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National Association of Federally-Insured Credit Unions

June 12, 2019

The Honorable Roger Wicker
Chairman
Committee on Commerce, Science,
& Transportation
United States Senate
Washington, D.C. 20510

The Honorable Maria Cantwell
Ranking Member
Committee on Commerce, Science,
& Transportation
United States Senate
Washington, D.C. 20510

Re: Today's Hearing on the Federal Communications Commission (FCC)

Dear Chairman Wicker and Ranking Member Cantwell:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) in conjunction with today'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 117 million consumers with personal and small business financial service products. NAFCU is concerned about the potential effects of the FCC's most recent rulemaking regarding robocall blocking and urges the Committee to ensure that the FCC is meeting its obligations under the *Administrative Procedure Act* (APA). NAFCU would also like to stress the importance of the FCC's work in defining "automatic telephone dialing system" ("autodialer") under the *Telephone Consumer Protection Act* (TCPA). We urge you to encourage the FCC complete its work and issue an order in a timely fashion.

NAFCU strongly supports both the FCC and Congress's efforts to eliminate illegal robocalls and encourages continued work to combat fraudulent communications. Nonetheless, the FCC, like other federal agencies, is subject to the APA and should offer the public notice and an opportunity to comment on any planned rulemaking. On June 6, 2019, the FCC approved, effective immediately, a Declaratory Ruling on call blocking that permits phone service providers to automatically block suspected robocalls unless a consumer opts out of the service. NAFCU is worried that even though the final Declaratory Ruling was modified to include a provision explicitly permitting callers to challenge erroneously blocked calls with the provider and the FCC, credit unions may not be able to reach consumers with time-sensitive and important communications.

Under the Declaratory Ruling, providers are permitted to establish their own processes for callers to challenge erroneously blocked calls, which could lead to divergent approaches and cause confusion among callers. Additionally, carriers are not required to notify callers that their calls have been blocked, which further complicates the issue of identifying when a call has been blocked and ensuring that consumers have all necessary and relevant information that they may have missed as a result of the call blocking. Moreover, the FCC issued the draft Declaratory Ruling on

May 15, 2019, and did not offer a formal notice and comment period before its June 6, 2019, Open Commission meeting. Interested stakeholders hardly had enough time to provide comments and voice concerns about the Declaratory Ruling. As a result, consumers could end up harmed because providers may now automatically block important, time-sensitive calls without notice. NAFCU urges the Committee to ensure the FCC is appropriately following the APA's requirements in all of its future rulemaking procedures.

With respect to the TCPA, since the Federal Communications Commission (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. 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.

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. Finally, we would encourage the Committee to consider modernizing and clarifying the TCPA.

NAFCU appreciates the Committee's continuing focus on the issue of stopping the scourge of illegal robocalls. It is important that any action by the FCC or Congress does 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.

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 Max Virkus at (703) 842-2261.

Sincerely,



Brad Thaler
Vice President of Legislative Affairs

cc: Members of the Senate Committee on Commerce, Science, & Transportation