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National Association of Federally-Insured Credit Unions

August 31, 2020

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

RE: In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls (CG Docket No. 17-59) (FCC 20-96)

Dear Ms. Dortch:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Federal Communications Commission's (FCC or Commission) Third Report and Order and Fourth Further Notice of Proposed Rulemaking (FNPR). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve 121 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.

NAFCU appreciates the Commission's orders regarding the publication of contact information for disputing erroneously blocked calls, the requirement to provide a single point of contact for these disputes, and the requirement to promptly stop blocking legal calls as conditions of obtaining a safe harbor. NAFCU is also grateful to the FCC for issuing the FNPR to elicit more feedback on what is necessary to give meaningful effect to these provisions. These redress mechanisms ensure consumers can receive important calls they want and provides important relief for legitimate callers who have had their calls blocked in error. However, these steps alone are not sufficient to achieve the statutory directive in the *Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act* (TRACED Act) to provide "transparency and effective redress" for legitimate callers. Notification of the blocking to the calling party is an absolute need to achieve this end. Further, NAFCU urges the FCC to require that erroneously blocked calls be resolved within 24 hours of dispute.

The Absolute Need for Notification

The Commission indicates its belief that it has fully implemented the directive to provide callers with transparency regarding robocall-blocking services. However, to-date, legitimate callers whose calls are being erroneously blocked still have no meaningful mechanism to identify and discover that their calls are being blocked. There can be no transparency around or meaningful redress of an erroneously blocked call if the caller is unaware of it.

The steps taken by the Commission are a step in the right direction toward solving a problem that legitimate callers are still unable to identify. As discussed in our January 29, 2020 letter,¹ credit unions only learn their calls are being blocked through indirect means such as confused members or an observed statistical uptick in busy signals. There has not been improvement in this area in the last eight months.

Without clear notification from the service provider, only the largest organizations will be able to ensure their calls are going through. Large organizations might have the resources to implement in-house monitoring programs of busy signal rates or to pay a third-party vendor to determine whether their calls are being blocked. Most credit unions do not have the resources to track busy signals and determine which of their outbound calls are blocked by service providers.

The extent of this problem is unknown precisely because uncovering it requires a tremendous expenditure of staff time and other resources. Because of the difficulty in determining a call has been blocked from the caller's perspective, notification that a call has been blocked is necessary for the redress mechanisms to have any kind of efficiency or effectiveness. The notification provided to legitimate callers must be fast, if not immediate, so that it can be acted upon swiftly. For this reason, a Session Initiation Protocol (SIP) code, Integrated Services Digital Network User Part (ISUP) code or intercept message is most desirable. Any controls to limit access to these notifications to legitimate callers such as requesting notifications or registering with a service provider must be easily identifiable, accessible, free-of-charge, and credit unions should be permitted to register or request notifications once for all service providers.

Transparency and the Benefits to Illegal Callers

The FCC seems torn on whether a caller's inability to identify whether its calls are being blocked is a feature or a bug of the current framework. The Commission's concern that meaningful notification of call blocking might benefit illegal callers is understandable; however, it is also short-sighted. Those perpetrating illegal robocall schemes accept that their numbers will be identified as fraudulent and calls will be blocked. Their strategy is not to work through the system, it is to be faster than the system. A fraudster initiating illegal robocalls will be more likely than legitimate callers to recognize the signals, however opaque, that their call is being blocked due to the tools of their trade and their familiarity with the system. Once they believe they are being blocked, they will quickly obtain a new number, credentials, or switch to a new provider. They will always have more familiarity with the workings of the system they are attempting to exploit than those who use the system to conduct legitimate business. Without transparency from the service providers, illegal callers will gain transparency into the system through illicit means, while legitimate callers will be left confused and forced to pay others for assistance. Both basic fairness and the language of the TRACED Act demand transparency for legitimate callers.

Because transparency is a legal requirement of the TRACED Act, rather than attempting to reduce transparency to slow down illegal robocalls, the Commission should use that transparency against

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

them. A legitimate caller behaves differently than an illegal robocaller once it knows its calls are being blocked, and that behavioral distinction is valuable. A legitimate caller relies on consistent use of phone numbers and, upon determining that their call is being blocked, they will dispute the error and defend the validity of their number and their calls. Where a significant number of calls from the same originating service provider are being blocked, and that blocking is resulting in the abandonment of numbers rather than disputes, that is a significant flag for the Traceback Consortium that the originating Provider is initiating illegal robocall schemes. The FCC should consider this as a meaningful feedback mechanism to take advantage of in the hunt for those perpetrating illegal robocall campaigns, rather than a compromise with legitimate business.

Immediate Notification and Redress Is A Critical Feedback Mechanism to Sufficient Human Oversight and Network Monitoring of Network-Based Blocking

Since the Commission began allowing call blocking, legitimate callers have reported erroneous call blocking. The Commission states that it is mitigating the risk of erroneous blocking of legitimate calls by limiting blocking to that done under a program using reasonable analytics to identify and prevent the blocking of unwanted calls. However, where these analytics have been put into place and relied upon, they have been found to consistently block legal calls.

Known rates of error regarding legitimate, lawful communications² are significant and can have detrimental effects on legitimate callers and their ability to communicate with consumers.³ The extent to which the currently-used analytics are, in fact, unreasonable in their effect on legitimate calls is currently undetermined as the true scope of inappropriate call blocking is unknown. In its appreciable zeal to protect consumers, the Commission has permitted calls to be blocked based on “reasonable” analytics without establishing a framework for accountability as to whether those analytics are reasonable.

These analytics are not visible to callers but reportedly often rely on high volume, short duration calls originating from a toll-free number. These factors may also be true about legitimate calls, such as fraud alerts. It is clear in the record⁴ that the analytics currently used by Providers often accidentally include legitimate callers.

Before implementing a safe harbor for network-wide blocking based on reasonable analytics, the Commission should first consider what tools and feedback mechanisms should be in place in the framework to identify analytics that are not yielding reasonable results. Without notice for callers making erroneously blocked calls and effective redress mechanisms, service providers remain ignorant of the number of legitimate calls current analytics block. These feedback elements are

² 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).

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

⁴ See, Letter from NAFCU to Marlene H. Dortch, Secretary, FCC, GC Docket Nos. 17-59 and 17-97 (filed January 29, 2020).

critical to establishing whether analytics are over-blocking. Until these mechanisms are in place, the ultimate success and reasonability of current analytics cannot be measured.

For this reason, implementing notification requirements in conjunction with the redress mechanisms established by the Commission is critical. Once implemented, service providers should be required to track the number of lawful calls they are mistakenly blocking and mislabeling. This information should be reviewed by anyone tasked with managing these call blocking programs to provide the sufficient human oversight and network monitoring required to achieve a safe harbor. This information should also be reported out to establish transparent and supportable benchmarks for what constitutes “reasonable” and provided to the Consortium so they can identify which service providers are using analytics that are not appropriate and then incorporate that data into its own analyses to identify illegal robocall schemes and the service providers originating them.

Transparency and effective means of redress are core feedback mechanisms to identifying and improving the quality of call blocking determinations. It is critical that these issues be addressed and implemented and that the Commission allow time for those processes to operate before expanding the safe harbor. NAFCU urges the FCC to require immediate notification to callers that calls are being blocked so that this important feedback can be introduced into the system.

Disputes Should Be Resolved in 24 Hours

In the event of fraudulent activity on an account, every day matters. A fraud alert often coincides with a consumer’s card being placed on hold, preventing its further use. Where a fraud alert is the result of actual fraud, a delay in notifying the consumer is, in turn, a delay in the consumer receiving an updated card and being able to access their funds.

Where a fraud alert is a false positive, these automated calls allow consumers to verify card use immediately and ensure they can continue to use the card. This often happens when a consumer is traveling, sometimes abroad. If that call is being blocked, the consumer’s failure to verify the transactions results in the card remaining off. The consumer will not discover the card has been turned off until they attempt to use it, resulting in embarrassment, inconvenience and even danger to the consumer. Thousands of these fraud alerts are issued every day and if the issuing number is blocked, these consumers must wait to discover the potential fraud on their account and manually call into service centers to resolve the issue. This can flood a credit union’s operations and results in many frustrated consumers unable to access funds.

Many other automated alerts particularly likely to be inappropriately blocked by service providers’ analytics are just as important for consumers to receive. As such, it is critical that these erroneously blocked calls are resolved quickly. In the TRACED Act, Congress’s directive was that the Commission not “support blocking or mislabeling calls from legitimate businesses” and that the Commission “should require voice service providers to unblock improperly blocked calls in as timely and efficient a manner as reasonable.”⁵ The service providers must provide this redress at

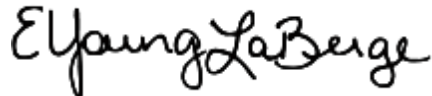
⁵ S. Rep. No. 116-41, at 15 (2019) (Senate Commerce Committee report on the Telephone Robocall Abuse Criminal

no-cost to legitimate callers. As such, service providers must have reasonable flexibilities in resolving improperly blocked calls. However, these improperly blocked calls also prevent the consumer from receiving important information, interrupt the course of business for legitimate callers, and interfere with a legitimate caller's relationship with the consumer. A 24-hour window for resolution of these disputes is reasonable. It strikes the proper balance of harm to the consumer, harm to legitimate callers, and flexibility for the service providers.

Conclusion

NAFCU greatly appreciates the Commission seeking feedback on whether a notification of call blocking is appropriate in this FNRA, and strongly urges the Commission to issue an Order requiring an immediate notification as a requirement of any safe harbor. This gives the transparency and redress mechanisms required by Congress meaningful effect. Further, the resolution of disputes in a 24-hour period is reasonable and necessary for the benefit of consumers. If you have any question or concerns, please do not hesitate to contact me at (703) 842-2272 or elaberge@nafcu.org.

Sincerely,



Elizabeth M. Young LaBerge
Senior Regulatory Counsel