



**National Association  
of Federal Credit Unions**  
3138 10th Street North  
Arlington, VA 22201-2149

NAFCU | Your Direct Connection to Education, Advocacy & Advancement

August 31, 2015

The Honorable Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12th Street SW,  
Washington, DC 20554

RE: Letter in Support of the American Bankers Association Petition for  
Reconsideration on the FCC's Rules and Regulations Implementing the  
Telephone Consumer Protection Act

Dear Chairman Wheeler:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing to you regarding the American Bankers Association (ABA) Petition filed on August 8, 2015 with the Federal Communications Commission's (FCC or the Commission). This Petition requests reconsideration of the July 18, 2015 Declaratory Ruling and Order (the Order), which sought to clarify its interpretations of the Telephone Consumer Protection Act (TCPA). NAFCU strongly supports the ABA's request for clarification on the FCC's exemption for "free end user calls" made by financial institutions. NAFCU and our members, like the ABA and other industry stakeholders, believe that the exemption as written will still not allow financial institutions to make time sensitive communications to their consumers about identity theft or data breaches.

In the Order, the FCC adopted an exemption for financial institutions to contact consumers, specifically for the purpose of: (1) calls intended to prevent fraudulent transactions or identity theft; (2) data security breach notifications; (3) measures consumers may take to prevent identity theft following a data breach; and (4) money transfer notifications. However, these four kinds of calls and texts will only be exempt from the TCPA if the message is free to the consumer. The Order creates technical questions that may be impossible for a credit union to resolve such as whether or not the member will be charged for such texts or calls by their plan provider, or if they will count against their plan limits. Furthermore in order to meet the exemption, these calls and texts must (1) be made to the number provided to the financial institution by the member, (2) state the name and contact information of the financial institution, and (3) are strictly limited in purpose, i.e. no telemarketing, cross-selling, or similar component. The financial institution also cannot initiate more than three messages per event over a three-day period and must offer members "an easy means to opt out" of the messages immediately. NAFCU believes that the

FCC should provide more flexibility to the prescriptive requirements for financial institutions using this exemption, especially because this exemption meant to apply in exigent circumstances to protect consumers.

Unfortunately, the FCC's Order will make it more difficult for credit unions and other financial institutions to contact their members about identity theft or data breaches. As the ABA outlines in its Petition, this exemption improperly limits the exempted calls to those sent to customer-provided mobile contact numbers. The condition limiting this exemption to mobile phone numbers significantly reduces the value of this exemption, since consumers can already receive urgent text messages on a non-free-to-end-user basis, if prior express consent has been granted. The FCC must do more to ensure that consumers are able to receive important notifications and timely updates about financial developments that will impact their existing accounts, on both mobile and residential phone lines.

NAFCU and our members strongly urge the FCC to reevaluate the purpose of this "provided number restriction," as it will greatly diminish to ability of credit unions and other financial institutions from making fraud prevention calls to customer contact numbers. The FCC's Order explicitly states that the exempted calls and texts to be sent only to "the wireless telephone number provided by the customer of the financial institution." This restriction unnecessarily impedes a financial institution's ability to send customer notifications in the event of an exigent circumstance, especially if there is doubt as to when the financial institution received the mobile phone number from the consumer.

NAFCU firmly believes that the provided-number restriction undermines the ability of institutions to prevent or reduce harm to as many customers as possible. As the ABA aptly notes in its Petition, this restriction will prevent financial institutions from sending messages to mobile numbers that customers provided in the course of a telephone call or face-to-face conversation with an employee of the financial institution. This restriction implicitly imposes a strict record-keeping requirement on financial institutions to prove when the phone number was furnished directly by their customers. Because of the serious threat of litigation to calling a mobile number without proper documentation, financial institutions will not be able to notify customers of fraud and identity theft risks in a timely fashion.

NAFCU has serious concerns about the Commission's antiquated regulations that create distinctions between mobile and residential phones. An increasing number of consumers do not have a traditional home phone lines. As cell phones replace landlines, credit union members expect to receive the same service from their credit union as they would if they had a residential telephone number listed. As the use of mobile and online technologies have largely replaced residential phone lines as the most pervasive mechanism of communication between financial institutions and their consumers, the FCC must ensure that its regulations do not have the unintended consequence of reducing consumers' access to vital information about their financial accounts. NAFCU believes that the FCC must remove the distinction between residential and mobile phone lines as it applies to the "free end user call" exemption for financial institutions.

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NAFCU looks forward to continuing a dialogue with you and your staff on modernizing the FCC's implementation of the TCPA to ensure that it continues to allow consumers to have unhindered access to important financial information. Should you have any questions or if you would like to discuss these issues further, please feel free to contact me by telephone at (703) 842-2234, or Kavitha Subramanian, NAFCU's Regulatory Affairs Counsel at (703) 842-2212 or [ksubramanian@nafcu.org](mailto:ksubramanian@nafcu.org).

Sincerely,



Carrie R. Hunt  
Senior Vice President of Government Affairs and General Counsel

cc: The Honorable Mignon Clyburn, FCC Commissioner  
The Honorable Jessica Rosenworcel, FCC Commissioner  
The Honorable Ajit Pai, FCC Commissioner  
The Honorable Michael O'Rielly, FCC Commissioner

Enclosure: NAFCU's July 16, 2015 Response to the Commission's Declaratory Ruling and Order on the Telephone Consumer Protection Act



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NAFCU | Your Direct Connection to Education, Advocacy & Advancement

July 16, 2015

The Honorable Tom Wheeler  
Chairman  
Federal Communications Commission  
445 12th Street SW,  
Washington, DC 20554

RE: Response to the Commission's Declaratory Ruling and Order on the Telephone Consumer Protection Act

Dear Chairman Wheeler:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing to you regarding the Federal Communications Commission's (FCC) July 10, 2015 Declaratory Ruling and Order (the Order) to clarify its interpretations of the Telephone Consumer Protection Act (TCPA). While NAFCU and our members appreciate the FCC's effort to clarify and modernize its regulations, the FCC must do more to ensure that consumers are able to receive important notifications and timely updates about financial developments that will impact their existing accounts, on both mobile and residential phone lines. Unfortunately, the FCC's Order will make it more difficult for credit unions and other financial institutions to contact their members about identity theft or data breaches.

NAFCU recognizes that the Commission adopted an exemption for "free end user calls" made by financial institutions, specifically for the purpose of: (1) calls intended to prevent fraudulent transactions or identity theft; (2) data security breach notifications; (3) measures consumers may take to prevent identity theft following a data breach; and (4) money transfer notifications. However, the Order creates technical questions that may be impossible for a credit union to resolve such as whether or not the member will be charged for such texts or calls by their plan provider, or if they will count against their plan limits. NAFCU believes that the FCC should provide more flexibility to the prescriptive requirements for financial institutions using this exemption, especially because this exemption meant to apply in exigent circumstances to protect consumers.

NAFCU is very concerned about the FCC's expansive treatment of the term "automatic telephone dialing system" (auto-dialers). The FCC's Order defines auto-dialers to include broadly any equipment even if it "lacks the 'present ability' to dial randomly or sequentially" but can be modified to provide those capabilities. This interpretation is very troublesome since it

remains unclear what type of technology is actually covered. NAFCU and our members believe that the vague standard for what qualifies as an auto-dialer, and the vague definition of commercial purpose will ultimately stop credit unions from making important communications to their members about their financial accounts for fear of violating the regulation and possibly incurring substantial liability.

Furthermore, NAFCU has serious concerns about the Commission's antiquated regulations that create distinctions between mobile and residential phones. An increasing number of consumers do not have a traditional home phone lines. As cell phones replace landlines, credit union members expect to receive the same service from their credit union as they would if they had a residential telephone number listed. For mobile phone lines, the FCC requires prior express written consent for all automated calls regardless of the purpose of the call, while calls to a residential phone line can be made for informational purposes without prior consent. As the use of mobile and online technologies have largely replaced residential phone lines as the most pervasive mechanism of communication between financial institutions and their consumers, the FCC must ensure that its regulations do not have the unintended consequence of reducing consumers' access to vital information about their financial accounts. To prevent this, NAFCU believes that the FCC must remove the distinction between residential and mobile phone lines as it applies to making automated informational calls to consumers about their existing accounts.

Additionally, the Order creates an overly vague standard for revoking previous consent by stating that a consumer may revoke their prior express consent to receive autodialed and prerecorded calls through "any reasonable means." The order prohibits a financial institution from controlling how the consumer may revoke consent in a reasonable manner. The FCC Order thus creates a system where the question of whether a consumer's revocation is reasonable becomes a subjective issue, opening up financial institutions to insurmountable liability.

Finally, with regard to the portability of wireless numbers from one consumer to another, the Commission's Order does not provide enough flexibility to credit unions with regards to these situations. Instead, the Order places a strict burden on credit unions when a consumer's phone number is reassigned because after only one call to a reassigned number, callers are deemed to have "constructive knowledge" that the number was reassigned. However, this does not take into consideration whether the call actually resulted in any information that would indicate the number was reassigned. For example, not all consumers choose to personalize their voice mail messages, so one phone call may not yield any information relating to the reassignment. Credit unions could make one call to a reassigned number and still have no reason to believe that consent is no longer valid, yet incur substantial liability even when acting in good faith.

NAFCU looks forward to continuing a dialogue with you and your staff on modernizing the FCC's implementation of the TCPA to ensure that it continues to allow consumers to have unhindered access to important financial information. Should you have any questions or if you would like to discuss these issues further, please feel free to contact me by telephone at (703) 842-2234, or Kavitha Subramanian, NAFCU's Regulatory Affairs Counsel at (703) 842-2212 or [ksubramanian@nafcu.org](mailto:ksubramanian@nafcu.org).

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