April 14, 2020

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Comments on March 30, 2020 Petition for Expedited Declaratory Ruling, Clarification or Waiver Filed by the American Bankers Association, et al. – CG Docket Number 02-278

The Credit Union National Association (“CUNA”) submits this ex parte letter to urge the Federal Communications Commission (“Commission”) to act more quickly on the petition for expedited declaratory ruling, clarification, or waiver (“Petition”) filed by the American Bankers Association, CUNA and other trade associations that provide financial services.\(^1\) The Petition asks the Commission to find that calls or texts relaying information related to financial relief efforts and other actions necessitated by the governments’ response to COVID-19 fall within the emergency purposes exception to the proscriptions of the Telephone Consumer Protection Act (“TCPA”) that bar autodialed calls to cell phones without prior consent.

Rather than treat the Petition with the urgency that the unprecedented nature of the current crises demands, the Commission has instead opted to relegate the Petition to a relatively drawn out (considering the circumstances) 45-day comment cycle that does not conclude until May 21\(^{st}\), almost six weeks from the filing of the Petition.\(^2\) The Commission’s treatment of the Petition stands in stark contrast to the action it took on its own motion to provide immediate relief from potential TCPA liability to health care providers and governmental agencies for calls or texts related to COVID-19.\(^3\) As noted in ABA’s recent ex parte filing, financial institutions

---


\(^2\) Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Expedited Declaratory Ruling, Clarification, or Waiver Filed by the American Bankers Assoc. et al., Public Notice, CG Docket No. 02-278 (rel. April 6, 2020) (“Public Notice”).

\(^3\) Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Declaratory Ruling, CG Docket No. 02-278, DA 20-318 (rel. March 20, 2020) (confirming that the COVID-19 pandemic constitutes an emergency and authorizing health care providers, hospitals and state and local government agencies to lawfully communicate information about the coronavirus and mitigation measures without violation of federal law.).
want to make these calls now.\textsuperscript{4} CUNA thus supports ABA’s request that the Commission grant immediate interim relief pending the further review of the Petition as set forth in the Public Notice.\textsuperscript{5}

It is unconscionable to require credit unions and other financial institutions to undertake a litigation risk assessment or simply hope for the best that they are not sued before sending out calls and texts providing vital information regarding loan relief or other measures at a time when unemployment rates have quickly reached levels not seen since the Great Depression. The majority of credit unions are themselves small businesses hit hard by the pandemic, even as they seek to serve the needs of their members, including facilitating government provided relief programs such the Paycheck Protection Program and disbursements under the Economic Impact Payments program. Moreover, credit unions are often the only available financial institutions serving the rural, low income or minority communities that are being hit particularly hard by the pandemic.

As financial first responders, credit unions remain open and ready to assist members in need – of which there are many. In many cases, credit unions and service providers are operating under amended hours, reduced staffing, and mandatory telework policies, and are even alternating in-person work schedules to correspond with appropriate social distancing. At full capacity, about one-third of credit unions operate with five or fewer full-time equivalent (FTE) employees, and about half of credit unions operate with 10 or fewer FTEs. The current conditions have strained credit unions’ finite resources and significantly changed many standard operating procedures and processes. Credit unions should be able to utilize efficient dialing technologies to fulfill their role in this crisis without fear of litigation.

As noted in the ABA ex parte, prompt action on the Petition has already garnered broad support. The National Consumer Law Center (“NCLC”) and other organizations that have traditionally opposed relaxation of TCPA requirements support the Petition to the extent it involves calls related to relief for loans secured by cars or homes.\textsuperscript{6} The U.S. Chamber of

\textsuperscript{4} Letter from Jonathan Thessin, Senior Counsel, ABA, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278 (filed April 10, 2020) (“ABA ex parte”).
\textsuperscript{5} Id.
\textsuperscript{6} Letter from Margot Saunders, Senior Counsel, NCLC, to Marlene Dortch, Secretary, FCC, CG Docket No. 02-278, at 1-2 (filed April 9, 2020) (“NCLC ex parte”). The ex parte notice was filed by the National Consumer Law Center on behalf of its low-income clients and Americans for Financial Reform Education Fund, Consumer Federation of America, Consumer Reports, Consumer Action, and the National Association of Consumer Advocates. The NCLC would limit relief to calls related to loans collateralized by cars or homes and impose other restrictions. While relief for these types of loans is of critical importance, for the reasons set in the NCLC ex parte, limiting the Petition to just these types of loans is unnecessarily restrictive and counterproductive. Additionally, limiting the number of calls or requiring that any recordings be “concise,” as NCLC proposes, creates unnecessary complications and ambiguity that could undermine the purposes of the Petition. Nor is it appropriate to limit the relief requested in the Petition to the pendency of the federal emergency declaration. State or local governments may maintain their own emergency measures and the need for financial assistance likely will extend for some period of time following the end of the federal emergency declaration. Limiting calls to matters related to the pandemic and excluding telemarketing or debt collection as
Commerce stated its strong support as well. It is perhaps a sign of the unprecedented nature of the pandemic that these often disparate organizations find common ground in support of the Petition. Commissioner O’Rielly also questioned the Commission’s failure to treat the Petition with the urgency that the times deserve, stating that it is “tough to reconcile [the] timing of [a] late May or June decision, at [the] earliest” on the Petition with the need for financial institutions to contact their customers now with COVID-19-related information.

The recent decision by the Second Circuit in a class action lawsuit holding that common types of texting platforms that send texts from programmed lists constitute an automatic telephone dialing system (ATDS) further demonstrates the need for the Petition. The Second Circuit joins the Ninth Circuit’s decision in Marks in articulating a broad definition of an ATDS that imposes liability for automatic dialing systems even when they do not have the capacity to generate numbers randomly or sequentially thereby dramatically increasing litigation risk. These two circuits include several states hit hardest by the pandemic, including New York, California and Washington State. The Second Circuit decision also sharpens a circuit split on the interpretation of an ATDS that creates regional disparities and leads to sharply different assessment of litigation risk at a time when financial institutions seek to address a problem of national proportions. Granting the Petition would alleviate the possibility of financial institutions facing potential class action litigation for relaying critical information using efficient dialing technologies in some parts of the country and not others.

Please contact the undersigned if you have any questions.

---

proposed in the Petition sufficiently balances privacy interests with the public interest in ensuring important financial information is quickly disseminated.

7 Letter from Harold Kim, President, US Chamber Institute for Legal Reform, to Marlene Dortch, Secretary, FCC, CG Docket No. 02-278 (filed April 8, 2020).

8 Duran v. La Boom Disco, Inc., No. 19-600-cv (2nd Cir. April 7, 2020) (holding that the ExpressText and EZTexting programs constitute automatic telephone dialing systems because they store numbers to be dialed automatically).

9 Marks v. Crunch San Diego, LLC, 904 F.3d 1041 (9th Cir. 2018).
Respectfully submitted,

s/ Elizabeth A. Eurgubian
Elizabeth A. Eurgubian
Deputy Chief Advocacy Officer & Senior Counsel
Regulatory & Executive Branch Relations
Credit Union National Association

April 14, 2020