



3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org

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

Federal Communications Commission

August 28, 2017

Page 3 of 3

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 letters of the first and last names being capitalized and prominent.

Ann Kossachev
Regulatory Affairs Counsel