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National Association of Federally-Insured Credit Unions

October 24, 2017

The Honorable Marsha Blackburn
Chairman
Committee on Energy and Commerce
Communications & Technology Subcommittee
United States House of Representatives
Washington, D.C. 20515

The Honorable Michael Doyle
Ranking Member
Committee on Energy and Commerce
Communications & Technology Subcommittee
United States House of Representatives
Washington, D.C. 20515

Re: Oversight of the Federal Communications Commission (FCC)

Dear Chairman Blackburn and Ranking Member Doyle:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only trade association exclusively representing the federal interests of our nation's federally-insured credit unions, I am writing to you today in conjunction with tomorrow's oversight hearing of the Federal Communications Commission (FCC). I would like to share with you our comment letters to the FCC outlining credit union concerns with the Commission's 2015 Declaratory Ruling and Order (2015 Order) on the *Telephone Consumer Protection Act* (TCPA).

NAFCU would like to commend the FCC's recent efforts to target and eliminate unlawful robocalls and evaluate the creation of a database of reassigned numbers. NAFCU and its member credit unions, however, also recognize that there still remain many unresolved issues with the 2015 Order and the underlying law – the TCPA.

It is imperative that Congress act to revise the antiquated and problematic language in the TCPA. The FCC's efforts to clarify and modernize its TCPA regulations have actually only led to more vague standards. In addition, there has been exponential growth in frivolous TCPA lawsuits as plaintiffs seek to take advantage of the outdated and ineffective TCPA. In fact, TCPA litigation has increased by about 1,272 percent between 2010 and 2016. This risk of litigation is incredibly burdensome for credit unions acting in good faith to contact their members. Credit unions are not the bad actors that Congress intended to target when it passed the TCPA. Credit unions are simply attempting to relay important notifications and updates to their members regarding their existing accounts, including whether they may have been affected by identity theft or a data breach and what can be done to help them stay protected.

For years, NAFCU and its member credit unions have urged the FCC to reconsider its 2015 Order, especially as applied to credit unions. Today, we ask you to review the attached letters and to question the FCC on our behalf. We also urge you to seriously evaluate the potential improvements that can be made to the TCPA to help relieve some of the burden it imposes on credit unions. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me or NAFCU's Senior Associate Director of Legislative Affairs Chad Adams at (703) 842-2265.

Sincerely,

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the Subcommittee on Communications & Technology

Attachments



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

June 6, 2016

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

RE: Response to the Commission's Notice of Proposed Rulemaking on the Telephone Consumer Protection Act

Dear Ms. Dortch:

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) Notice of Proposed Rulemaking on implementing the changes to the Telephone Consumer Protection Act (TCPA) as required by the Bipartisan Budget Act of 2015. *See* 81 FR 31889 (May 20, 2016). NAFCU remains concerned that the FCC's interpretation of the TCPA is harming consumers by reducing legitimate communications regarding their existing financial services.

Covered Parties Under the Proposal

NAFCU and our members appreciate the FCC's consideration of the exemption under the TCPA that removes the consent requirement for robocalls "made solely to collect a debt owed to or guaranteed by the United States." The FCC in its proposal seeks comments on what the scope of the calls should be under the exemption and the person or persons to whom covered calls may be made. NAFCU and our members believe that the most reasonable interpretation of the statute would be an expansive understanding of a "debt owed to or guaranteed by the United States," in order to facilitate communications with struggling or delinquent borrowers. We would caution the FCC against adopting the interpretation that "solely to collect a debt" means only those calls made to obtain payment after the borrower is delinquent or in default. *See* 81 FR 31890. This would limit the ability of financial institutions to help borrowers who are experiencing financial hardships and have proven to be at-risk for a default. Providing at-risk borrowers with information on repayment options in advance of a default could help the borrower avoid more severe financial consequences.

Reassigned Numbers

NAFCU believes that the FCC's narrow one-call limitation on reassigned numbers will severely limit the scope of this proposal. The FCC proposal does not provide enough flexibility to credit unions with regards to these situations. Instead, the Declaratory Ruling and Order (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. 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 urges the FCC to reconsider its proposed interpretation of reassigned wireless numbers and only impose liability after a caller has actual knowledge that the number has been reassigned to a new person.

Limits on Number and Duration of Covered Calls

NAFCU and our members are concerned that the proposed limits on the number and duration of calls run afoul of many existing laws on the collection of debt. The proposal would restrict the number of covered calls to three per month, per delinquency, and only after delinquency. In particular, the Department of Housing and Urban Development (HUD) requires that for an FHA-insured loan, telephone contact must be made within the 20th day of delinquency at least 2 times per week until contact is established or it is determined that the property is vacant or abandoned. See Statement of FCC Commissioner Michael O'Rielly (May 4, 2016). Additionally, a mortgage loan covered by the Treasury's HAMP program requires that the debtor make a minimum of 4 telephone calls to the last known phone numbers of record, at different times of the day, within a 30-day period. *Id.* Not only is the FCC's proposed interpretation contrary to the Congressional intent to encourage meaningful conversations with delinquent borrowers that have a debt guaranteed or insured by the United States government, but this also requires debt collectors to either violate the TCPA or to violate existing regulations.

NAFCU has concerns with the FCC's proposal to restrict the number of covered calls to include any initiated call, even if it is unanswered and the consumer does not speak with anyone. The purpose of this rule is to increase consumer education regarding an outstanding debt owed to the government in order to reduce the risk of default for the borrower. In order to promote the intent of the statute, FCC should remove the requirement that unanswered calls are counted toward the three-call requirement.

Further, NAFCU believes that FCC must revise the proposal to remove any limitations on the duration of the calls. If a borrower is speaking with a live agent regarding repayment options, the conversation should not be arbitrarily limited in a way that would hamper meaningful financial education.

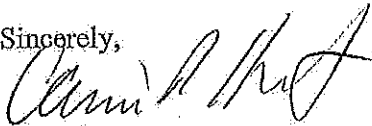
Definition of Autodialer

The FCC's proposal adopts the agency's existing definition of an "autodialer" to define covered calls as defined in its Order. The Order defines auto-dialers broadly to include 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 not only because it is contrary to the statute's terms, but also since it leaves 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 discourage credit unions from making important communications to their members about their financial accounts for fear of violating the regulation and possibly incurring substantial liability.

Conclusion

NAFCU understands that the TCPA is a consumer protection statute. As mobile and online technologies have become the most pervasive mechanisms 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 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 Alexander Monterrubio, NAFCU's Director of Regulatory Affairs at (703) 842-2244 or amonterrubio@nafcuh.org.

Sincerely,



Carrie R. Hunt

Executive Vice President of Government Affairs and General Counsel



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National Association of Federally-Insured Credit Unions

August 28, 2017

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW, Room TW-A325
Washington, D.C. 20554

RE: *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*
(CG Docket No. 17-59)

Dear Ms. Dortch:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally-insured credit unions, I am writing in regard to the *Second Notice of Inquiry* (Notice of Inquiry) in the Federal Communications Commission's (FCC) efforts *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*. I would also like to take this opportunity to reiterate the extremely harmful effects the FCC's July 10, 2015 Declaratory Ruling and Order (the 2015 Order) on the Telephone Consumer Protection Act (TCPA) has had on credit unions. Credit unions are not the bad actors in the market seeking to harass consumers, but rather are simply trying to contact their members regarding essential financial information on their existing accounts. In relation to this Notice of Inquiry, NAFCU is pleased that the FCC is taking steps to evaluate the creation of a database of reassigned numbers and is hopeful that, if established, this will provide credit unions with a process for verifying reassigned numbers and much-needed relief from potential TCPA liability.

NAFCU urges the FCC to take charge on this issue and establish a centralized database for voice service providers to provide reports on reassigned numbers. The other proposed alternatives are decentralized and have the potential to create inconsistency across the voice service provider industry as well as confusion for robocallers. A single, centralized database that is overseen by the FCC is the best option. Voice service providers should be required to update the reassigned number information they report to such a database on a regular basis. Given that roughly 100,000 cell phone numbers are reassigned to new users every day, providing updates infrequently would defeat the purpose of the database. This should apply for voice service providers of all sizes and across all regions of the country in order to properly address the issue.

The onus of reporting reassigned numbers should lie with voice providers because they are the ultimate keepers of this valuable information. A centralized database should, however, be out of their hands and, instead, monitored by the FCC to provide quality control. Credit unions should also have access to such information at little or no cost. Credit unions are member-owned

cooperative financial institutions that seek to serve the best interests of their members and make every attempt to contact their members with vital information regarding their accounts and services. As not-for-profits, credit unions have limited resources to provide their consistently high quality products and services and any additional costs would put a huge strain on their ability to continue to do so. NAFCU is hopeful that the creation of such a database would provide some relief to credit unions acting in good faith in contacting their members. Nevertheless, the FCC's 2015 Order has caused unprecedented frustration and difficulty for credit unions in their efforts to contact their members about potentially fraudulent activity, identify theft, and data breaches.

Credit unions have been unreasonably exposed to potentially crippling legal liability because of the 2015 Order's restrictions on reassigned numbers. The Order's "constructive knowledge" standard punishes credit unions acting in good faith because there is currently no clear process for verifying that a phone number has been reassigned. Although this Notice of Inquiry is a positive first step, the FCC should provide credit unions with further relief by reining in the standard for reassigned numbers. This Notice of Inquiry does not address the situation of accidental misdialed calls and credit unions still face significant liability under the TCPA in this instance. A solution must be devised so that innocent actors like credit unions are no longer subject to hefty legal liability for unintentional calls when they are simply trying to contact their members about important financial information. If the FCC proceeds with the creation of a reassigned numbers database, NAFCU suggests the FCC establish a safe harbor from legal liability for those financial institutions, such as credit unions, that use the database. This would be a huge step in protecting credit unions and their members from unnecessary and unwarranted legal liability under the TCPA.

Notwithstanding the ideas presented in this Notice of Inquiry, there is more to be done in the area of reassigned numbers as well as other problems stemming from the FCC's 2015 Order. NAFCU is aware that the ongoing *ACA International v. FCC* case has, to a large extent, bound the FCC's hands in terms of reversing its 2015 Order, but NAFCU urges the FCC to, at the first possible opportunity once this litigation has concluded, repair the following additional problems with its Order:

1. Overly restrictive "free end user calls" exemption;
2. Sprawling definition of "automatic telephone dialing system" (auto-dialers);
3. Antiquated distinctions between mobile and residential phones; and
4. Extremely vague standard for revoking previous consent.

The FCC should carefully consider these concerns and further study the credit union industry to better understand the member-first approach of credit unions nationwide and realize how the TCPA and the FCC's 2015 Order have harmed, instead of helped, consumers. NAFCU believes that the nation's credit unions deserve regulatory relief across the board and the TCPA is one of the most onerous regulatory burdens facing credit unions today. NAFCU is optimistic that the FCC, under its new leadership, will take the appropriate steps to usher in an era of transparent modernization of the TCPA. Considering the importance of credit unions' ability to communicate freely and effectively with their members regarding sensitive financial information, NAFCU is

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grateful for any and all steps the FCC may take to lessen the burden of its misguided 2015 Order and the outdated TCPA.

Conclusion

NAFCU is thankful for the opportunity to comment on this *Second Notice of Inquiry* and is eager to continue this dialogue with you regarding the modernization of the TCPA and the effects of the FCC's 2015 Order. If you have any questions or concerns, please do not hesitate to contact me at (703) 842-2212 or akossachev@nafcu.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann Kossachev". The signature is fluid and cursive, with the first name "Ann" and last name "Kossachev" clearly distinguishable.

Ann Kossachev
Regulatory Affairs Counsel



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B. Dan Berger
President & Chief Executive Officer

National Association of Federally-Insured Credit Unions

January 23, 2017

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

RE: Telephone Consumer Protection Act

Dear Chairman Pai:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally-insured credit unions, I would like to take this opportunity to congratulate you on your designation as the new chairman of the Federal Communications Commission (FCC). NAFCU looks forward to continuing to work with you in your new position.

I am also writing to you in regard to a matter of great concern to all financial institutions -- the ability to communicate freely and effectively with consumers regarding their sensitive financial information. Although NAFCU and our member credit unions appreciate the FCC's efforts to modernize the Telephone Consumer Protection Act (TCPA), the FCC has stopped short of ensuring that consumers have access to important notifications and updates about financial developments affecting their existing accounts, on both mobile and residential phone lines. The FCC's July 10, 2015 Declaratory Ruling and Order (the Order) does more harm than good by making it extremely difficult for credit unions to contact their members about potentially fraudulent activity, identify theft, and data breaches. Based on discussions from our previous meetings with you, and your dissent in the Commission's Order, NAFCU urges you, as Chairman, to continue to take steps to fix the injustices caused by this Order and safeguard the original purpose of the TCPA. The TCPA should protect, not harm, consumers.

NAFCU is concerned with several aspects of the Commission's Order, including:

1. The restrictive "free end user calls" exemption;
2. The sprawling definition of "automatic telephone dialing system" (auto-dialers);
3. Antiquated distinctions between mobile and residential phones;
4. The extremely vague standard for revoking previous consent; and

5. A lack of flexibility with regard to the portability of wireless numbers from one consumer to another.

More specifically, the FCC's exemption for "free end user calls" made by financial institutions is prohibitively restrictive and has bred technical questions that are oftentimes impossible for a credit union to answer, such as whether a member's plan provider will charge for text messages or calls related to the issues covered by the exception. The FCC should increase flexibility related to the requirements of this exemption, especially given that this exemption is intended to apply in exigent circumstances to protect consumers.

The Order's expansive definition of auto-dialers is also troubling because it leaves credit unions in the dark as far as what type of technology is actually covered. This vague definition will likely stop credit unions from making important communications to their members for fear of violating the TCPA. Such a result is hardly consistent with the original purpose of the regulation. NAFCU asks the FCC to put consumers first and make sure the TCPA is not preventing consumers from receiving important notifications and updates from their financial institutions in favor of a blanket definition of the type of technology used for potentially abusive telemarketing communications.

The TCPA's outdated distinctions between a mobile and residential phone provides another reason why consumers may not be receiving vital information from their financial institutions. Cell phones have largely replaced landlines and consumers expect to receive the same service from their credit union regardless of the type of phone line they have listed. The FCC should, therefore, remove any such distinction relative to automated informational calls to consumers about their existing accounts.

The FCC's Order establishes an absurdly vague standard for revoking previous consent to receive autodialed and prerecorded calls. The "any reasonable means" standard leaves no room for credit unions to monitor and control how a consumer may revoke consent. If credit unions cannot provide their members with a limited list of options through which they may revoke consent, then credit unions may be exposed to limitless liability. Credit unions may also be unreasonably exposed to substantial liability because of the Order's restrictions on reassigned numbers. The Order's "constructive knowledge" standard punishes credit unions acting in good faith because there is no clear process for verifying that a phone number has been reassigned and a consumer's consent to be contacted is no longer valid. The FCC should clarify and rein in the standards for revoking previous consent and reassigned numbers so that credit unions are not left guessing whether their members would like to be contacted telephonically about important financial information.

Despite ongoing litigation relative to the TCPA, now is the time for the FCC to repair the above-mentioned problems caused by its Order. NAFCU hopes that you, as a proponent of heightened transparency, will lead the FCC into an era of transparent modernization of the TCPA. The decisions made by the FCC affect millions of consumers and credit unions all across the country. Therefore, NAFCU believes it is imperative that credit unions and other financial institutions

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affected by the TCPA be kept abreast of any developments regarding the modernization of this regulation.

NAFCU is eager to continue this dialogue with you and would greatly appreciate the opportunity to set up a meeting to discuss the modernization of the TCPA. If you have any questions or concerns, please do not hesitate to contact me at (703) 842-2215, or Ann Kossachev, Regulatory Affairs Counsel, at (703) 842-2212 or akossachev@nafcu.org.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Dan Berger", with a stylized flourish at the end.

B. Dan Berger
President and CEO