



OHIO CREDIT  
UNION LEAGUE

*Submitted Via Electronic Filing*

January 22, 2018

The Honorable Commissioner Carr  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

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

Dear Commissioner Carr:

On behalf of Ohio's 284 credit unions and their nearly three million members, we are responding from our meeting on January 12, 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. Specifically, we discussed Credit Union National Association's (CUNA) petition for declaratory relief requesting an exemption for credit unions and our supporting response.

During the meeting, OCUL and CUNA informed the FCC about the burdens of the TCPA on Ohio's credit union members and the need for an established-business relationship exemption. OCUL encouraged the FCC to update the TCPA to reflect modern technology advancements and credit union business operations.

As an example, we discussed, how TCPA has impacted Universal 1 CU (Universal 1), located in Dayton, Ohio, by inhibiting member communications.

Universal 1 has used an automated message to notify members of the conversion to a new online banking platform and to notify members regarding new chip cards being mailed. This automated calling system provides an additional means to contact members and is cost-effective. Universal 1 has been trying to navigate TCPA regulations and how they affect the implementation and usage of this calling system. Universal 1 considers this a call precluded by TCPA unless there is prior consent. Because of TCPA regulations, members are no longer contacted through the automated calling system. Rather, Universal 1 has opted to use mass mailings when needed, which has an added cost.

Not only have TCPA regulations impacted day-to-day communications, Universal 1 is not able to transfer appropriate, timely communications to their members concerning delinquent payments. Often times, Universal 1 is unable to reach their member due to outdated contact information, among other reasons, concerning a delinquent loan. Previously, Universal 1 would use another number provided on the loan application (perhaps a reference or family member) or a number found through "skip tracing." However, Universal 1 is not currently able to use these numbers to attempt to make contact with the member.



AMERICA'S  
CREDIT  
UNIONS™

---

10 West Broad Street, Suite 1100, Columbus, Ohio 43215  
614-336-2894 • 800-486-2917 • fax 614-336-2895 • [www.OhioCreditUnions.org](http://www.OhioCreditUnions.org)



OHIO CREDIT  
UNION LEAGUE

To provide proactive financial information to decrease delinquent payments and penalties to members, Universal 1 utilized an automated calling system to send out payment reminders to members who are approaching due dates for their loan payments. Universal 1 saw a correlation between payment reminders and delinquent loans. Despite the success for both the credit union and member, Universal 1 is no longer providing this reminder service to their members in order to maintain compliance with TCPA. Universal 1 has an established business relationship with their members; yet, TCPA still requires consent to contact them. If the choice is receiving a payment reminder from an auto dialer or being late on a loan payment, Universal 1 members would prefer the automated dialer.

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 and other regulations. Therefore, credit unions do not have the bandwidth and scale to obtain consent through their website, track consent, and store the appropriate documentation on the server, as some large institutions do.

### **The TCPA’s Outdated Regulations Obstruct Friendly Communications with Credit Union Members**

We believe the TCPA does not address the advancements made in communications technology since its enactment in 1991. Further, we understand the congressional intent of the TCPA’s enactment was to protect consumers from businesses, particularly telemarketing companies, who make unwelcome and repetitive contact with consumers with whom they have no established relationship. We do not believe the congressional intent of the TCPA’s passage was to prevent financial institutions from communicating with consumers with whom an established and legitimate business relationship exists; however, that is the result of the TCPA and its regulations.

During the dialogue, OCUL detailed the impact the TCPA and unclear FCC interpretations are having on Ohio credit unions ability to communicate with their members. Credit unions, as not-for-profit, member owned, financial cooperatives, strive to provide affordable financial services to their members. As such, when Ohio credit unions are communicating with their members, the credit union is seeking to connect with the same people who own the credit union.

Credit union members overwhelmingly expect and deserve timely communications regarding their accounts. A significant 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.



AMERICA'S  
CREDIT  
UNIONS™

---

10 West Broad Street, Suite 1100, Columbus, Ohio 43215  
614-336-2894 • 800-486-2917 • fax 614-336-2895 • [www.OhioCreditUnions.org](http://www.OhioCreditUnions.org)



OHIO CREDIT  
UNION LEAGUE

## **The July 2015 TCPA Order Made it More Cumbersome for Credit Unions to Communicate with their Members**

During the meeting, we reiterated concerns about the July 2015 TCPA Omnibus Ruling and Order (Order).<sup>1</sup> While the order recognized that financial institutions should be able to communicate with their customers without fear of class action lawsuits by creating an exemption, it is extremely difficult to comply with for a multitude of reasons. Technology is not widely available for credit unions to ensure the call or text is free to the end user, the manner in which consumers can revoke consent is unclear, and only limited types of communications qualify for exemption.

### **Conflicting Regulatory Guidance Harms Members of Credit Unions**

As a part of the dialogue, the group shared concerns about the conflicting guidance financial institutions receive from regulators about how credit unions should communicate with their members. Below are a few example of conflicting guidance:

- The Consumer Financial Protection Bureau's "Early Intervention Rule," which requires institutions to establish live contact or make a good faith effort to establish live contact within 36 days after a mortgage loan becomes delinquent;
- Fannie Mae's "Quality Right Party Contact," which establishes a code of conduct for interactions with customers with delinquent debt and includes a requirement to build a rapport and have open and on-going dialogue with those customers to positively resolve delinquency. Fannie Mae also requires sending the consumer a foreclosure prevention package and then making follow-up calls to the consumer at least every three days until resolution of the issue; and
- The Home Affordable Modification Program, which requires institutions to "proactively solicit" customers for inclusion in the program by making a minimum of four telephone calls to the customer at different times of day.<sup>2</sup>

The lack of consistency between federal regulators has put Ohio credit unions in a position of having to choose between which federal agency's regulations will take precedent or risk liability. This ultimately stifles communication between a credit union and its members, especially the smaller credit unions who have fewer resources for compliance and larger credit unions may be targeted by the plaintiffs' bar lawyers. The average Ohio credit union has \$101 million in assets and an average of 8 employees on staff and simply do not have the bandwidth to navigate conflicting guidance between federal agencies.

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, account for the unique size and ownership structure of credit unions, and ensure federal agencies are working in cohesion and providing consistent guidance.

---

<sup>1</sup> *In re Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, CG Docket No. 02-278, WC Docket No. 07-135, FCC 15-72 (July 10, 2015).

<sup>2</sup> Wells Fargo Ex Parte CG Docket No. 02-278 January 26, 2015, exhibit 3.



AMERICA'S  
CREDIT  
UNIONS™



OHIO CREDIT  
UNION LEAGUE

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

Sincerely,

Paul Mercer  
President

Miriah Lee  
Manager of Policy Impact



AMERICA'S  
CREDIT  
UNIONS™

---

10 West Broad Street, Suite 1100, Columbus, Ohio 43215  
614-336-2894 • 800-486-2917 • fax 614-336-2895 • [www.OhioCreditUnions.org](http://www.OhioCreditUnions.org)