



Submitted Via Electronic Filing

July 21, 2017

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 287 credit unions and their nearly three million members, we are responding from our meeting on June 28, 2017 with the Federal Communications Commission (FCC) to discuss the Telephone Consumer Protection Act's (TCPA) on the ability of Ohio's credit unions to serve their members. In attendance with the Ohio Credit Union League (OCUL) and the Credit Union National Association (CUNA) was Scott Everett, Vice President and General Counsel of Wright-Patt Credit Union (WPCU) in Ohio.

During the meeting, OCUL and CUNA informed the FCC about the burdens of the TCPA on Ohio's credit union members, with 325,000 served by WPCU. Particularly, Mr. Everett shared specific examples of how the TCPA has caused confusion, resulting in interrupting the business operations of WPCU, causing additional costs. OCUL encouraged the FCC to update the TCPA to reflect modern technology advancements and credit union business operations.

The TCPA's Outdated Regulations Obstruct Friendly Communications with Credit Union Members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 those consumers with whom the credit union has an established and legitimate relationship; however, that is the result of the TCPA and its regulations.

During the dialogue, Mr. Everett detailed the impact the TCPA and unclear FCC interpretations are having on WPCU's ability to communicate with their members. WPCU, like all other credit unions, is a not-for-profit, member-owned, financial cooperative whose purpose is to provide affordable financial services to its members. As such, when Ohio credit unions, WPCU included, are communicating with their members, the credit union is seeking to connect with the same people who own the credit union.





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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. As an example, Mr. Everett noted that the current regulatory framework inhibits credit unions from delivering material information to member-owners, ranging from fraud alerts to past due payment notices to opportunities for lower interest rates on various financial products. While WPCU endeavors to serve members in compliance with consumer protection regulations, the TCPA requirements are not feasible to satisfy while simultaneously delivering the level of timely service members requires. The result is less communication which prevents members from making informed decisions regarding this financial well-being.

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).¹ While the order recognized that financial institutions should be able to communicate with their members 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 "proactively solicit" customers for inclusion in the program by making a minimum of four telephone calls to the customer at different times of day.²

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.

¹ *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).

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



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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 the FCC consider how the TCPA is harming member-owned credit unions, account for the unique size and ownership structure of credit unions, and to ensure federal agencies are working in cohesion and providing consistent guidance.

Thank you for your careful consideration and for the opportunity to express these views to the FCC. Should you have any questions concerning our *ex-parte* presentation, please feel free to contact me at 614-923-9762 or mlee@ohiocul.org.

Sincerely,

Miriah Lee
Manager of Policy Impact
Ohio Credit Union League

