relaxation of repayment terms on loans secured by homes or vehicles;
- Loan modifications on loans secured by homes or vehicles; and

¹ A description of the organizations on whose behalf this Notice is filed is included at the end of this Notice.

² Petition for Expedited Declaratory Ruling, Clarification, or Waiver of the American Bankers Association, American Financial Services Association, Consumer Bankers Association, Credit Union National Association, Independent Community Bankers Of America, Mortgage Bankers, Association, and National Association Of Federally-Insured Credit Unions, CG Docket No. 02-278 (Mar. 30, 2020), available at https://ecfsapi.fcc.gov/file/10330137314199/ABA_JointTrades_Petition_Emergency_Purposes_Exception_2020_03_30_final.pdf [hereinafter Petition]

³ See Petition at 4.

- Other programs, relief and resources provided to assist debtors in response to the current pandemic relating to loans secured by homes or vehicles.

Importantly, the petition specifies that none of these calls would include debt collection or marketing messages.⁴

The current pandemic—which has been declared a national emergency⁵—has caused an unprecedented disruption to the lives of almost every person in the United States. As the Commission recently noted—

Efforts to slow the spread of the disease and mitigate strain on the nation’s health care system have resulted in the dramatic disruption of many aspects of Americans’ lives, including social distancing measures intended to prevent person-to-person transmission that have required the closure of schools, workplaces, and community institutions such as parks, restaurants, and houses of worship.⁶

In addition to placing our health at risk, this pandemic has caused widespread economic distress. Over thirteen percent of the nation is unemployed,⁷ a record number of people are unable to pay their rent,⁸ and an extraordinarily high number of credit defaults are expected to occur just this month.⁹ Because of the current health crisis and the resulting crippling of many households’ financial stability, people throughout the United States are petrified of losing their homes to foreclosure and their cars to repossession.

People who have lost income because of this pandemic are facing these disastrous economic consequences without any opportunities to help themselves. In almost all states, there are now Shelter-in-Place orders that restrict residents from leaving their homes to find new jobs.

Foreclosure, repossession, and default on loan payments always carry serious consequences for the consumer. In the current pandemic, these issues also threaten health and safety. Losing one’s home or car due to foreclosure or repossession places the consumer and the consumer’s entire household in harm’s way because

⁴ Petition at 5.

⁵ See Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020), available at <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-nationalemergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

⁶ *In re* Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991, CG Docket. No. 02-278, Declaratory Ruling, at 1 ¶ 5 (Mar. 20, 2020), available at <https://docs.fcc.gov/public/attachments/DA-20-318A1.pdf>.

⁷ Justin Wolfers, *The Unemployment Rate is Probably Around 13 Percent*, N.Y. Times, Apr. 3, 2020, available at <https://www.nytimes.com/2020/04/03/upshot/coronavirus-jobless-rate-great-depression.html>.

⁸ Alan Gomez, *Worried about paying rent of April 1? What states are doing, and not doing, to help*, U.S.A. Today, March 31, 2020, available at <https://www.usatoday.com/story/news/nation/2020/03/31/paying-rent-during-coronavirus-many-states-offer-relief-renters/5086542002/>.

⁹ Simmons + Simmons, *Covid-19-impact on the global economy and increase in debt defaults* (Mar. 31, 2020), available at <https://www.simmons-simmons.com/en/publications/ck8fpxs060tyf0942to9mx3ns/covid-19---impact-on-the-global-economy-and-increase-in-debt-defaults>.

of the necessity—and the requirement—for people to stay in their homes, avoid public transit, and keep a physical distance from other people.

- Consumers who lose their homes to foreclosure face severe dangers to their health and safety, as they and their families would have no home in which to shelter. At best they would have to move in with relatives or friends who might be sick, or to whom they might cause greater risk of illness.
- Without a private vehicle people must take public transportation to obtain food, go to the doctor or the pharmacy, or to seek other necessities. Public transportation has become dangerous during the pandemic because it inherently brings passengers into close contact with each other, putting their health at risk and creating the conditions that spread the disease to others.

The current pandemic is a terrible and a highly unusual situation, which, in our opinion, does justify the described calls to be made for “emergency purposes” without consent.¹⁰ The Commission’s rules define “emergency purposes” to mean “calls made necessary in any situation affecting the health and safety of consumers.”¹¹ The described calls from creditors can help consumers avoid loss of the homes and cars they need in order to stay safe in this pandemic.

The Commission has permitted automated calls to be made without consent in an emergency in a limited number of situations. Most recently, on its own motion, the Commission permitted health care calls from “a hospital, or . . . a health care provider, state or local health official, or other government official as well as a person under the express direction of such an organization and acting on its behalf” which are “solely informational, made necessary because of the COVID-19 outbreak, and directly related to the imminent health or safety risk arising out of the COVID-19 outbreak.”¹² The calls described in this letter are similar to those calls in that they directly assist the recipients in avoiding unhealthy and dangerous situations, and should similarly be permitted.

It is important to emphasize that it is the extraordinary and particularly awful circumstances of this pandemic that has led us to support permitting these calls. There are unprecedented high numbers of consumers facing defaults. Similarly, the creditors likely have fewer staff available, and are no doubt struggling to deal with the calls they are receiving as well as their depleted ability to make outbound calls because of the pandemic. This combination of factors justifies the making of automated calls during this national emergency. In this regard, the current circumstances are starkly different from the situation in which servicers seek to communicate with consumers in normal times about their obligations and the programs or relief options offered them. In ordinary times, as we have said previously regarding calls from loan servicers, absent this kind of true emergency situation, the TCPA requires consent for automated calls from loan servicers.¹³

¹⁰ 47 U.S.C. § 227(b)(1)(A)-(B).

¹¹ See *In Re Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752, 8778, ¶ 51 (1992).

¹² *In re Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, CG Docket. No. 02-278, Declaratory Ruling, at 2 ¶ 7 (Mar. 20, 2020), available at <https://docs.fcc.gov/public/attachments/DA-20-318A1.pdf>.

¹³ We have previously supported applying the emergency exception to calls from loan servicers regarding preservation of consumers’ homes after a natural disaster. See *In re Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, CG Docket. No. 02-278, Comments by the National Consumer Law Center on behalf of its low-income clients and Consumer Federation of America, Consumers Union,

If the Commission allows the specified kinds of calls to be made using automated equipment without consent, we also urge the Commission to do the following: 1) explicitly prohibit any debt collection or telemarketing communication as part of the calls (other than to answer questions from the call recipient about the amount and terms of the debt that is the subject of the calls); 2) apply appropriate limits on the number of calls and require that prerecorded or artificial voice calls be concise, as the Commission required for fraud alerts by financial institutions in its July 10, 2015 order;¹⁴ and specify that these calls can only be made during the pendency of the federal emergency order.

Given the importance of the described calls, we urge the Commission to make a determination on this request as expeditiously as possible.

Additionally, please note that on April 7, 2020, I had a conversation with Mark Stone, Deputy Chief, Consumer and Governmental Affairs Bureau of the FCC, relating to the issues discussed in this *ex parte* Notice.

If there are any questions, please contact Margot Saunders at the National Consumer Law Center (NCLC), msaunders@nclc.org (202 452 6252, extension 104). This disclosure is made pursuant to 47 C.F.R. § 1.1206. Thank you very much.

Sincerely,

Margot Saunders
Senior Counsel
National Consumer Law Center
1001 Connecticut Ave, NW
Washington, D.C. 20036
www.nclc.org

National Association of Consumer Advocates, National Community Stabilization Trust Regarding the Petition for Clarification by the Federal Housing Finance Agency (Dec. 4, 2017), *available at* <https://ecfsapi.fcc.gov/file/1204617405592/FHFA%20Emergency%20Calls%20Comments.pdf> (supporting application of emergency exception for calls from mortgage servicers after the 2017 hurricanes in Texas, Louisiana, and Puerto Rico). However, we have opposed servicers' request to apply the emergency exception outside of a disaster. *See In re* Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991, CG Docket No. 02-278, Comments Opposing the Petition for Exemption by the Mortgage Bankers Association by the National Consumer Law Center on behalf of its low-income clients and Americans for Financial Reform, Center for Responsible Lending, Consumer Action, Consumer Federation of America, Consumers Union, Financial Protection Law Center, Legal Services of New Jersey, Indiana Legal Services, Inc., Jacksonville Area Legal Aid, Inc., National Association of Consumer Advocates, National Association of Consumer Bankruptcy Attorneys, and U.S. PIRG (Aug. 26, 2016), *available at* [https://ecfsapi.fcc.gov/file/10826118922507/Comments%20to%20FCC%20Opposing%20MBA%20Petition%20on%20Robocalling%20\(8-26-2016\)-FINAL.pdf](https://ecfsapi.fcc.gov/file/10826118922507/Comments%20to%20FCC%20Opposing%20MBA%20Petition%20on%20Robocalling%20(8-26-2016)-FINAL.pdf)

¹⁴ *In re* Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, CG Docket No. 02-278, Report and Order, 30 F.C.C. Rcd. 7961, 8027 ¶ 138 (F.C.C. July 10, 2015), *appeal resolved*, ACA Int'l v. Fed. Comm'ns Comm'n, 885 F.3d 687 (D.C. Cir. 2018) (setting aside two parts of 2015 Declaratory Ruling, but leaving this portion undisturbed).

Descriptions of Organizations on behalf of which this Notice is filed:

Americans for Financial Reform Education Fund Americans for Financial Reform Education Fund is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. Formed in the wake of the 2008 crisis, we are working to lay the foundation for a strong, stable, and ethical financial system – one that serves the economy and the nation as a whole.

Consumer Action has been a champion of underrepresented consumers nationwide since 1971. Consumer Action focuses on financial education that empowers low to moderate income and limited-English-speaking consumers to financially prosper. It also advocates for consumers in the media and before lawmakers to advance consumer rights and promote industry-wide change.

Consumer Reports is an expert, independent, non-profit organization, founded in 1936, that works side by side with consumers for a fair, transparent, truthful, and safe marketplace. It is the world's largest independent product-testing organization, using its dozens of labs, auto test center, and survey research department to rate thousands of products and services annually. It has been active for decades on a wide range of policy issues affecting consumers, including efforts to protect consumers from being harassed by unwanted robocalls.

The **Consumer Federation of America** is an association of nearly 300 nonprofit consumer groups that was established in 1968 to advance the consumer interest through research, advocacy and education.

The **National Association of Consumer Advocates** (NACA) is a non-profit association of consumer advocates and attorney members who represent hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices. As an organization fully committed to promoting justice for consumers, NACA's members and their clients are actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means.

National Consumer Law Center (NCLC) is a non-profit corporation founded in 1969 to assist legal services, consumer law attorneys, consumer advocates and public policy makers in using the powerful and complex tools of consumer law for just and fair treatment for all in the economic marketplace. NCLC has expertise in protecting low-income customer access to telecommunications, energy and water services in proceedings at the FCC and state utility commissions and publishes *Access to Utility Service* (6th edition, 2018), *Guide to Surviving Debt* (Feb. 2019), plus Chapter 6 of *Federal Deception Law* (3d ed. 2017), which focuses on the Telephone Consumer Protection Act.