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PUCO

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September 10, 2008

Alan R. Schriber, Chairman
Paul A. Centolella, Commissioner
Ronda Hartman Fergus, Commissioner
Valerie A. Lemmie, Commissioner
Cheryl Roberto, Commissioner
The Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215

RE: *In the Matter of the Commission's Review of Chapters 4901:1-17 and 4901:1-18, and Rules 4901:1-5-07, 4901:1-10-22, 4901:1-13-11, 4901:1-15-17, 4901:1-21-14, and 4901:1-29-12 of the Ohio Administrative Code. (Case No. 08-0723-AU-ORD)*

Dear Commissioners:

On behalf of CheckFreePay Corporation ("CheckFreePay"), I am writing to express our concerns with the provisions in the above-referenced chapter and rules before the Commission. CheckFreePay is the largest provider of walk-in bill payment services (the "Services") in the United States. Many utilities under the purview of the Public Utilities Commission of Ohio ("PUCO") utilize CheckFreePay's walk-in agent network to provide convenient payment centers or authorized payment locations ("APLs") for their customers to make in-person payments. In many cases, the utilities are required by the PUCO to provide brick and mortar locations to their customers where they can make in-person payments. In fact, many utilities choose to reduce or eliminate utility owned storefronts and use the Services as a more cost effective option to service their customers for in-person payments. This year in Ohio, CheckFreePay, through approximately seven hundred twenty six (726) APLs, will process approximately four (4) million utility walk-in bill payments for approximately fifteen (15) Ohio utilities. The CheckFreePay network and its physical presence in the community provide unparalleled convenience to consumers. Convenience and access to bill payment centers allow consumers the ability to pay their utility bills on time, helping to eliminate the risk of service interruption. This is particularly important for elderly consumers or other at-risk consumers who are more vulnerable to utility service interruptions. Further, many consumers who use CheckFreePay are also "unbanked" or "underbanked"

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consumers, meaning they do not have traditional bank accounts from which to pay their utility bills. Having a convenient bill payment location in their neighborhoods is, in some cases, the only method some consumers have to remit utility payments. For these reasons, CheckFreePay believes that it offers a unique perspective and can provide some useful information to the PUCO relative to the regulation by which APLs are scrutinized and the use of APLs by Ohio consumers.

CheckFreePay is duly licensed as a money transmitter by the Ohio Division of Financial Institutions (the "DFI") to provide the Services. CheckFreePay's status as a licensed money transmitter enables the APLs to act as authorized delegates¹ of CheckFreePay to offer the Services to Ohioans. The APLs are independently owned retail establishments the types of which include, but are not limited to, grocery and convenience stores; pharmacies; and check cashers. CheckFreePay performs due diligence on all prospective APLs in adherence to strict company policy that includes, but is not limited to, review of ownership information, credit scores, state qualifications to do business, and license status of the APLs relative to their own business, such as check cashers. Once an APL is approved as an authorized delegate and a written contract is executed, CheckFreePay and the DFI are responsible for the continued oversight of the authorized delegates² for their activities in the provision of the Services.

¹ R.C. 1315.01(A) "Authorized delegate" means a person designated by a licensee under section 1315.11 of the Revised Code to receive, directly or indirectly, money or its equivalent for transmission by the licensee.

² R.C. 1315.11 Conduct of activities through authorized delegate.

(A) A licensee that chooses to conduct money transmission activities in this state through an authorized delegate shall execute an express written contract with the authorized delegate that, at a minimum, sets forth all of the following:

(1) The duties and responsibilities of the authorized delegate regarding money or its equivalent received from persons located in this state for transmission by the licensee;

(2) The duties and responsibilities of the authorized delegate regarding instruments, devices, or processes used by the licensee to transmit money;

(3) The duties and responsibilities of the authorized delegate with regard to compliance with laws regulating money transmission activities.

(B) A licensee shall monitor the activities of its authorized delegate with regard to money or its equivalent received from persons in this state for transmission by the licensee and for compliance with all of the following:

(1) The written contract between the licensee and the authorized delegate;

(2) Sections 1315.01 to 1315.18 of the Revised Code;

(3) Other laws applicable to the business of transmitting money.

(C) As part of the examination of a licensee authorized by section 1315.12 of the Revised Code, the superintendent of financial institutions may examine the books and records and policies and procedures of the licensee's authorized delegate.

(D)(1) An authorized delegate or other person that receives money or its equivalent for transmission by a licensee shall keep it separate and shall not commingle it with other money or receipts. All money or its equivalent, less fees, that is received by an authorized delegate or by any other person for transmission by a licensee, from the time received until remitted to the licensee, shall constitute funds owned by and belonging to the licensee and shall be impressed with a trust for the benefit of the person from which the money or its equivalent is received.

The Draft Rules under consideration in the above-referenced matter state, in relevant part, that providers of telecommunications, electric, water works, sewage disposal, competitive retail electric and retail natural gas supplier services "shall not contract with a check-cashing business or licensee to be an authorized payment agent..."³ The PUCO indicates "...that this practice [of contracting with check-cashing businesses to act as authorized agents for the receipt of utility payments] unnecessarily exposes Ohio's financially vulnerable low-income population to the predatory lending practices of this industry."⁴ It is important for the PUCO to consider whether the prohibition of check-cashing businesses as APLs would serve any regulatory purpose in light of the recent enactment of the Short-Term Lender Law (R.C. 1321.35 to 1321.48), that became effective on September 1, 2008. The Short-Term Lender Law repeals the Check-Cashing Lender Law and makes a number of substantive changes as the Legislative Bill Analysis details (see attached), including:

- A 28% annual percentage rate ("APR")⁵ cap;
- A licensee under the new Short-Term Lender Law is not required to also hold a check-cashing license;
- Requires the Superintendent of Financial Institutions to create a statewide database of loans made by licensed short-term lenders if there are a certain number of such lenders;
- Creates a short-term installment loan linked deposit program;
- Eliminates the authority of credit unions to make certain high-cost, short-term loans;
- Further restricts the making of multiple loans under the Small Loan Law;
- Revises the manner in which appointments to the Consumer Finance Education Board are made and expands the Board's responsibilities;

(2) If an authorized delegate or other person fails to comply with division (D)(1) of this section and commingles any money or its equivalent received for transmission by a licensee with any other funds or property owned or controlled by the authorized delegate or other person, all commingled proceeds and other property shall be impressed with a trust in favor of the licensee in an amount equal to the amount due the licensee.

(E) No licensee shall fail to comply with division (A) or (B) of this section, and no authorized delegate or other person that receives money or its equivalent for transmission by a licensee shall fail to comply with division (D) of this section.

³ O.A.C. Rules 4901:1-5-07 Customer bills; 4901:1-10-22 EDU customer billing and payments; 4901:1-13-11 Gas or natural gas company customer billing and payments; 4901:1-15-17 Business offices; 4901:1-21-14 Customer billing and payments; 4901:1-29-12 Customer billing and payments.

⁴ Case No. 08-0723-AU-ORD, Entry at 5 (June 25, 2008)

⁵ The Bill Analysis defines "'annual percentage rate' [to have] the same meaning as in the federal Truth in Lending Act, 15 U.S.C. 1606. All fees and charges are to be included in the computation of the APR. Fees and charges for single premium credit insurance and other ancillary products sold in connection with the transaction are to be included in the calculation of the APR. (R.C. 1321.35(D).)"

Establishes the Financial Literacy Education Fund.

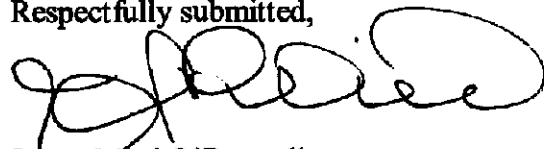
A recent joint press release issued by the Consumer Federation of America and National Consumer Law Center Inc.⁶ introduced a new report issued by the Consumer Federation of America, Consumers Union, and the National Consumer Law Center ("Consumers Group") that rates the states on how well they protect consumers from excessive interest charges on certain small dollar loans including payday loans. States were issued a "pass" or "fail" grade depending upon the state's laws either prohibits the payday loans or cap the loan's APR. Ohio's Short-Term Lender Law sets the APR to 28% which is well within the Consumers Group's "pass" standard of less than or equal to 36%. In fact, the Consumers Group gave special attention in its scorecard to Ohio because its new rate cap effectively reduced the APR from as much as 391% to 28%.⁷

For the three month period of May 1, 2008 to July 29, 2008, CheckFreePay processed a total of 1,126,158 Ohio utility payments that equate to \$136,356,071 in utility funds. Of those total payments, 246,835 or \$29,954,643 in utility funds were processed by check casher locations. In other words, 22% of Ohio walk-in utility payments processed through CheckFreePay originated at check casher locations. We believe this is compelling evidence of the convenience of the Service and Ohio consumers' desire to have access to these sorts of Services at a multitude of APLs. Further, to the best of CheckFreePay's knowledge, walk-in bill payment consumers have not objected to presenting their bill payments at check casher locations.

CheckFreePay appreciates that the PUCO has its utility customers' best interests in mind with its Draft Rules. However, it would seem that the prohibition of the check cashing business to act as APLs seems to be arbitrary in light of the newly enacted Short-Term Lender Law.

CheckFreePay appreciates the PUCO's consideration of its comments relative to this matter, and we believe it is critical for the Commission to examine this issue more fully before a final ruling is issued. Please feel free to contact me should you wish to discuss the contents of this letter.

Respectfully submitted,



Jenny Ricci O'Donnell
Director, Regulatory Compliance

Enclosure

⁶ See, Consumer Federation of America and National Consumer Law Center Inc (August 27, 2008). http://www.consumerfed.org/pdfs/CU_CFA_NCLC_Usury_Scorecard_Release_8_08.pdf. Press release. Retrieved on August 29, 2008.

⁷ Consumers Union, the National Consumer Law Center, Consumer Federation of America at 3. (Updated 8/20/08). Small Dollar Loan Products Introduction to the Scorecard.