



Submitted Via Electronic Filing

October 12, 2018

The Honorable Chairman Ajit Pai
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Notice of *Ex Parte* Presentation Concerning the Telephone Consumer Protection Act

Dear Chairman Pai:

On behalf of Ohio's 274 credit unions and their nearly three million members, we are responding from our meeting on September 27, 2018 with the Federal Communications Commission (FCC) to discuss the Telephone Consumer Protection Act's (TCPA) impact on the ability of Ohio's credit unions to serve their members and to communicate sensitive financial information. Specifically, we inquired and discussed the status of Credit Union National Association's (CUNA) petition for declaratory relief requesting an exemption for credit unions and discussed the recent litigation in *Marks v. Crunch San Diego*¹. In attendance with the Ohio Credit Union League (OCUL)² was Carrie Poynter, Vice President of Compliance & Audit at River Valley CU in Miamisburg, Ohio; Barry Shaner, CEO of Directions CU in Toledo, Ohio, and Denise Herman, member of the Board of Directors of Telhio in Columbus, Ohio.

During the meeting, OCUL and credit union attendees informed the FCC about the burdens of the TCPA on Ohio's credit union members. We spoke to the need for a holistic approach at rulemaking encouraging the agency to focus on other TCPA rulemaking items outside of an automated telephone dialing system, such as a clearer fraud exemption and an established business relationship exemption. OCUL urged the FCC to update the TCPA to reflect modern technology advancements and credit union business operations.

For small businesses, like credit unions, obtaining consent from member-owners to communicate items pertinent to their financial situation is quite complex for the following reasons:

- Members often put a cell phone down on an application in the "home phone" box or another area, leaving the credit union to decipher which communications are cell phones and landlines, which is cost prohibitive;
- Members typically have a long-standing relationship with the credit union preceding technological advancements of the modern day, as such there is no easy, organized way to trace when a member gave consent "X" amount of years prior; and,
- Credit unions have limited IT departments who focus on day-to-day operations, member service delivery, and other regulations. Therefore, credit unions do not have the

¹ *Marks v. Crunch San Diego, LLC*, No-14-56834 (9th Cir. 2018).

² Andrew Canan, Cory Fleming, Miriah Lee, and Emily Leite were in attendance representing OCUL.





bandwidth and scale to obtain consent through their website, track consent, and store the appropriate documentation on the server, as some large institutions do.

Credit union members overwhelmingly expect and deserve timely communications and credit union outreach regarding their accounts. A significant and growing percentage of the membership utilizes cell phones as their primary method of contact. It is imperative that credit unions have an unfettered ability to provide time sensitive information via cell phone calls and text messages.

Additionally, during the meeting, we discussed the recent court decision in *Marks v. Crunch San Diego* in which the court relied on *ACA Int'l v. Federal Communication Commission*³ acknowledging *ACA Int'l* set aside the 2015 Omnibus Order and overruled prior FCC guidance. Thus, the *Marks* court examined the context and original statute in order to reach its decision, holding that Congress intended to regulate devices that had the capacity to store numbers to be called or produce numbers to be called. With various interpretations of TCPA out of the U.S. Court of Appeals for the Third Circuit, the Ninth Circuit, and the D.C. Circuit, it is extremely difficult for businesses to navigate what type of device is an automated telephone dialing system and how they can remain compliant under TCPA.

What is at stake is jeopardizing consumers' unabridged and continued access to open and timely communications provided by their cooperative financial institutions. We respectfully request that the FCC consider how the TCPA is negatively impacting member-owned credit unions.

Thank you for your careful consideration and for the opportunity to express these views to the FCC.

Sincerely,

A handwritten signature in black ink, appearing to read 'Miriah Lee'.

Miriah Lee
Regulatory Counsel

³ *ACA Int'l, Et Al v. Federal Communication Commission*, No. 15-1211 (D.C. Cir. March 16, 2018).

