



November 2, 2017

Chairman Ajit Pai
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

RE: Support for Credit Union National Association Petition for Declaratory Ruling

Introduction:

In 1991, Congress enacted the Telephone Consumer Protection Act ("TCPA") to address a growing number of telephone marketing calls and other calling practices which were invasive to consumer privacy. Following passage of the TCPA, the Federal Communications Commission ("the Commission") implemented rules, in relevant part, which prohibited: (1) making telemarketing calls using an artificial or prerecorded voice to residential telephones without prior express consent and (2) making any non-emergency call using an automatic telephone dialing system ("autodialer") or an artificial or prerecorded voice to a wireless telephone number without prior express consent.

In 1992, the Commission established an exemption from TCPA liability for a "telephone call to any residential telephone line" where the caller and the "residential subscriber" had an established business relationship ("EBR"). The EBR exemption from the requirement to obtain prior express consent extended to all residential calls and was in addition to the Commission's codification, per § 227(b)(2) of the TCPA, of exemptions for noncommercial calls and commercial calls that did not include an unsolicited advertisement; however, the EBR exemption was never extended to wireless calls.

RBFCU Supports Credit Union National Association ("CUNA") Petition:

RBFCU supports CUNA's petition to adopt one of two methods to equalize TCPA treatment of information messages to landlines and cell phones. Specifically, RBFCU believes the Commission should adopt an EBR exemption for credit union information messages to cell phones. A second or alternative method for the Commission is to utilize its express authority to exempt calls or texts which are free to the called party under the called party's wireless plan.

Under the current rule, if a credit union conveys information to a member at her home over a landline connection, the call does not require the member's prior express consent. However, if the member takes the same call at home on a cell phone, prior express consent is required. The different treatment of calls to cell phones and landlines fails to reflect how the vast majority of consumers communicate today and is unfair to both credit unions and their members. Because wireless phones do not fall under the EBR exemption for landlines, the regulation hinders member from receiving vital information which may prevent them from making a timely loan payment, maintaining a positive account balance, or being aware of fraudulent activity.

Unique Structure of Credit Unions

Credit unions are community based, not-for-profit, member-owned financial cooperatives which have a unique relationship with their members. Because credit unions are controlled by their members,

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particular importance and emphasis is placed on financial education. As owners of the credit union, members have a vested interest in being informed about different aspects of the credit union's operations ranging from governance communications, fraudulent activity, and account information such as overdue payments. Having more information, not less, is beneficial to credit union members. As such, it is critically important for members to receive this information in a timely and efficient manner. Regulations which restrict such communication are burdensome to the credit union and prevent important information from reaching members.

CFPB Comments:

Granting CUNA's petition will align the Commission's policies with recent guidance from the Consumer Financial Protection Bureau ("CFPB") which urged banks and credit unions to text their consumers regarding financial information. As reported by the CFPB, wireless communications regarding financial information are particularly important for "low-income, unbanked, underbanked and economically vulnerable consumers." The CFPB further recommended for credit unions to provide "real-time information" to consumers through text alerts to help protect their finances. Although the CFPB recommends credit unions to communicate through wireless phones, the Commission's rules restrict vital member communication regarding their accounts while simultaneously exposing the credit union to liability and class action litigation. This creates conflicting guidance on how credit unions should communicate with their members and places credit unions in the uncomfortable position of having to choose between federal regulators.

Conclusion:

Engrained in the credit union mission is the cooperative principle of member education which manifests itself in financial counseling. Credit unions are uniquely committed to serving members of modest means and supporting communities which are underserved by banks. As such, we seek to inform members about important account information so they can better manage their finances. Because many members live from one paycheck to another, it is critical that regulations do not restrict credit unions from openly communicating to members about account balances, upcoming bill payments, or other account information. In addition, financial literacy programs will help these same members attain necessary skills on how to build savings, create a budget, and manage loans. With this in mind, RBFCU strongly supports CUNA's petition to equalize TCPA treatment of information messages between landlines and cell phones.

Sincerely,

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