

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

<i>In the Matter of</i>)	
)	
Consumer and Governmental Affairs Bureau)	CG Docket No. 18-152
Seeks Comment on Interpretation of the Telephone)	
Consumer Protection Act in Light of the Ninth)	
Circuit’s <i>Marks v. Crunch San Diego, LLC</i>)	
Decision)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	

REPLY COMMENTS OF CREDIT UNION NATIONAL ASSOCIATION

The Credit Union National Association (“CUNA”), by and through its counsel, submits these reply comments in response to the Consumer and Governmental Affairs Bureau’s October 3, 2018, *Public Notice* seeking further comment regarding the definition of an automatic telephone dialing system (“ATDS”) following the decision in *Marks v. Crunch San Diego, LLC*.¹

CUNA submits these reply comments to highlight comments filed by a number of credit unions and state credit union leagues emphasizing the critical importance of narrowly defining automatic telephone dialing systems. Defining ATDS as Congress initially intended will help lift the threat of litigation against credit unions seeking to communicate effectively and efficiently with their members.² As noted by the Louisiana Credit Union League, “communications

¹ *Consumer and Governmental Affairs Bureau Seeks Further Comment on Interpretation of the Telephone Consumer Protection Act in Light of the Ninth Circuit’s Marks v. Crunch San Diego, LLC Decision*, Public Notice, DA-1014 (rel. Oct. 3, 2018) (*Public Notice*). See *Marks v. Crunch San Diego, LLC*, No. 14-56834, 2018 WL 4495553 (9th Cir. Sept. 20, 2018) (*Marks*). The appellee, Crunch, has filed a petition for *en banc* review. *Appellee’s Petition for Rehearing En Banc*, Case No. 14-56834 (9th Cir. Oct. 4, 2018).

² *Comments of the Ohio Credit Union League*, CG Docket Nos. 18-152, 02-278, at 1 (filed October 17, 2018) (Narrowly defining ATDS would “go a long way in helping to ensure the continued success of Ohio credit unions by eliminating restrictive requirements that inhibit member communications and impede credit union operations.”)

between a credit union and its members are more than just a method of business communication.”³ Credit unions “enjoy a special relationship with their member-owners, who welcome and expect their credit unions to share important information and to communicate effectively.”⁴ The Ohio Credit Union League reminds the Commission that credit unions are typically small businesses that service discrete and sometimes underserved groups such as “military personnel and their families, state employees, religious groups, [and] individuals and families of modest means.”⁵ Overly broad interpretations inhibit efficient calling technologies and impose unnecessary procedures and costs on credit unions and other companies communicating with their customers.⁶ Uncertainty over the definition of ATDS creates doubt among some credit unions that even manual dialing to establish a live communication would run afoul of the TPCA’s autodialing calling restrictions.⁷

Credit unions seek to restore the balance Congress originally intended between protecting consumers from repetitive and ill-timed unsolicited telemarketing calls and preserving the ability of businesses to communicate with their members or customers.⁸ Although more clearly and narrowly defining key TCPA terms will help, CUNA respectfully urges the Commission to go further by equalizing the treatment of informational calls made to cell phones and residential

(*Ohio Credit Union League Comments*); *Brief Comments of Sun East Federal Credit Union*, CG Docket Nos. 18-152, 02-278 (filed October 22, 2018) (“[T]he relatively vague definition of ATDS opens the door to pernicious litigation which impedes communications with consumers, our members.”) (*Sun East Federal Credit Union Brief Comments*).

³ *Comments of the Louisiana Credit Union League*, CG Docket No. 18-152, at 1 (filed October 16, 2018) (*Louisiana Credit Union League Comments*).

⁴ *Comments of the Wisconsin Credit Union League*, CG Docket Nos. 18-152, 02-278, at 1 (filed October 16, 2018) (*Wisconsin Credit Union League Comments*).

⁵ Ohio Credit Union League Comments at 1.

⁶ *See, Comments of Patelco Credit Union*, CG Docket Nos. 18-152, 02-278, at 2 (noting that the current uncertainty around the ATDS definition is causing Patelco to manually dial numbers, which is “inefficient” but deemed necessary to avoid the risk of litigation) (filed October 17, 2018) (*Patelco Credit Union Comments*).

⁷ Sun East Federal Credit Union Brief Comments.

⁸ Wisconsin Credit Union League Comments at 1 (“We respect and support the right of consumers to be free from unwanted ‘robocalls,’ but unfortunately, the TCPA has been interpreted in ways that unduly impede credit unions’ ability to reach members for legitimate business purposes.”); Ohio Credit Union League Comments at 2 (“Congress intended to regulate *the telemarketing industry*”) (emphasis in original).

lines. Exempting informational calls to cell phones would avoid arcane litigation battles regarding the capabilities of calling technologies while still ensuring that consumers are afforded maximum legal protections for unsolicited telemarketing calls and ever increasing scam calls.

Respectfully submitted,

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October 24, 2018

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