November 6, 2017

*Submitted electronically via:* <http://www.fcc.gov/ecfs/>

Marlene H. Dortch

Secretary

Federal Communications Commission

445 12th Street SW,

Washington, D.C. 20554

**RE: Credit Union National Association’s Petition for Declaratory Ruling**

Dear Ms. Dortch,

On behalf of Minnesota’s credit unions, please accept this correspondence in support of the petition (the “Petition”) filed by Credit Union National Association (“CUNA”), requesting a business relationship exemption for credit unions from the Telephone Consumer Protection Act (“TCPA”). The Minnesota Credit Union Network (“MnCUN") represents the interests of Minnesota’s 115 credit unions and their 1.7 million members. MnCUN thanks you for the opportunity to provide a response regarding CUNA’s Petition.

We strongly support efforts to protect consumers. Every day, Minnesota’s credit unions provide services and education focused on protecting consumers and improving their members’ financial lives. Credit unions provide such services, not for profit, but because they adhere to the cooperative principles. If communication is hindered, then so is the ability to provide these services. The TCPA, as it is applied today, has created substantial and unnecessary hindrances to credit unions’ abilities to communicate with their members. We fully support CUNA’s Petition and would like to bring to your attention to some additional issues we feel exist with the TCPA. We respectfully request that the Federal Communications Commission (“FCC”) use its authority to grant the requests of CUNA’s Petition as well as our requests below.

**Credit Unions are unlike other types of financial institutions**

The relationship between credit unions and their members is unique from the relationship that other types of financial institutions have with consumers. Members of credit unions are not only consumers of credit union products and services, they are also owners of the credit unions at which they obtain these products and services. As an owner and consumer, a member is entitled to certain information from their credit union. This includes information on topics such as governance, financial education, information regarding financial products, and fraud alerts. All of which is critical information. The TCPA has hindered the flow of such information in at least four ways:

Definition for “automatic telephone dialer system” is overly broad

The TCPA is overly-broad in that it subjects even credit unions that do not actually use auto-dialers to its regulations and rules. The purpose of the TCPA is to protect consumers from unsolicited automated phone calls and prerecorded messages.[[1]](#footnote-1) However, because of the TCPA’s overly broad definition for “automatic telephone dialing system,”[[2]](#footnote-2) credit unions that do not actually use auto-dialers are still subject to the TCPA’s restrictions and burdens. As pointed out in the Petition, a majority of credit unions do not use auto-dialers. (See Petition, pg. 3, fn. 9.) Since the TCPA was enacted to protect consumers from being overwhelmed by phone calls from auto-dialers and prerecorded messages, then logic dictates that should be applied only to persons that actually use such methods. We ask that persons, who do not actually use automatic telephone dialing systems, regardless of whether they have phone systems capable of auto-dialing, be exempted from the TCPA.

The one-call safe harbor is not sufficient

The TCPA creates a private right of action for any “person who has received more than one telephone call within any 12-month period by the same entity in violation of the regulations. . .” prescribed under the TCPA. (47 USC § 227(a)(5)). Although this creates what might be seen as a safe harbor, it is not sufficient. Consider the following scenario. A credit union member provides the credit union with a telephone number and grants permission for that credit union to contact the member at that number. Subsequently, the member changes telephone numbers and fails to inform the credit union of this change. The number gets reassigned. The credit union then attempts to contact the member at this number and gets only a generic voicemail. The credit union cannot possibly know, based upon this single phone call, that this is no longer a valid phone number for the member. The credit union attempts to call again. Once the credit union has made this second call, it has violated the TCPA and is subject to liability. This is harsh result under the circumstances. However, under the letter of the law, the credit union could be held liable. Some may argue that there are methods by which credit unions can get updated phone lists. However, such lists are costly and scrubbing such lists against the credit union’s data is an onerous burden. Additionally, using such lists is not practical because by the time a credit union has finished scrubbing the list, the data could be outdated. To make such a method workable, a credit would have to do this on a monthly, if not weekly basis. Even then there is no guarantee that the data is up to date and that the phone number being called is still correct. We believe a more reasonable approach would be to give a private right of action when the entity making the phone call had “reason to know or should have known” that it was calling a number that was no longer valid for the consumer that the entity was trying to reach. This approach would still protect consumers and further the purposes of the TCPA.

Process for revoking consent is not clearly defined

The TCPA does not provide a clear definition at to what constitutes an effective revocation of consent. This lack of clarity makes it extremely difficult for credit unions, other businesses, and financial institutions, to create a process to record and comply with revocation requests. We request that FCC create a regulation that would allow entities to define a reasonable and specific revocation process or processes that consumers must follow for revocations to be effective. This approach would create clarity for both the entity and the consumer. Entities will be able to create revocation processes that can be more effectively applied, thus making it more likely that they will be able to comply a consumer’s wishes.

Determining what type of communication device is being contacted is extremely difficult

Another challenge with the TCPA is that the regulations and restrictions differ depending upon the type of device is being called. For example, the restrictions for cellular phones differ from the restrictions for land lines. The result is that credit unions are left with the burdensome and near impossible task of trying to determine what type of device is being contacted. Although credit unions can, and many do, gather this type of information up front. Members sometimes make mistakes (e.g. classifying a cellular phone as a land line). There are outside resources that can help determine the type of device to which a phone number is assigned. However, these resources are expensive, are not always completely accurate and the data would still need to be scrubbed. This creates additional work and additional costs that ultimately get past onto the end consumer. We ask that the FCC create a presumption that the information provided by a consumer is correct, and that by giving a phone number to the entity, the consumers is presumed to have given the entity the authority to contact that number by any method regardless of what type of device to which that number is assigned.

We support efforts to protect consumers, and therefor support the purposes for which the TCPA was enacted. However, the TCPA is not up-to-date with the current methods by which people communicate, and it does not account for the unique relationship that credit unions have with their members. We support CUNA’s Petition and ask that you consider their requests as well as the requests in this letter. Thank you for taking into consideration MnCUN’s commentary on this matter.

If you have any questions about our comments, please do not hesitate to contact us at (651) 288-5170.

Sincerely,

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Mark Cummins

President & CEO

Minnesota Credit Union Network

1. Express Congressional intent in passing the TCPA was to “protect the privacy interests of residential telephone subscribers” by placing certain restrictions on the use of unsolicited, automated phone calls made by telemarketers who were “blasting” out advertising by the use of both “facsimile machines and automatic dialers.” (See, e.g. Senate Report No. 102-178, October 8, 1991, 1991 U.S.C.C.A.N. 1968.) [↑](#footnote-ref-1)
2. The TCPA defines “automatic telephone dialing system” as “equipment which has the capacity: (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers. (47 USC § 227(a)(1)). [↑](#footnote-ref-2)