Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Petition for Declaratory	)	
Ruling of the Credit	)	
Union National Association	)	CG Docket No. 02-278

Comments of the American Consumer Institute

The American Consumer Institute Center for Citizen Research (ACI) is a nonprofit (501c3) educational and research institute with the mission to identify, analyze and project the interests of consumers in selected legislative and rulemaking proceedings in information technology, health care, insurance, financial markets, energy and other matters. Recognizing that consumers' interests can be variously defined and measured, and that numerous parties purport to speak on behalf of consumers, the goal of ACI is to bring to bear the tools of economic and consumer welfare analyses as rigorous as available data will allow, while taking care to assure that the analyses reflect relevant and significant costs and benefits of alternative courses of government action.

Summary

In this Petition for Declaratory Ruling of the Credit Union National Association (CUNA), the Federal Communications Commission (Commission) seeks comment on a request by CUNA for a business relationship exemption from the Telephone Consumer Protection Act of 1991 (TCPA). In these comments, ACI will briefly discuss how these rules act to reduce consumer welfare and lead to a market failure. Because of the imposition of these regulatory costs, ACI finds the request for an exemption by CUNA to be reasonable and their petition should be granted. Furthermore, we encourage the Commission to consider modifications for other businesses who communicate important information to their customers.

Current Rules Not Aligned with Today's Wireless Market

The wireless telecommunications market has changed substantially since TCPA was enacted. According to CTIA's semi-annual reports and the FCC's Mobile Wireless Competition Report, wireless subscribership increased from 7.6 million in 1991 to nearly

400 million in 2016. Moreover, only 5.8% of adults use only a wireline service for voice communications, according to a CDC report.[1] This means that if consumers want information, service alerts and other pertinent notifications, companies will most often need to call their customers on their wireless telephones.

However, current TCPA rules are not aligned with this reality. If a company makes a call without knowledge that a number was reassigned and the phone call is not answered, is dropped by weak cellular coverage or the customer hangs up for any reason, the company can make no further call to the customer without subjecting itself to fines. This makes companies less likely to provide information to consumers, such as providing timely alerts on transactions, balances, service disruption, payments and billing.

Imperfect Information is a Market Failure

Because consumers require better information to make proper decisions, this rule puts consumers at a disadvantage. Consumers require market and service information necessary to make judgments and market decisions. This information could be about their purchases, service appointments, data breaches, fraud, overdrawn account balances, subscriptions and disruption of services. The lack of information reduces market differentiation, rivalry and consumer welfare, as well as consumer information. It creates asymmetric information (or imperfect information) which is a market failure.[2] Unlike consumers in the textbook models of competition, consumers generally have an incomplete or inaccurate understanding of facts material to a particular choice. The costs of acquiring pertinent information – search costs – are often substantial. Rather than

[1] Stephen J. Blumberg, Ph.D., and Julian V. Luke, "Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January–June 2016" U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, December 20, 2016, Table 1, p. 5, at https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201612.pdf.

[2] The implications of imperfect information informing consumer choices have been intensively studied. An extensive review and summary is beyond our scope here, but we can recommend a handful of studies and the references they cite. See, Joan K. Lewis, Teresa Mauldin, "Returns to Investments in Information: Can Investments Reduce Bad Purchase Experiences of Consumers?" *Journal of Consumer Studies and Home Economics*, 20 (2), 183–199, 1996. The authors examine the impact of consumer information, information sources, information acquisition costs, and consumer demographics on "bad purchase" experience. The results suggest that age, education, extent of social contacts with relevant information and others were relevant. See also, George B. Sproles, Loren V. Geistfeld, and Suzanne B. Badenhop, "Types and Amounts of Information Used by Efficient Consumers," *Journal of Consumer Affairs*, Vol. 14, Issue 1, p. 37, June 1980. The paper examines the efficiency of consumer decision-making as indicated by the types and amounts of informational resources utilized. They classify consumers in three groups ranked by their relative efficiency in making optimal choices in the context of their wants/needs/preferences and the information available about alternatives. Taken together these papers indicate that inadequate consumer information leads to loss of consumer welfare; that information acquisition by consumers is often costly; and that investing in better information can lead to increased consumer welfare.

bearing search costs, the outcome of which is not predictable, consumers should have access to information and not be poorly informed.[3]

Therefore, company communications with its customers can be a very important means for consumers to get better information. The current rules create asymmetric information, which leads to a market failure and reduces consumer welfare.

Other Effects on Consumer Welfare

In the case of Credit Unions, the welfare loss is even more obvious. Since credit unions are member-owned (consumer-owned), a lawsuit that sends money to one consumer is entirely paid for by its other consumers. Along with the added legal expenses, including the potential for trial attorney abuses, collectively, these customers will pay more than they get in return. Essentially, these rules make consumers worse off, not better off, and this represents yet another consumer welfare loss.

Conclusion

In summary, ACI believes that these onerous TCPA rules reduce consumer welfare and lead to market failure. Therefore, we find the request for an exemption by CUNA to be reasonable and the petition should be granted. In addition, ACI encourages the Commission to consider broader modifications for other businesses that communicate vital information with their customers.

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[3] See A. Postlewaite, *Asymmetric Information, Allocation, Information, and Markets,* (John Eatwell, Murray Milgate, Peter Newman, eds.), The New Palgrave, WW Norton, NY and London, 1989, pp. 35-38.