February 19, 2020

VIA ECFS
Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Ex Parte Presentation; CG Docket Nos. 02-278, 18-152

Dear Ms. Dortch:

On behalf of the Credit Union National Association, Alaska Credit Union League, California and Nevada Credit Union Leagues, Carolinas Credit Union League, Credit Union League of Connecticut, Inc., Cooperative Credit Union Association, Cornerstone Credit Union League, CrossState Credit Union Association, Credit Union Association of the Dakotas, Hawaii Credit Union League, Heartland Credit Union Association, Illinois Credit Union System, Indiana Credit Union League, Iowa Credit Union League, Kentucky Credit Union League, League of Southeastern Credit Unions, Louisiana Credit Union League, Maine Credit Union League, Maryland | DC Credit Union Association, Michigan Credit Union League, Minnesota Credit Union Network, Mississippi Credit Union Association, Montana’s Credit Unions, Mountain West Credit Union Association, Nebraska Credit Union League and Affiliates, Credit Union Association of New Mexico, New York Credit Union Association, Northwest Credit Union Association, Ohio Credit Union League, Tennessee Credit Union League, Utah Credit Union Association, Association of Vermont Credit Unions, Virginia Credit Union League, West Virginia Credit Union League and the Wisconsin Credit Union League, we respectfully submit this ex parte letter urging the Federal Communications Commission (“FCC” or “Commission”) to expeditiously clarify the Telephone Consumer Protection Act’s (“TCPA”) applicability to information calls made to a wireless phone by either:

(1) adopting an established business relationship (“EBR”) exemption from the prior consent requirement for credit union informational calls and text messages to cell phones; or, alternatively

(2) exempting credit union informational calls or texts from the prior consent requirement if they are in fact free to the called party under the called party’s wireless plan.
Each of these proposed alternatives for clarification were previously raised as part of the Petition for Declaratory Ruling (“CUNA Petition” or “Petition”) filed by the Credit Union National Association on September 29, 2017. To date, nearly three years later, the CUNA Petition remains outstanding while judicial interpretations surrounding the TCPA have become more and more contradictory, increasing the level of uncertainty for both credit unions and the 115 million credit union member owners that they serve. Accordingly, we urge the Commission to expeditiously act on the Petition for Declaratory Ruling.

Credit unions are tax-exempt, nonprofit, democratically operated financial cooperatives that have a unique relationship with their members—who are also owners of the enterprise. This special relationship spawns a variety of communications between the credit union and its member-owners, ranging from timely and critical financial information to messages regarding governance issues and financial education. Members welcome and expect this information.

When a credit union conveys such information to a member at her home over a landline connection, the call does not require the member’s prior consent. If the member, however, takes that same call at home on a cell phone, the rules are completely different. The Telephone Consumer Protection Act (“TCPA”) and the Federal Communications Commission’s implementing rules require prior express consent to make informational calls to cell phones using an automatic telephone dialing system (“ATDS”) or an artificial or prerecorded voice, and the credit union risks potentially ruinous class-action litigation if for some reason consent had not been obtained or documented. The different treatment of informational calls to cell phones and landlines is antiquated, unfair, and fails to reflect how the vast majority of consumers communicate today. Adoption of either of the Petition’s proposed exemptions would restore the balance that Congress sought to achieve between consumers’ privacy interests and the legitimate interests of businesses to communicate with their consumers.

With the uncertainty stemming from a confusing patchwork of contradictory court interpretations continuing to threaten credit unions’ legitimate business obligations to inform members, the need for the Commission to act is immediate. Accordingly, we urge the FCC to promptly grant the Petition.

Sincerely,

Jim Nussle, President and CEO
Credit Union National Association

Daniel McCue, President and CEO
Alaska Credit Union League

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1 See Petition for Declaratory Ruling, CG Docket No. 02-278 (filed September 29, 2017) (“CUNA Petition”).

CUNA.org
Diana Dykstra, President and CEO
California & Nevada Credit Union Leagues

Kelly Fuhlbrigge, VP, Gov’t Relations
The Connecticut League of Credit Unions

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