

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Rules and Regulations Implementing the) **CG Docket No. 02-278**
Telephone Consumer Protection Act of 1991) **FCC Number 10-18**
)

Comments of the
National Association of College and University Business Officers
Coalition of Higher Education Assistance Organizations
National Association of Student Financial Aid Administrators

May 21, 2010

We are writing to provide comments on the notice of proposed rulemaking published on March 22, 2010, that would amend the rules implementing the Telephone Consumer Protection Act on behalf of the National Association of College and University Business Officers (NACUBO), the Coalition of Higher Education Assistance Organizations (COHEAO), and the National Association of Student Financial Aid Administrators (NASFAA). Together these organizations represent over 2,800 colleges and universities, as well as third-party servicers which provide loan management and collection services to institutions of higher education. We respectfully request that the Commission consider the impact that these proposed rules may have on the ability of colleges and universities to communicate with their students and alumni.

We understand that the intent of the proposed regulations is to harmonize the Commission’s rules under the Telephone Consumer Protection Act with the Federal Trade Commission’s Telemarketing Sales Rule in order to protect consumers from unwanted prerecorded solicitations that are generated by telemarketing firms for the sole purpose of marketing products or services. Consumers are currently afforded such protection by the “do-not-call list”, and other regulatory restrictions for residential telephone lines.

However, absent clear language that authorizes prerecorded messages to both residential and wireless phones by colleges and universities and their contracted servicers, substantial legal exposure remains. There is no question that an existing business relationship exists between an institution and a student who has been accepted for enrollment at a college or university, is currently enrolled, and/or remains financially indebted to the university through federal loans, private education loans, or student receivables.

First, we will explain how colleges and universities, and their agents, use automated and prerecorded calls, and then we will discuss our concerns with the proposed regulations.

Uses of Automated Calls. Colleges and universities use prerecorded phone messages to contact their students for a variety of reasons. Generally, the first line of communication with students is email and calls are used only for students who have failed to respond to email reminders. In recent years, as students have become inured to email, telephone calls have become an even more important communication tool. For instance, higher education institutions may use prerecorded telephone messages to:

- Remind students of approaching deadlines for aid applications, registration, payments, etc.
- Encourage students to attend required financial counseling (such as “entrance” and “exit” counseling for loan borrowers)
- Remind students to submit proof of vaccinations
- Ask students to sign their promissory note or submit a missing document necessary to complete a student aid application
- Inform students that a credit balance refund check is ready to be picked up
- Warn students when their registration is about to be dropped for lack of payment
- Alert students to closures or schedule changes
- Remind former students when the grace period on their student loans is expiring and they must start making loan payments
- Notify borrowers of overdue loan payments

None of these uses involve telemarketing or solicitation, and all are predicated upon the existing relationship between students and the college.

Under current rules, these are all activities that are permitted if calls are placed to residential telephone lines and to cell phones if the student has provided consent for the college to use that number. Indeed, under current §64.1200(a)(2) governing calls to residential lines, these types of calls would be exempt from the prior consent requirement several ways. The calls are:

- Not made for a commercial purpose
- Do not include advertisements or solicitations
- Made to persons with whom the institution has an established relationship
- Made, in most cases, on behalf of a tax-exempt nonprofit organization

Placing individual calls, especially at peak periods at the beginning of terms, is costly and inefficient. Prerecorded calls are much more cost-effective. One large public university found that it can contact the 3,500 students each term whose schedules are about to be cancelled due to outstanding balances in 30 minutes using an automated system and prerecorded message. This provides better customer service while saving considerable time and money compared to their past practice of using 10-15 staff members to place calls over the course of a week. (Notably, the university receives less than five complaints a semester about the calls—and most complaints are that they didn’t call sooner.) With the current

economic climate forcing colleges and universities to cut administrative staff and expenses, making it more difficult for them to communicate important information in a timely manner to their students and alumni would only increase administrative burden and add needless expense.

Cell Phones on Campus. There is probably no demographic group in the United States that has embraced cell phones more than college students. A recent survey by Student Monitor indicated that:

- 90 percent of students have a cell phone
- 23 percent have a cell phone and a landline
- 66 percent have only a cell and no landline
- 2 percent have only a landline and no cell phone

Often, the only telephone number the college or university has for a student is a cell phone. Institutional student databases have varying capacities for gathering and maintaining detailed information on student phone numbers. Some have multiple fields for each student (permanent home, local, cell, etc.). Others collect numbers and ask students to specify the type of phone. Still others may not have the capacity to differentiate between various types of phones and only ask the student to provide their preferred contact number. If a student has not designated a phone number as a cellular phone or the institution's database does not store such designations, the institution will not know that the contact number is a cell phone.

Emergency Communications. Cell phones are a vital link in emergency communication plans on many campuses. Colleges and universities have expended considerable effort and resources to install automated emergency communications systems and gather cell phones numbers for students and other members of their campus community. A recent NACUBO survey showed that almost all institutions (91 percent) had either already deployed or were in the process of deploying cell-phone dependent text/instant messaging alert systems. About 70 percent of institutions with such systems use a voluntary opt-in approach to participation and only 29 percent make participation mandatory or use an opt-out system. Lack of student participation is a serious issue, however, with 68 percent of institutions reporting that 50 percent or less of their students were in the system.

While emergency communications are exempt from the prior-notice requirements, we are concerned that students will be confused by the proposed requirements for providing prior express written consent for other autodialed or prerecorded calls to their cell phones and may be more likely to decline to provide their cell phone numbers to their schools.

Concerns with the Proposed Rules

Telemarketing. The Commission seeks to maximize consistency with the Federal Trade Commission's Telemarketing Sales Rule. However, the restrictions in §64.1200 apply to a much broader set of activities than the FTC rule. As delineated above, the types of prerecorded calls made by colleges and universities do not constitute telemarketing or solicitation and are not subject to the FTC rule. We have no objection to additional constraints on telemarketing activities, but object to unreasonable barriers to institutions'

and their agents' ability to conduct business in an efficient manner and provide necessary services to current and former students.

The Commission issued a Declaratory Ruling on January 4, 2008, that concluded that if a person provides his or her wireless number to a creditor, and the number was provided in connection with the existing debt, then autodialed calls or calls containing prerecorded messages made to the wireless number are permissible under the TCPA. That individual has voluntarily given his cell phone number to the creditor during the application process, and thus was deemed to have given his prior express consent to being contacted on that number.

With regard to debt collection, the Fair Debt Collection Practices Act (FDCPA) provides a consumer with the ability to opt out of any communication from a debt collector. Section 805(1) of the (FDCPA) also defines times that a debt collector is permitted to contact a consumer. Paragraph (c) of the same section reiterates that a consumer has the right to cut off communication with a debt collector. This provides a consumer with an opportunity to opt out should he or she desire not to be contacted via a cell phone. Further, Section 806 defines what constitutes harassment or abuse by a debt collector. All of these regulations protect the consumer from unwanted communications.

There is a disconnect between the broad impact of the proposed changes to §64.1200(a)(1) and the discussion provided by the Commission. In almost every paragraph of the discussion, entities making calls are referred to as "telemarketers" or "sellers," and calls are referred to as "prerecorded telemarketing calls" or "telephone solicitations." Yet the provisions in §64.1200(a)(1) encompass automated or prerecorded calls to cell phones regardless of the originator of the call or its purpose.

If the Commission's objective is to harmonize its TCPA rules with the FTC Telemarketing Sales Rule, it should restrict the imposition of additional consent requirements to §64.1200(a)(2) which more closely follows the scope of the FTC rule.

Cellular Phones. There have been revolutionary changes to personal communications equipment over the last 20 years. When the TCPA was enacted almost 20 years ago, cell phones were rare, calls were comparatively expensive, and virtually every household had a landline. Today, especially for young adults, cell phones are ubiquitous, calls are cheap, and landlines are rare. Consumers' choices about their preferred methods of communication have changed. The Commission has not provided justification for inhibiting the ability of entities, such as colleges and universities and their agents, to communicate with their customers in the manner the customers prefer. When a student enrolls in a higher education institution, or a borrower completes a loan application, and provides a contact phone number, they reasonably expect to be contacted at that number. Providing a cell phone number as the preferred contact number should continue to be construed as consent for non-marketing calls.

Recommendations. We urge the Commission to recognize that the contacts made by colleges and universities and their agents with students, former students and their parents involve a pre-existing business relationship and, even if they did not, do not constitute telemarketing or other advertisement or commercial solicitation. We recommend that the Commission either exempt colleges and universities from these regulatory restrictions or, at a minimum, that the proposed regulations be

clarified so that cell phones are permitted to be treated as the preferred contact number in cases where the consumer has provided that number.

We suggest that §64.1200(a)(2)(v) be modified to read:

(v) For purposes of paragraph (a)(1) of this section, if the call is for a commercial purpose and includes or introduces an unsolicited advertisement or constitutes a telephone solicitation, a person or entity shall be deemed to have obtained prior express consent upon obtaining from the recipient of the call an express agreement, in writing, that:

We also suggest that §64.1200 (a)(2)(v) be redesignated as subparagraph (vii) and that the following new subparagraph (vi) be inserted:

(vi) is made by or on behalf of a college or university or their agents, including employees of the college or university or their agents. Permissible actions include the use of predictive dialers, pre-recorded messages, and (SMS) text messaging to contact students and/or education loan borrowers.

Thank you for the opportunity to comment on these proposed regulations.

Submitted by:

National Association of College and University Business Officers
Anne Gross
Vice President, Regulatory Affairs
1110 Vermont Avenue, N.W. Suite 800
Washington, DC 20005

Coalition of Higher Education Assistance Organizations
Harrison Wadsworth
Executive Director
1101 Vermont Avenue, N.W. Suite 400
Washington, DC 20005

National Association of Student Financial Aid Administrators
Justin Draeger
Vice President, Advocacy and Public Policy
1101 Connecticut Avenue, N.W. Suite 1100
Washington, DC 20036

