

FCC Bureau Asks for Comments on the Treatment of Calls to Mortgage Borrowers Affected by Hurricanes

Article By:

Eduardo R. Guzmán

The Consumer and Governmental Affairs Bureau of the Federal Communications Commission (FCC) is asking for comments on a [petition](#) filed by the Federal Housing Finance Agency (FHFA) requesting clarification or a declaratory ruling under the Telephone Consumer Protection Act (TCPA) as to communications from mortgage servicers to borrowers affected by natural disasters. The FHFA's petition, which was filed on November 15, 2017 and requests an "expedited response," makes two specific requests.

First, the FHFA asks the FCC to declare that borrowers "affected by disasters" should be deemed to have consented for purposes of the TCPA to receive certain communications from mortgage servicers. The petition generally states that "communications that affect [the borrower's] mortgage" fall within the scope of consent that borrowers gave when they provided their telephone numbers. More specifically as to borrowers affected by disasters, the FHFA asks the FCC to clarify that this consent covers communications related to "notice that their payment obligation is suspended, that they should be aware of potential fraud scams, that they may qualify for a mortgage loan modification or other relevant matters provided by a reputable service provider."

Second, the FHFA asks the FCC to clarify that the TCPA does not apply to calls from mortgage servicers—even if they use an autodialer—that "provide assistance for homeowners affected by Hurricanes Harvey and Irma." Invoking the exception under the TCPA for calls made for emergency purposes, the petition states that mortgage servicers will need to rely on autodialers to "facilitate the rapid conveyance of crucial information to as many impacted borrowers as quickly and as efficiently possible." Among the communications that the FHFA asks to be exempted from the TCPA are calls that inform borrowers "that they have options to assist them if their ability to make their mortgage payment has been affected by a disaster," which includes providing information about resources that offer emergency assistance, forbearance options and the impact of forbearance, guidance on how to avoid mortgage scams, and advice on how to contact insurance companies to file insurance claims.

The Bureau noted in its Public Notice that the FHFA's petition appears to make reference to the Declaratory Ruling that the FCC issued in 2016 in response to the petitions filed by Blackboard, Inc. and Edison Electric Institute and the American Gas Association.^[1] In *Blackboard-Edison* the FCC addressed both the "emergency purposes" exception and the scope of prior express consent when

consumers voluntarily provide their telephone numbers. The FCC held that, in the context of calls from educational organizations, “autodialed calls to wireless numbers made necessary by a situation affecting the health and safety of students and faculty are made for an emergency purpose.” As to the scope of express consent, the FCC held that communications from schools that were “closely related to the education mission of the school or the official school activities” and communications from utilities that were “closely related to the service” fell within the scope of the express consent to be contacted at the number that the customer provided. As to the latter, the FCC specifically ruled that a customer that provides a telephone number prior to termination of service is deemed to have given prior express consent to be contacted “to warn about the likelihood that failure to make a payment will result in service curtailment.” The FCC also warned “[f]uture petitioners seeking similar relief” that it “continues to interpret ‘closely related’ narrowly.” The FCC’s response to the FHFA’s petition may provide insight into how narrowly the FCC will interpret the “closely related” standard and the “emergency purposes” exception under Chairman Ajit Pai.

The Bureau seeks comment on the petition by December 1, 2017 and reply comments by December 8, 2017. We will continue to monitor future actions at the FCC related to the TCPA, including any follow-up to FHFA’s petition.

Matthew Bake contributed to this post.

[1] Declaratory Ruling, *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, 31 FCC Rcd 9054 (2016) (*Blackboard-Edison*).

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