

May 17, 2019

VIAECFS

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Notice of Ex Parte Presentation: *Rules and Regulations Implementing the Telephone Consumer Protection Act*, CG Docket No. 02-278; *Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act of 1991*, CG Docket No. 18-152

Dear Ms. Dortch:

American Airlines Federal Credit Union ("AAFCU") hereby submits this ex parte letter to provide data quantifying costs imposed on AAFCU and its members due to the uncertainty and risk of litigation arising from the Telephone Consumer Protection Act ("TCPA") as currently implemented. AAFCU's field of membership is limited to those who work in the air transportation industry and their immediate families. This includes airline and certain airport employees who work directly in the administration, regulation or security of airlines or airports and those employees of companies that have a strong dependency relationship with airlines or airports. AAFCU has over 300,000 members, 47 branches located throughout the United States, and has been serving its members since 1934.

AAFCU, like many other credit unions, takes a conservative approach to regulatory compliance. The overly broad rulings issued by the Federal Communications Commissions ("Commission") in its 2015 Omnibus TCPA Order,² in particular its expansion of the definition of an Automatic Telephone Dialing System ("ATDS"), caused AAFCU to abandon the use of

¹ AAFCU and CUNA met with Zenji Nakazawa, Legal Advisor to Chairman Ajit Pai, on March 12, 2019 to provide their views on TCPA reforms consistent with their previous filings. Letter from Michael Pryor, Brownstein Hyatt Farber Schreck, to Marlene H. Dortch, FCC, CG Docket Nos. 02-278, 18-152 (filed March 14, 2019). This letter responds in part to questions regarding the ability to quantify harms caused by inability to utilize efficient dialing technologies.

² Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, *Declaratory Ruling and Order*, 30 FCC Rcd, 7961 (2015).

efficient automated dialing technologies. AAFCU manually dials its members (and, requests that its vendors also manually dial AAFCU members) and uses traditional mail rather than texting in instances when texting would be the more efficient method of communication. Although the D.C. Circuit overturned the Commissions' previous definition of an ATDS and other aspects of the 2015 order, courts have continued to reach diverse results that create even more uncertainty.³

AAFCU undertook an examination of the costs incurred as a result of foregoing the use of automated dialing technology. It assessed both direct costs of compliance and opportunity costs, for example, by mailing notices rather than utilizing a texting platform in certain instances. AAFCU also assessed the detrimental impact on its members due to delays in notifications caused by having to manually dial numbers. The results of its analysis are set forth below.

Direct Mailing versus Texting

AAFCU on average sends out approximately 450 letters per day to its members. These mailings include a wide range of notices relating to matters such as notification of credit card or loan delinquencies, surveys, overdraft notices, card resets, confirming member contact information, requests to call AAFCU and so forth. AAFCU would greatly prefer to send these notices via text rather than by mail, but concern over violating the TCPA precludes this result. Texting, as the Commission well knows, is a highly efficient and popular method of communication.

Mailing notifications as opposed to using a texting platform is an inefficient use of employee resources that could be better used interacting with and assisting members and performing other tasks. AAFCU estimates that using a texting platform rather than mailing letters would save approximately 90 hours of labor per year. In addition, AAFCU estimates that it could decrease its postage costs by an estimated \$65,000 per year (450 letters/day x \$.55 postage x 262 work days per year) if it used a texting platform.

Relying on mailing rather than texting has other consequences that are not readily quantifiable, but may in some ways be more detrimental to its members. For example, during recent hurricanes in Texas, Florida and Puerto Rico, AAFCU sought to notify its members of special disaster loan programs and loan deferral options. In some cases, mailing was not an option due to disruptions in postal routes leaving AAFCU effectively unable to communicate with its members. AAFCU was unable to provide important information in a timely manner to its members affected by these natural disasters. Similarly, AAFCU sought to notify air transportation employees such as TSA, FAA and other federal government employees, who were working without pay during the recent government shutdown, of special accommodations in terms of fee waivers, refund requests, special loan program and repayment deferrals. Without an en masse method of communication that AAFCU could quickly use, these members were unfortunately left

³ *ACA Int'l, et al. v. FCC*, 885 F.3d 687 (D.C. Cir. 2018).

without knowledge of financial solutions that AAFCU was offering to help them during these difficult times.

Compliance Costs

AAFCU uses a third party vendor for some early stage (*i.e.*, 15 days past due) collection calls to supplement its own collections staff. In 2019, AAFCU incurred an average monthly cost of \$19,500 for this third party company to contact its early stage delinquent members, and these costs would not be needed if AAFCU was able to utilize automated dialing technology to reach these same members. Additionally, AAFCU has informed this third party company not to use such equipment when calling its members due to TCPA concerns.

If AAFCU chose to use automated dialing technology today given the TCPA's requirements, it would incur a cost to scrub its members' phone numbers to determine the manner in which phone numbers can be called. The cost would be approximately \$0.04 per phone number scrubbed. On average, AAFCU has between 4,000 to 6,400 members who are 15 or more days delinquent in any given month. If AAFCU were to contact these members using automated dialing technology, the monthly cost would be between \$6,300 to \$10,000 to scrub each of the phone numbers AAFCU has (*i.e.*, on average 1.5 different phone numbers for each member) and to scrub the numbers 6 days per week as it calls members Monday through Saturday.

Membership Costs Due to Delayed Contact Regarding Delinquencies

AAFCU's practice is to contact its members when payments are past due because some members just need a reminder. Ideally, we would contact delinquent members once a credit card or loan payment is 15 days late. This provides an opportunity for members to become current on their loans before 30 days, at which point AAFCU must report the late payment to credit bureaus, adversely impacting the member's credit score. Due to manual dialing, however, AAFCU cannot timely contact as many borrowers as we could otherwise utilizing an efficient automated dialing technology. Such technologies could, for example, permit leaving messages to call AAFCU regarding their account or dial the member and establish a live conversation if the member is available.

To assess the impact of delays in notifying members about delinquencies, AAFCU estimated the percentage of members that, if timely contacted, would make a payment and avoid being over 30 days past due that triggers notification to the credit bureaus. Based on the extensive experience of its collections managers (some with over 20 to 30 years of experience), AAFCU estimates that with timely notification (at around 15 days) an additional 15 percent of its delinquent borrowers in any given month would become current and pay their past-due amount before the 30-day deadline. This would total approximately 325 to 400 borrowers who would avoid being reported late to credit bureaus because of having been reminded of their payment due date. AAFCU also estimates that timely contact would prevent 160 to 200 members from having their loans "charged off." Based on average loan charge offs for personal, unsecured loans, AAFCU estimates that it could prevent \$415,000 to \$520,000 in loan charge offs per quarter using

efficient dialing technology. This reduction in loan charge offs could translate into lower loan interest rates and higher dividends rates returned to its members.

Even modest extrapolation of these results across the entire credit union industry would demonstrate that the TCPA is unnecessarily causing substantial costs due to the reluctance to use efficient dialing technologies. AAFCU, with over 300,000 members, is but one of over 6,000 credit unions with a total membership in excess of 110 million members. While not all credit unions may be as conservative in their approach to contacting members as AAFCU, many are similarly risk averse in light of their responsibilities to their members, who are also the owners of their credit unions.

Common sense reforms such as those previously advocated by CUNA in its pending petition for declaratory ruling to creating an established business relationship exception for wireless informational calls⁴ or defining an ATDS consistent with the statutory language would result in material savings for AAFCU and the entire credit union industry. Until these changes are made, credit unions will continue to avoid utilizing cost-saving technologies in order to avoid the possibility of onerous damages sought by plaintiff class action attorneys.

Sincerely,



Gail Enda
President & CEO
American Airlines Federal Credit Union
4151 Amon Carter Boulevard
Fort Worth, TX 76155

cc: Zenji Nakazawa, Esq. (via email)
Michael H. Pryor, Esq.
Mitria Wilson, Esq.

⁴ *In the Matter of Credit Union National Association Petition for Declaratory Ruling and Rules and Regulations Implementing the Telephone Consumer Protection Act*, CG Docket No. 02-278, Petition for Declaratory Ruling (filed September 29, 2017) (“CUNA Petition”).