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NEW RULE LIMITS STATUTORY EXEMPTION FOR AUTODIALED CALLS TO COLLECT GOVERNMENT DEBTS

The new FCC rule significantly limits the statutory exemption by interpreting narrowly the statutory terms “solely to collect a debt” and “owed to or guaranteed by the United States.” It also narrowly defines the permitted callers and call recipients, permitted called numbers, and most controversially, the permitted number of calls. The authors describe these and other provisions of the rule and consider their potential impact to be inconsistent with Congress’ intent in enacting the exemption.

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As part of the Bipartisan Budget Act of 2015 (the “Budget Act”), Congress amended the Telephone Consumer Protection Act (“TCPA”) to exempt calls that are made “solely to collect a debt owed to or guaranteed by the United States”¹ from the TCPA’s general prohibition on making autodialed or pre-recorded calls without the called party’s prior express consent. Implementing this amendment (the “Budget Act Amendment”) in a final rule (“the Rule”),² the Federal Communications Commission has narrowed the scope of the statutory exemption to an extent that may significantly dilute its impact. For the many debt collectors and loan servicers who applauded Congress’ adoption of the Budget Act Amendment, and particularly those who provided the FCC with information and opinions in comments on a proposed version of the

Rule,³ the Rule is a disappointment. Indeed, several such entities have filed a petition with the FCC for reconsideration of the Rule on the ground that it is arbitrary and capricious, and in conflict with Congress’ intent.

It is possible that the petition, as well as the regulatory priorities of the Trump Administration, may delay the Rule’s enforcement.⁴ However, although the

¹ Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 301, 129 Stat. 584, 588 [hereinafter the “Budget Act”].

² Telephone Consumer Protection Act of 1991, 81 Fed. Reg. 80,594 (Nov. 16, 2016) (to be codified at 47 C.F.R. pt. 64).

³ See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 81 Fed. Reg. 31,889 (proposed May 20, 2016).

⁴ Irrespective of the filing of a petition for reconsideration, the effective date of the Rule is yet to be determined pending the FCC’s collection of information on certain aspects of the Rule as required under the Paperwork Reduction Act. The effective date will be published by the FCC upon receiving approval from the Office of Management and Budget on such information collections. The effective date is also likely to be impacted by the January 20, 2017 White House order on the freezing of federal regulations pending review. Under the order, any final

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