

November 6, 2017

Marlene H. Dortch, Secretary

Federal Communications Commission

Office of the Secretary

445 12th Street, SW

Room TW-A325

Washington, DC 20554

Re: PSCU’s Support of CUNA’s Petition for Declaratory Ruling under the Telephone Consumer Protection Act of 1991

DA/FCC: DA-17-978

CG Docket No. 02-278

Dear Ms. Dortch:

PSCU is a credit union service organization and a cooperative built, owned, and governed by credit unions. We provide credit and/or debit processing services, as well as other services, to the 850+ credit unions that we serve. On behalf of our member-owner credit unions and those that we serve, PSCU is writing to you in support of the Petition for Declaratory Ruling under the Telephone Consumer Protection Act (“TCPA”) of 1991 filed by the Credit Union National Association (“CUNA”) on September 29, 2017. We wholly embrace CUNA’s petition and, for reasons addressed below, join them in asking the Federal Communications Commission (“FCC”) to either: (i) adopt an established business relationship (“EBR”) exemption from the TCPA’s prior-express-consent requirement for informational autodialed or artificial- or prerecorded-voice calls (including text messages) made by or on behalf of credit unions to their members’ wireless phone numbers or (ii) exercise its statutory authority to exempt from the TCPA’s prior-express-consent requirement credit union informational calls made to its members’ wireless phone numbers that are in fact free to the called party.

**The Credit Union Difference**

Credit unions are tax-exempt, not-for-profit, democratically-operated financial cooperatives that have a unique relationship with their members, who are also owners of the enterprise. This relationship spawns a variety of communications between credit unions and their member-owners, ranging from timely and critical financial information to messages regarding governance issues and financial education. Members welcome and expect this information.

**The TCPA’s Outdated Regulations Impede the Ability of Credit Unions to Reach Their Members**

Written in 1991 to protect consumers from businesses, particularly telemarketing companies, who make unwelcome and repetitive contact with consumers with whom they have no established relationship, the TCPA is now, in large part, 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. As a result, credit unions find the current TCPA compliance landscape so confusing that they tell us they feel restrained from contacting members for fear of violating the rules and becoming the targets of increasingly frequent class-action litigation.

**CUNA’s Proposal**

CUNA has asked the FCC to exempt from the TCPA’s prior consent requirement informational (not telemarketing) calls and texts made by credit unions to their members’ cell phones. The CUNA petition proposes two methods of balancing the TCPA treatment of informational messages to landlines and cell phones:

* First, CUNA has asked the FCC to adopt an EBR exemption for credit union informational messages to cell phones. This makes sense for several reasons. As explained earlier, credit unions have a unique relationship with their member-owners, who have a vested interest in being informed about issues such as credit union governance, fraudulent activity, and account information like overdue payments. For more than 20 years, the FCC exempted all residential calls, both informational calls and telemarketing calls, from the TCPA’s prior-express-consent requirement where the called party had an EBR with the caller. The FCC should at least treat informational calls to cell phones as it does residential calls by instituting this EBR exemption for informational autodialed or artificial- or prerecorded- voice calls (including texts) made by credit unions to their members’ cell phones.
* Second, CUNA has asked the FCC to use its authority to exempt credit union informational calls or texts that are in fact free to the member under his/her wireless plan. This simply makes sense: As the petition explains, “the vast majority of consumers are not charged for calls or texts to their wireless phone.” If members are not paying for these calls, credit unions should be able to freely provide the information the members want and need.

This proposed approach would only require that the call is, in fact, free to the consumer. It would not require credit unions to ensure that the call is free. Section 227(b)(2)(C) of the TCPA (the free-to-end-user provision) imposes no requirement that the caller ensure the call is free, and it would be illogical and unnecessarily burdensome to impose such a requirement on credit unions. This is especially true for credit unions because, in addition to the fact that most are small businesses, credit unions are, as discussed above, owned by their members. Thus, when a credit union is punished for making an informational call to one of its member-owners, it’s not solely the credit union that is impacted; its member-owners also suffer.

**Other Regulators Have Encouraged Credit Unions to Communicate with Consumers**

Granting this petition would also align the FCC’s policies with recent guidance from the Consumer Financial Protection Bureau (“CFPB”) urging both banks and credit unions to text their consumers regarding financial information. While the CFPB is urging credit unions to provide "real-time information" to consumers through text alerts to help protect their finances, the TCPA and FCC rules subject credit unions to liability for automated calls and texts; this juxtaposition creates extremely problematic, conflicting guidance about how credit unions should be communicating with their members. It also puts credit unions in the untenable position of having to choose between federal regulators. Credit unions have been recognized by the CFPB for their outstanding financial education efforts. A severely outdated statute and unclear guidance should not impede this work.

**Conclusion**

PSCU appreciates the opportunity to comment on CUNA’s proposal and asks the FCC to grant CUNA’s petition and issue a declaratory ruling that wireless informational calls and texts to credit union member-owners with whom the credit union has an EBR, or where the call or text is in fact free, are exempt from the TCPA’s prior-express-consent requirement.

Respectfully submitted,



Steven A. Salzer

SVP, Legal and Enterprise Risk