

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Credit Union National Association (CUNA)
Petition for Declaratory Ruling

Rules and Regulations Implementing the
Telephone Consumer Protection Act of 1991

CG Docket No. 02-278

Reply Comments of Robert Biggerstaff

Robert Biggerstaff submits these reply comments on the Petition of the Credit Union National Association (“CUNA”).¹ The *Petition* is blatant anti-consumer rent seeking wrapped in euphemisms and misdirection. It should be emphatically denied. I say this as a member, for over 20 years, of a federally chartered credit union.

As a threshold matter, the *Petition* carefully focuses on the lipstick, rather than the pig. It successfully avoids the term “robocall” in favor of euphemisms such as “efficient calling technologies”, “informational communications”, and “wireless information calls”. CUNA also carefully avoids mentioning that the exemptions it seeks would also permit unrestrained debt collection calls. The Commission must not reward this subterfuge.

CUNA wants an exemption with no bounds ... one that will allow any number of calls at any time. Consider one case where an autodialer (allegedly) malfunctioned and a single consumer “received hundreds of phone calls” from that autodialer.² Under the exemptions sought by CUNA a consumer in a similar situation would have no recourse against a rogue

¹ *Petition for Declaratory Ruling of the Credit Union National Association*, CG Docket No. 02-278 (filed September 29, 2017) DA 17-798 (*Petition*).

² *Irvine v. Akron Beacon Journal*, 770 N.E.2d 1105 (Ohio App. 2002).

credit union autodialer. Neither would the Commission if it pursued an enforcement action.

I agree with the comments of the National Consumer Law Center, *et al.*, David Frankel, Justin T. Holcombe, and many others. Particularly those expressing similar opinions that “[t]he calls CUNA wants to exempt are no more special than those made by anyone else.” Indeed the notion of an exemption for a tax-exempt nonprofit as well as an “established business relationship” exemption for robocalls to cell phones has been categorically rejected by the Commission. There is no justification to walk back that cat and nothing special about credit unions.

The TCPA and Commission rules should treat credit union robocalls to cell phones no differently from other robocalls to cell phones. Indeed, as an entity that has regular contact with the consumer, a credit union should have little trouble securing consent from the consumer for robocalls if—as CUNA claims—those consumers actually want those calls.

Calls that are purportedly “free” to the called party are still an invasion of privacy. In the TCPA itself, Congress found that “the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call.”³ When the TCPA was introduced in Congress, its sponsor Senator Hollings correctly summarized the collective opinion of consumers regarding robocalls:

Computerized calls are the scourge of modern civilization. They wake us up in the morning; they interrupt our dinner at night; they force the sick and elderly out of bed; they hound us until we want to rip the telephone right out of the wall.

The telephone is a basic necessity of life. You cannot get along in this country if you do not have a telephone in your home. However, owning a telephone does not give the world the right and privilege to assault the consumer with

³ Telephone Consumer Protection Act, PL 102-243, 105 STAT. 2394, Congressional Findings, No. 13 (1991) (emphasis added).

machine-generated telephone calls. These calls are a nuisance and an invasion of our privacy.⁴

That is doubly true when those robocalls come to a cell phone. Consumers carry cell phones everywhere because we need that electronic connection for emergencies, such as a dependant relative needing assistance or a school or doctor calling about a child. Cell phones also have a unique place and deserve unique protection due to the safety concerns of a call that could be urgent coming while driving or operating machinery.

Indeed, CUNA obviously knows that text messages are considered urgent by consumers and almost always read immediately. That is why they want to use them for debt collection. If CUNA really wanted to serve consumers, they can use e-mail, which many consumers also receive on their cell phones. But unlike text messages that interrupt the consumer's privacy, consumers can configure their e-mail to only poll for new messages or only provide a notice of new messages when requested by the consumer. Consumers can route e-mails based on sender or subject line, thus sorting the wheat from the chaff. Consumers can also terminate an e-mail address if it starts to be abused by a business.⁵ Text messages to a cell phone number lack all these customizations.

As an expert in the computer and computer telephony fields for over 30 years, I have repeatedly found that cheap automated messaging systems when used to send messages in "recipient-pays" mediums, are a nightmare. Every consumer has to pay higher rates, even for "unlimited" plans, when the providers must deal with the capacity issues caused by uninvited automated messaging systems adding the load to their networks.

⁴ 137 Cong. Rec. S9840 (daily ed. July 11, 1991) (statement of Sen. Hollings); See also, 137 Cong. Rec. S16204 (daily ed. Nov. 7, 1991) (statement of Sen. Hollings) ("It is telephone terrorism, and it has got to stop.")

⁵ Indeed, many consumers, like myself, give a unique e-mail address to each different business for exactly those reasons.

The TCPA only works to the degree it does because consumers are protected from nearly ***all*** robocalls to their cell phones made without express consent.... protected from political calls, survey calls, religious calls, charity calls, debt collection calls, and nearly every other robocall. Consumers don't have to play detective to determine which legal loophole a call might fit into. Once robocallers succeed in forcing consumers to go down that rabbit hole as a precondition to protecting their privacy rights, the robocallers win.

CONCLUSION

Consumers hate uninvited robocalls and robotexts to their cell phones. Cell phones are *personal* devices that people carry on their person many carry them 24 hours a day. Unexpected calls and texts distract drivers, interrupt work, and intrude into your life. Unwanted interruptions are the scourge of modern life. But remaining connected to family, friends, customers, and to a means of emergency contact is critical so we have to respond when a call or text comes in to at least see who it is from. The intrusion is independent of whether you get 1 call or 20.... it is the officiousness and invasion of privacy from the uninvited call itself.

If a credit union (or any other entity) truly values its customers, it would abide by the TCPA and existing Commission rules and ask for the consumer's express consent before unleashing their robot calls.

Sincerely

/s/ Robert Biggerstaff
Robert Biggerstaff, CCE
November 21, 2017



Cert. No. 1360