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National Association of Federal Credit Unions | nafcu.org

September 21, 2016

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

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

**Re: Credit Union Issues with the Telephone Consumer Protection Act**

Dear Chairman Walden and Ranking Member Eshoo:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association focusing exclusively on federal issues affecting the nation's federally-insured credit unions, I write today regarding tomorrow's hearing on modernizing the *Telephone Consumer Protection Act* (TCPA).

In a world of ever evolving communication methods, the TCPA presents an antiquated approach to communications regulations. Although once intended to protect consumers from pestering telemarketers, the Act now prevents consumers from receiving the valuable information they need. After 25 years, it has become clear that it is time for Congress to enact legislation to update the TCPA. Specifically, the TCPA does not take in to account membership-based businesses or the compliance burden that regulations place on small businesses. The intent of the TCPA is to ensure that all egregious offenders are grouped together. However, such grouping has inadvertently included good actors as well. NAFCU applauds Chairman Walden and Ranking Member Eshoo for their efforts to present a more nuanced approach to updating the TCPA that takes in to account the needs of membership-based businesses.

NAFCU appreciates the FCC's initiatives to clarify and modernize its regulations. Nonetheless, NAFCU believes that the FCC has hindered consumers' ability to receive important notifications and timely updates about financial developments that have the potential to impact their existing accounts, on both mobile and residential phone lines. The time has come to rewrite the provisions of the TCPA to account for the modern era of telecommunication. Unfortunately, the FCC's updated TCPA Order does not go far enough and will make it more difficult for credit unions and other financial institutions to contact their members about potential identity theft or data breaches. NAFCU has urged the Commission to reconsider its action relative to credit unions and is pleased that the same concerns were also raised in the report language accompanying the FY '17 Financial Services and General Government Appropriations bill in the House.

As we mentioned in our letter, dated September 11, 2015, along with five other financial services organizations, the FCC's Order is detrimentally impacting consumers. NAFCU continues to engage the FCC with the concerns of our member credit unions and would like to share NAFCU's July 16, 2015, letter to the FCC as well as subsequent letters, dated August 31, 2015, and May 2, 2016, regarding the FCC's Order. Attached please find those letters.

On behalf of our nation's credit unions and their nearly 105 million members, NAFCU would like to thank you for holding this important hearing. NAFCU looks forward to working with you to bring positive changes to the TCPA. If my staff 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,

[REDACTED]

Sin [REDACTED]

Brad Thaler  
Vice President of Legislative Affairs

cc: Members of the House Committee on Energy and Commerce, Subcommittee on Communications and Technology



National Association  
of Federal Credit Unions  
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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 [REDACTED] or Kavitha Subramanian, NAFCU's Regulatory Affairs Counsel at [REDACTED] or [REDACTED]

Federal Communications Commission  
July 16, 2015  
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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



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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 [REDACTED] or Kavitha Subramanian, NAFCU's Regulatory Affairs Counsel at [REDACTED] or [REDACTED]

Sincerely,

[REDACTED]  
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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May 2, 2016

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

**RE: Response to CG Docket No. 02-278**

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) public request for comment on the petition for declaratory ruling filed by Todd C. Bank (Bank) asking the Commission to clarify whether a telephone line in a home that is used for business purposes can be considered a "residential" line under the Telephone Consumer Protection Act (TCPA). See *Petition for Declaratory Ruling to Clarify the Scope of Rule 64.1200(a)(2)*, CG Docket No. 02-278, filed by Todd C. Bank on Mar. 7, 2016 (Petition). While NAFCU and our members appreciate the FCC's effort to clarify and modernize its regulations with respect to the TCPA, we are deeply concerned that the FCC's distinction between mobile and residential lines creates a discrepancy in the law. As a growing number of consumers use their mobile phone as their primary phone line, NAFCU urges the FCC to develop a common sense interpretation of "residential" line to ensure that consumers are able to receive important notifications and timely updates about developments from their financial services providers on both mobile and landline residential phone lines.

NAFCU and our members have serious concerns that the Commission's dated regulations related to the treatment of mobile phones will create significant risks for credit unions that wish to contact their members via telephone. In general, the TCPA regulates the way credit unions may use automatic telephone dialing systems, prerecorded voice message systems or "robocalls," messages sent to fax machines, and abandoned calls. The FCC treats advertisement and telemarketing calls differently from calls with another "commercial purpose." The regulation still states that a phone call may not be made using an automatic telephone dialing system for telemarketing purposes unless the credit union has the "prior express written consent" of the member, unless the call is made for "a commercial purpose but does not include or introduce an advertisement or constitute telemarketing." See 47 CFR 64.1200 (a)(3). However, for mobile

phone lines, the FCC requires prior express written consent for all automated calls regardless of the purpose of the call. This distinction is problematic for many credit unions because more and more consumers today do not have landline home phones anymore, but still expect to receive the same service from their credit union as they would if they had a landline residential telephone number listed. Additionally, this situation can be even more complicated because the credit union may not know if the telephone number that the consumer has provided is for a residential landline or a cell phone. NAFCU urges the FCC to remove this antiquated distinction that does not adequately reflect the way consumers use telephone services today.

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. In 2013, the FCC amended some of its rules relating to telemarketing, including removing a previously-existing "established business relationship" for certain kinds of calls. However, the FCC has chosen to apply a different standard to mobile phone lines, and does not distinguish between calls for telemarketing and informational purposes to a mobile number. NAFCU strongly urges the FCC to further modernize its regulations to ensure that credit unions and other financial institutions are able to provide essential and timely information to consumers through mobile and texting channels about their existing financial accounts.

NAFCU understands that the TCPA is a consumer protection statute. As the use of mobile and online technologies have become 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 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 [REDACTED] or Kavitha Subramanian, NAFCU's Regulatory Affairs Counsel at [REDACTED] or [REDACTED]

Sincerely,

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