



*Submitted Via Electronic Filing*

November 2, 2017

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

RE: Support of CUNA's petition for declaratory ruling  
CG Docket No. 02-278

Dear Chairman Pai:

On behalf of Ohio's 287 credit unions and their nearly three million members, the Ohio Credit Union League (OCUL) is responding to the Credit Union National Association's (CUNA) petition for declaratory relief under the Telephone Consumer Protection Act (TCPA).

Ohio credit unions are democratically operated financial cooperatives whose mission is to provide affordable, consumer-friendly products to their members. Ohio credit unions serve a wide array of members: military service personnel and their families, state employees, religious groups, individuals and families of modest means, and students, among many other groups. The average Ohio credit union is \$101 million in assets and retains a staff of 4-8 employees. While credit union membership is increasing on a national level, Ohio credit unions are not immune from market consolidation. Declaratory relief from TCPA would go a long way in helping to ensure the continued success of Ohio credit unions by eliminating restrictive requirements that stifle member communications and credit union operations. Not only would declaratory relief benefit credit unions, it would enhance the consumer experience in credit unions by improving communication and allowing for the transfer of more financial information to the consumer-member.

We request the Federal Communications Commission (FCC) grant CUNA's petition for declaratory relief by exempting credit unions from the TCPA. Ohio credit unions are experiencing detrimental effects from TCPA rulemaking. As the Chairman is aware, Ohio credit unions have been seeking regulatory relief: On June 28, 2017, OCUL, CUNA, and Scott Everett, Vice President and General Counsel of Wright-Patt Credit Union (WPCU) in Ohio met with the FCC to discuss how TCPA impacts the ability of Ohio's credit unions to serve their members. Further, OCUL filed an *ex-parte* filing with FCC regarding our meeting on July 21, 2017.

### **The TCPA's Outdated Regulations Obstruct Friendly Communications with Credit Union Members**

We believe TCPA does not address the advancements made in communications technology since its enactment in 1991. We understand the congressional intent of 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. The congressional intent of TCPA's passage arguably was not to prevent not-for-profit, member-





owned, financial cooperatives (credit unions) from communicating with members. Choosing membership with a credit union implies an established relationship; and, therefore, consent to be contacted regarding a member's financial well-being. As written, TCPA prevents vital outreach by credit unions to members.

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

The July 2015 TCPA Omnibus Ruling and Order (Order)<sup>1</sup> made it more burdensome for credit unions to navigate TCPA regulations, communicate with their members, and avert threats from crippling class action lawsuits. 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 for certain calls, 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 Credit Unions**

In addition to confusion stemming from TCPA rules, guidance from multiple agencies subjects credit unions to unclear direction regarding member outreach. The lack of consistency has put Ohio credit unions in juxtaposition between which regulations will take precedent. Below are a few examples 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>

### **Ohio's Credit Unions Face Significant Challenges Regarding TCPA Regulations**

*Wright-Patt Credit Union – Fairborn, Ohio*

WPCU is a not-for-profit institution serving more than 330,000 member-owners. When WPCU is seeking to communicate with its members, it is seeking to connect with the same people who own the credit union and who have the opportunity to vote in the governance of the credit

<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.





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union. The member-owner relationship is unique, and should be considered different from the harassing communication TCPA was created to regulate.

Many of WPCU's 330,000+ members have been with the credit union for years if not decades. As a result, the credit union's core system is populated with phone numbers, but WPCU struggles to find a reasonable method of verifying whether these numbers are tied to a mobile phone or land line. Many credit union members overwhelmingly expect and deserve timely communication 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. Because of this, WPCU, at times, must delay the deployment of real time text alerts related to suspicious activity out of concern over potential legal backlash arising from the plaintiff's bar using TCPA to create class action claims. TCPA directly diminishes WPCU's ability to proactively mitigate fraud exposure as a consequence. The result is less communication which prevents members from making informed decisions regarding their financial well-being.

TCPA impacts other aspects of WPCU's operations outside of fraud. Like all large institutions, WPCU utilizes a VOIP phone system. Under current TCPA definitions, any phone system or device (including an iPhone) that is *capable* of acting as an auto-dialer triggers coverage. So while WPCU always has a human being-live voice contact with the members, the use of the phone system technically requires that WPCU have express consent to make that contact.

It is WPCU's practice to welcome new members with a phone call. As a part of the welcome call, the credit union reviews the transaction(s) that arose with the member's first contact with the credit union. Additionally, the credit union requests an opportunity to walk through their credit report to determine if additional savings can be provided for any financing needs. This additional part constitutes "marketing" activity under TCPA and thus again triggers "prior express consent." It is practically impossible for WPCU to gain the written express consent from the member prior to the call. This is in part due to the fact that WPCU processes a high volume of indirect auto lending (\$50 million per month). These types of members come to the credit union through WPCU's dealer network: it is very challenging to have the member provide the required consent before they have even technically become a member.

Finally, TCPA impacts collection calls made by WPCU to their members, which also requires express written consent. Often calls are a critical reminder of a past due payment that can avoid further adverse financial consequences. By the time a member has reached the point where collection calls are necessary, WPCU may opt to use a third party to acquire current contact information. Therefore, it is even harder to document consent for a mobile number. If WPCU cannot make these calls, the credit union is doing a disservice to its members. Currently, WPCU pays a third party to scrub every phone number in its database to identify cell phone numbers, which are called manually. This method is costly, time consuming, and delays the ability to help the member.

*Kemba Credit Union - West Chester, Ohio*

As it does for WPCU, TCPA is negatively impacting Kemba Credit Union's (Kemba) fraud alerts sent to debit card holders. Kemba uses a third party vendor for their debit card products.



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Neither Kemba nor the vendor are able use the fraud exemption under the 2015 order as neither can ensure the call or text is free to the end user. Because the exemption is not available, Kemba must comply with TCPA.

With almost 100,000 members, Kemba cannot guarantee to their third party vendor that there is “prior express consent” and/or the call is “free to the end user.” Thus, when fraud is triggered Kemba incurs a cost for each call.

As a part of the fraud management system, every debit card transaction receives a score. When a high score reaches a certain limit, it is an indication that the transaction may be fraudulent. The debit card processor initiates an outbound call to the cardholder to verify whether the purchase was authorized by the credit union member. To maintain compliance, the debit card processor makes manual calls to the card holders and does not use an automated dialing system. This cost for manual calls is passed on to Kemba. With more than 42,000 debit cards in circulation, the cost for manual calls for fraud alerts adds up quickly.

#### *Universal 1 Credit Union – Dayton, Ohio*

Like other credit unions, Universal 1 Credit Union (Universal 1) finds value in reaching out to new members to welcome them to the credit union and to provide members with additional information on products and services. This is particularly beneficial to members who came to Universal 1 through an indirect auto loan. However, TCPA restricts these communications. This informational call is considered “marketing” under TCPA due to conversation stemming around products and services of benefit to the member. Because TCPA is triggered, Universal 1 must obtain prior written consent from the member to contact them. Like with WPCU, Universal 1 struggles to obtain consent from new members (stemming from indirect auto loans) before the member is technically a part of the credit union.

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.

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



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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.

### **Declaratory Relief is Needed; Cost Savings Would be Passed Down to Credit Union Members; Communication Would Increase**

We agree with CUNA that the FCC should adopt an “established business relationship” exemption for credit union informational messages to cell phones. Because of the unique member relationship, credit unions are different than typical businesses communicating with consumers. Members are owners of the credit union with a vested interest in being informed about the many aspects of operations. Simply put, the relationship between credit unions and members is more like a partnership; it benefits both parties to be in timely communication with each other.

We support CUNA’s alternative proposal: the FCC should utilize its express authority to exempt calls that are without charge to the called party under the party’s wireless plan. The vast majority of cell phone plans now include unlimited calling and texting. It follows that if members are not paying for these, common sense dictates that credit unions should be able to freely communicate with their members about information they want, and most importantly, need.

While we support CUNA’s petition and agree that the proposed exemptions are greatly needed, we believe the FCC should take broader steps to provide regulatory relief to credit unions. When considering the potential breadth of regulatory relief, the FCC should consider credit unions’ relationship with third parties, i.e. vendors and Credit Union Service Organizations. The untenable situation Ohio credit unions, like Kemba, have been put in from confusing and challenging FCC rulemaking warrants regulatory relief that scales back and corrects outdated rulemaking, considers advancements in technology, recognizes credit union’s interdependence with third parties, and accounts for the credit union-member owner relationship.

### **Conclusion**

Federal agencies have encouraged credit unions to communicate with consumers. Granting this petition would align with the FCC’s policies as well as recent guidance promulgated by the Consumer Financial Protection Bureau. Further, without declaratory relief, credit unions will continue to be in the untenable position of having to choose between federal regulators.

Our primary concern is that present circumstances are jeopardizing consumers’ unabridged and continued access to open and timely communications provided by their cooperative financial institutions. We urge the FCC to consider all comments within this letter and within CUNA’s petition, to account for the unique structure and ownership of credit unions, and to ensure federal agencies are working in cohesion and providing consistent, non-conflicting guidance. We



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support the positions articulated by CUNA. We respectfully request that the FCC grant CUNA's petition for declaratory relief.

Thank you for your careful consideration and for the opportunity to express these views to the FCC. Should you have any questions regarding our comments, please feel free to contact us at 1-800-486-2917.

Sincerely,

Paul Mercer  
President

Miriah Lee  
Manager of Policy Impact



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