

June 6, 2016

Chairman Thomas Wheeler
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O’Rielly
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Comments on Proposed Rulemaking; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; CG Docket No. 02-278

Dear Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O’Rielly:

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), one of the largest state trade associations for credit unions in the United States, representing the interests of more than 350 credit unions and their more than 10 million members/consumers. The Leagues welcome the opportunity to provide comments to the Federal Communications Commission (FCC) on its Notice of Proposed Rulemaking that would implement a provision of the Bipartisan Budget Act of 2015 (Budget Act) that exempts from the Telephone Consumer Protection Act’s (TCPA) consent requirement robocalls “made solely to collect a debt owed to or guaranteed by the United States.”

In July 2015 the FCC issued a *Declaratory Ruling and Order*¹ (July Order) that effectively prohibits credit unions from communicating important account information with their members in a timely and efficient manner. Unfortunately, this proposal to implement the Budget Act exemption for debt owed to or guaranteed by the United States also includes onerous restrictions that limit the exemption so severely as to deny federal government debt collectors the relief Congress intended.

Unworkable Limitations

Under the proposal, the FCC is seeking comment on how it should restrict or limit the number and duration of covered calls, including both collection calls and debt servicing calls. It proposes to restrict the number of covered calls to three per month, and only includes debt when the borrower is in default or delinquent on a payment. The three calls would also include unanswered calls. In addition, calls to reassigned numbers are not included in the exemption, except for a one-call safe harbor. Furthermore, the FCC proposes to allow consumers the ability to opt-out of further calls orally. These limitations make this exemption virtually meaningless. The FCC placed similar limitations on the exemption it provided to financial institutions in the July Order, and credit unions have found this exemption unworkable.

Debt Owed To or Guaranteed By the United States

In the proposal, the FCC does not define what is included in “debt owed to or guaranteed by the United States.” Rather, the FCC seeks comment on whether there are specific types of debts that are covered by the phrase “debt owed to or guaranteed by the United States,” such as SBA loans and federally guaranteed mortgages.

¹ GC Docket No. 02-278 (July 10, 2015)

The Leagues recommend that mortgages backed by government-sponsored entities should qualify for the TCPA's exemption because the United States is at risk for credit loss despite not holding legal title to these mortgages. Enhanced and timely communications to borrowers about mortgage debt can also prevent foreclosures and other negative consequences for consumers, such as late fees. Other federal agencies, as well as state governments, have created specific policies and requirements for communications with borrowers to decrease the likelihood of foreclosures. The FCC should not be adopting policies that conflict with these efforts or the Fair Debt Collection Practices Act.

The Leagues also recommend that loans offered through programs such as the SBA's 7(a) Loan Program, with up to 90% of the loan guaranteed by the SBA, should be included in the exemption. The SBA describes 7(a) loans as follows: "The 7(a) Loan Program is SBA's primary program for helping start-up and existing small businesses, with financing guaranteed for a variety of general business purposes. SBA does not make loans itself, but rather guarantees loans made by participating lending institutions. In this way, taxpayer funds are only used in the event of borrower default. This reduces the risk to the lender but not to the borrower, who remains obligated for the full debt, even in the event of default." In its own description, the SBA acknowledges that a borrower default will prompt the use of taxpayer funds. Accordingly, it is clear that these loans should be included in the FCC's definition of debt owed to or guaranteed by the federal government.

Relief Needed from the July Order

The Leagues strongly recommend the FCC withdraw its July Order which went into effect after being approved at an FCC meeting and without being published as a proposed rulemaking with a notice and comment period.

The July Order claimed to recognize the importance of receiving timely information from financial institutions and created an exemption for calls concerning: (1) transactions and events that suggest a risk of fraud or identity theft; (2) possible breaches of the security of customers' personal information; (3) steps consumers can take to prevent or remedy harm caused by data security breaches; and (4) actions needed to arrange for receipt of pending money transfers.

However, the conditions that must be met for a call to qualify as exempt are difficult, if not impossible, for credit unions to meet. One example is that exempted calls must be "free-to-end-user calls," or in other words, there can be no charge of any kind to the consumer. This requirement places an unreasonable burden on financial institutions to ensure that notifications do not count against a recipient's plan for minutes or texts. The technology and resources to be able to administer this are not readily available to the majority of credit unions.

Another example is the July Order permits consumers to revoke their consent for all autodialed calls at any time and in any reasonable manner, including orally. This requirement is impractical, as there is no realistic method to prove an oral request was or was not received.

Conclusion

In conclusion, the Leagues urge the FCC to reevaluate its interpretation of the TCPA in light of today's technologies and consumers' reliance on their smart phones, retract their July Order, and avoid imposing new call frequency, duration, and other limitations in the Budget Act exemption.

Comments on Proposed Rulemaking; Rules and Regulations Implementing the TCPA;
CG Docket No. 02-278
June 6, 2016
Page 3

Thank you for the opportunity to comment on the Proposed Rulemaking and for considering our views.
Sincerely,

Diana R. Dykstra
President and CEO
California and Nevada Credit Union Leagues