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National Association of Federally-Insured Credit Unions

December 4, 2019

The Honorable Michael Doyle
Chairman
Subcommittee on Communications &
Technology
House Energy and Commerce Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Robert Latta
Ranking Member
Subcommittee on Communications &
Technology
House Energy and Commerce Committee
U.S. House of Representatives
Washington, D.C. 20515

Re: Tomorrow's Hearing on "Accountability and Oversight of the Federal Communications Commission (FCC)"

Dear Chairman Doyle and Ranking Member Latta:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) in conjunction with tomorrow's hearing entitled "Accountability and Oversight of the Federal Communications Commission." NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 118 million consumers with personal and small business financial service products. NAFCU supports legislative efforts to direct the FCC to combat illegal robocalls in the House-Senate agreement on S. 151, the *TRACED Act*. NAFCU acknowledges the burden of illegal robocalls on consumers and the FCC's efforts to curb their frequency, but it is important to note that not all robocalls are illegal. That is why it is critical to distinguish between fraudulent and illegal robocalls and calls from legitimate businesses seeking to communicate with their members and customers.

NAFCU has concerns that the agreement on S. 151 does not ensure consumers can receive beneficial, time-sensitive communications by legitimate callers such as credit unions. Consumers want to receive information in the event of potential fraud, a data breach or other important updates to their existing accounts. As such, NAFCU supports Congress urging the FCC to clearly distinguish between legitimate communications and illegal robocalls and provide avenues for legal entities to share important information, while still protecting consumers from fraudulent and illegal robocalls.

The FCC's inaction in clarifying remaining uncertainties surrounding the scope of the *Telephone Consumer Protection Act* (TCPA) and the issue of illegal robocalls has caused legitimate businesses, like credit unions, to limit communications with their members for fear of frivolous litigation. One of the areas in which NAFCU would like to see more clarity is the FCC's definition of "automatic telephone dialing system" ("autodialer").

Since the FCC issued its problematic 2015 Declaratory Ruling and Order (2015 Order), the risk of facing a costly lawsuit over inadvertent TCPA violations has kept many credit unions from freely communicating needed financial information with their members. The March 2018 *ACA International v. FCC* decision invalidated the 2015 Order's overly expansive definition of "autodialer" and the FCC's approach to liability for calls to reassigned numbers under the TCPA.

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Since then, courts have taken a variety of approaches in determining what qualifies as an “autodialer” – leading to a maze of judicial interpretations of Congress’s intent and meaning in passing the TCPA. Nevertheless, the FCC remains silent on this important issue, leaving consumers vulnerable from receiving time-sensitive information.

NAFCU ultimately supports a broad definition of “autodialer” that only includes equipment that uses a random or sequential number generator to store or produce numbers and dial those numbers without human intervention. NAFCU also supports other reforms to help credit unions contact their members with important information about their existing accounts, such as permitting callers to establish a reasonable opt-out method for revoking their consent to be contacted.

Moreover, NAFCU supports the FCC’s efforts to implement SHAKEN/STIR, a new caller identification framework to combat illegal calls. However, in order to discourage the blocking of legitimate calls under SHAKEN/STIR, the FCC should require voice service providers to consult with call originators as they implement the SHAKEN/STIR call authentication framework and then provide a report to the FCC that analyzes any legal calls that are blocked and any disclosures used to implement SHAKEN/STIR. Additionally, the FCC should clarify that voice service providers should be required to notify callers and consumers of blocked calls, and remove erroneous blocks expeditiously in order to receive safe harbor protection.

NAFCU appreciates the actions of Congress on the issue of stopping the scourge of illegal robocalls. It is important that the FCC now step in and provide clarity on the “autodialer” issue so as to not hamper the ability of credit unions to communicate important information to their members without fear of inadvertently violating the TCPA and potentially facing expensive, and oftentimes meritless, lawsuits. NAFCU also supports safeguards for legitimate businesses under the SHAKEN/STIR framework and broad TCPA reform, including clear rules for revocation of consent.

Thank you for your attention to this matter. If my colleagues or I can be of assistance to you, or if you have any questions regarding this issue, please feel free to contact me or NAFCU's Associate Director of Legislative Affairs, Sarah Jacobs at (703) 842-2231.

Sincerely,



Brad Thaler
Vice President of Legislative Affairs

cc: Members of the Subcommittee on Communications and Technology