



November 3, 2017

By electronic delivery to: www.fcc.gov/ecfs/

Marlene H Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW,
Room TW-A325
Washington, DC 20554

Re: Petition for Declaratory Ruling under the Consumer Telephone Consumer Protection Act of 1991
DA/FCC: DA-17-978
CG Docket No. 02-278

Dear Ms. Dortch:

Kohler Credit Union appreciates the opportunity to submit comments to the Federal Communications Commission (FCC) in support of the Petition for Declaratory Relief filed by the Credit Union Nation Association (CUNA) on September 29, 2017. We fully back CUNA's petition and join them in asking the FCC to exempt credit unions from Telephone Consumer Protection Act's (TCPA's) prior express consent requirement for calls and texts to members regarding information on their accounts or important fraud information.

Who We Are

Kohler Credit Union is a \$353 million asset community chartered credit union, headquartered in Kohler, Wisconsin. Kohler Credit Union maintains seven (7) full service branches and four (4) in-school branches serving over 40,000 members in Sheboygan, Calumet, Manitowoc, Ozaukee, Washington, Fond du Lac, Milwaukee and Waukesha Counties of Wisconsin. Like our counterparts nationwide, our credit union is a tax-exempt, not-for-profit financial cooperative, solely owned by our members. Unlike banks, which exist to create value for shareholders, credit unions have a statutorily defined mission: "to encourage thrift among its members, create a source of credit at a fair and reasonable cost, and provide an opportunity for its members to improve their economic and social conditions." (Wis. Stats. §186.01). As a credit union we enjoy a special relationship with our members. That relationship often requires that we communicate effectively and share important information with our member-owners, who welcome and expect this information.

The Petition

The TCPA of 1991 unduly impedes our ability to reach members. That's largely because the TCPA is obsolete, lagging far behind rapidly changing communications technology. To make matters worse, the FCC's guidance on TCPA compliance has only confused the issues, and courts across the country have issued contradictory opinions on the TCPA's requirements.

In addition, the burdensome requirement that revocation of consent can be given in "any reasonable means" leaves this wide open to interpretation. The Second Circuit found that a consumer cannot unilaterally revoke consent to be contacted by telephone when that consent is not given, not gratuitously, but as bargained-for consideration in a bilateral contract. (*Reyes v. Lincoln Automotive Financial Services*, 861 F.3d 51 (2d Cir. 2017)). In addition, although the 2015 FCC Order held that consumers can use any form of reasonable



revocation, one court has found that a consumer's failure to simply text 'stop' as directed was unreasonable. (*Epps v. Earth Fare Inc.* (C.D. Cal. Feb. 27, 2017)).

As a result, our credit union finds the current TCPA compliance landscape confusing and we feel restrained from contacting members for fear of violating the rules and becoming a target of increasingly frequent class-action litigation. TCPA cases have gone up 46% since the Order was adopted. The penalties for violation are extreme and our credit union could not sustain such litigation. As CUNA's petition explains, a credit union "risks potentially ruinous class-action litigation if for some reason consent had not been obtained or documented. The different treatment of informational calls to cell phones and landlines is antiquated and unfair and fails to reflect how the vast majority of consumers communicate today."

Our credit union does not understand the different treatment for calls to telephone landlines vs. calls or texts to cell phones. We do not need a member's prior consent to contact him/her at home via a telephone landline, but the implementing rules require prior express consent to make calls to cell phones using an automatic telephone dialing system. With today's technology, the definition of an automatic telephone dialing system is so broad, that even if such a feature is not utilized, and the call is dialed by an employee, the call is still considered to have been dialed with an automatic telephone dialing system under the definition.

This does not even begin to address the burden of determining reassigned numbers.

In addition, numerous Regulators require some type of communications under their Rules. For example, the Consumer Financial Protection Bureau requires some communications under their mortgage rules.

What Are the Benefits?

By exempting credit unions as the Petition requests, it will allow us to use efficient dialing technologies; eliminate much of the confusion and uncertainty around compliance; and puts calls to landline phones and cell phones on equal footing.

This would reflect the way people communicate. The majority of Americans no longer even have a landline phone. More than 70% of young adults only use a cell phone. More than 90% of calls and texts are free under wireless plans.

In Conclusion

We strongly urge the Federal Communications Commission to support the Petition filed by CUNA on behalf of America's credit unions.

We appreciate the opportunity to share our thoughts on the Petition. Again, we would urge the FCC consider all comments received and support the Petition. If you have questions or need further information, please feel free to contact me by telephone 920-459-2595 or by email at svandermeuse@kohlercu.com.

Sincerely,

Sue Vandermeuse

Sue Vandermeuse, CUCE, CUERME, BSACS
VP Internal Audit & Risk Management