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**National Association of Federally-Insured Credit Unions**

July 9, 2020

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street S.W.  
Washington, D.C. 20554

**RE: In the Matter of Implementing Section 13(d) of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) (FCC 20-34) (EB Docket Nos. 20-22)**

Dear Ms. Dortch:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing regarding the Federal Communications Commission's (FCC or Commission) Further Notice of Proposed Rulemaking (FNPR) seeking comment on traceback efforts. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 120 million consumers with personal and small business financial service products. NAFCU would like to reiterate its support of the FCC's efforts to combat illegal robocalls but also stress the importance of protecting legitimate callers so that consumers receive important information they want and need. Transparency for legitimate callers and no-cost redress options are critical feedback mechanisms in the larger STIR/SHAKEN framework and their function and efficacy are necessary to making consistent and accurate determinations regarding whether a call is unlawful. NAFCU urges the FCC to address these elements as part of any proposals considering how calls will be determined to be unlawful, such as this FNPR.

**The Need to Address Transparency and Redress Mechanisms**

NAFCU has consistently submitted comments in support of the FCC's efforts to combat illegal robocalls by implementing a fully tested and effective STIR/SHAKEN framework. The STIR/SHAKEN framework and the TRACED Act are poised to create a dramatically more controllable system of voice calls in the United States, which should provide consumers with significant relief from illegal, harmful robocalls. However, NAFCU is highly concerned that the FCC has consistently issued Notices of Proposed Rulemakings and Reports and Orders building and implementing some of the structure and framework for a system that enables call labeling, call blocking, and other controls by Voice Service Providers (Service Providers), without discussing meaningful mechanisms for relief from these controls for legitimate callers.

Some of these controls are already in place and credit unions have already experienced the negative effects of allowing Service Providers to enact call blocking and labeling without the full

implementation of the STIR/SHAKEN framework.<sup>1</sup> Existing rates of error with regard to legitimate, lawful communications<sup>2</sup> are significant and can have detrimental effects on legitimate callers and their ability to communicate with consumers.<sup>3</sup> Ultimately, this harms consumers who do not receive the important information they need regarding their health, safety, and financial well-being. These calls are legal, appropriate, and need to be completed without delay.

NAFCU would urge the FCC to seek feedback on mechanisms, systems, and structures for identifying legitimate calls and ensuring their uninterrupted connection to consumers concurrently with efforts to seek feedback on prohibiting illegal robocalls. Ultimately, the measure of a successful framework to protect consumers cannot only be defined in terms of the number or reduction of illegal robocalls. It must be measured by the efficacy and accuracy of the framework in sifting legitimate calls, even those that are large-scale campaigns, from illegal, harmful robocalls.

### **The Role of Transparency and Redress Mechanisms in Unlawful Robocall Determinations**

The FCC's Report and Order states that registered consortiums must be competent managers of private-led efforts to trace back the origin of suspected unlawful robocalls, including working cooperatively and collaboratively to provide prompt and comprehensive information regarding the origins of suspected unlawful robocalls. The FCC's Further Notice of Proposed Rulemaking builds on this by asking how such a consortium should determine calls are large-scale unlawful robocall campaigns, and what level of certainty should be required. However, the FCC has yet to address the issue of transparency to callers and effective redress mechanisms. These are critical pieces of a larger system that must be in place to have a meaningful discussion about making the determination that calls are unlawful robocall campaigns and what level of certainty is appropriate and necessary for the Commission to act on that determination.

Currently, Service Providers each use their own analytics to identify suspected unlawful robocalls and to block them. These analytics vary widely from Service Provider to Service Provider and result in inconsistent identification of suspicious calls, often erroneously sweeping in legitimate calls, which, may then be mislabeled or blocked without the caller ever knowing. Legitimate callers only discover that a Service Provider is blocking or mislabeling their calls through the observation of a statistical increase in receiving busy signals or conversations with confused consumers. Just as analytics alone should not be the basis for a Service Provider's determination as to whether to block a calls or series of calls, analytics alone also should not be relied upon to determine what constitutes a large-scale unlawful robocall campaign. Investigation of the originating caller is critical to both a Service Provider's decision that a call should be blocked, and a registered consortium's determination that the originated calls constitute an unlawful robocall

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<sup>1</sup> See, Letter from NAFCU to Marlene H. Dortch, Secretary, FCC, GC Docket Nos. 17-59 and 17-97 (filed January 29, 2020).

<sup>2</sup> See Letter from American Association of Healthcare Administrative Management, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 17-97, 20-67, CG Docket No. 17-59, at 2 (filed Mar. 4, 2020) (Calling Party Associations Mar. 4 Ex Parte).

<sup>3</sup> See Letter from NAFCU to Marlene H. Dortch, Secretary, FCC WC Docket Nos. 17-97, 20-67 (filed May 14, 2020).

campaign. If a consortium relies on the same tools, the mistake may be compounded. A legitimate caller could find out that a consortium or the FCC has instructed their Service Provider to cease originating their calls based on an analytical analysis of call volume and other data points. At some point, the caller must be involved in this discussion and so far, the FCC has elicited little feedback on this point.

Transparency in derogatorily labeling and blocking calls is necessary for a legitimate caller to identify that their calls have been mistakenly treated as illegal robocalls. Without transparency, a legitimate caller remains ignorant of the mistake and unable to correct it. Without a requirement to investigate and meaningful mechanisms for redress, the Service Provider may also remain ignorant of the mistake. Certainly, if a significant number of an originator's calls are being blocked, that is an indication to the consortium that these calls may not be legitimate. However, if there is transparency that the calls are being blocked and easily available redress mechanisms for erroneously blocked calls, and still the originating caller makes no complaint, that is a far more powerful data point. These feedback elements are critical to establishing any level of certainty as to the determination that a robocall campaign is unlawful.

For this reason, Service Providers should be required to track and report on lawful calls they are mistakenly blocking and mislabeling. This data should be accessible by the registered consortiums and included in any analysis regarding whether the Service Provider is originating large-scale unlawful robocall campaigns. It would allow the consortium to see whether the originating caller sought to have the calls unblocked, and whether the analytics for certain Service Providers are inaccurate.

The existence and quality of a Service Provider's mechanisms for redressing the inappropriate blocking or mislabeling of calls should also be considered in identifying whether a Service Provider is originating large-scale unlawful robocall campaigns. If analytics indicate that a Service Provider is originating a significant number of calls from single originators which are being blocked or derogatorily labeled, it may not be that a Service Provider is originating large-scale unlawful robocall campaigns. It may be that Service Providers connecting the calls have mechanisms for redress that are difficult to find, to use, not prioritized by the Service Provider, or otherwise ineffective. It provides important information regarding the effectiveness of the Service Provider's implementation of the framework which the FCC should consider in any enforcement action that must take place.

Ultimately, the success of the SHAKEN/STIR framework will depend on the quality of the data and information that is flowing through the system. The determination as to whether a call is an unlawful robocall is the critical decision which will ultimately establish the efficacy of the framework as a whole. Transparency and effective means of redress are core feedback mechanisms to improving the quality of those determinations. It is critical that these issues be addressed. NAFCU urges the FCC to issue a rulemaking seeking feedback on the processes for accurately and consistently determining the legitimacy of calls, which must inherently include meaningful proposals of the transparent and effective, no-cost redress options for legitimate callers called for in the *Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act* (TRACED Act).

Federal Communications Commission

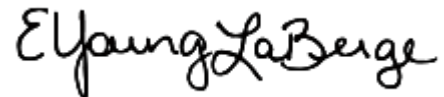
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## **Conclusion**

NAFCU appreciates the opportunity to comment on this Further Notice of Proposed Rulemaking and supports the Commission's effort to gather feedback on how best to approach this concern. If you have any question or concerns, please do not hesitate to contact me at (703) 842-2272 or [elaberge@nafcu.org](mailto:elaberge@nafcu.org).

Sincerely,

A handwritten signature in black ink that reads "E Young LaBerge". The signature is written in a cursive, flowing style.

Elizabeth M. Young LaBerge  
Senior Regulatory Counsel