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

June 7, 2018

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> 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 Federal Communications Commission's (FCC) proposed rule *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls* regarding the creation of a reassigned numbers database. NAFCU would like to reiterate its support of the FCC's efforts to evaluate the creation of a reassigned numbers database. NAFCU and its member credit unions urge the FCC to create a single, FCC-designated database and require service providers to report all reassigned numbers information. The FCC should also adopt a safe harbor for those callers who inadvertently make calls to reassigned numbers after checking the database.

### **General Comments**

In response to the host of issues posed by unwanted calls made to reassigned numbers, the FCC has initiated a multiple-front approach to help alleviate the annoyance faced by consumers and the inefficiencies and potential *Telephone Consumer Protection Act* (TCPA) liability imposed on callers. Currently, the Commission requires voice service providers to reassign a telephone number after it is disconnected by the previous subscriber. This reassignment process consists of the following four steps: a number currently in use is disconnected, then aged, then made available for assignment, and finally assigned to a new subscriber.

Some existing tools can help callers identify which numbers have been reassigned, but there is no centralized database that provides callers with guaranteed methods to discover all reassignments. In his statement related to the 2015 TCPA Declaratory Ruling and Order (2015 Order), FCC Commissioner Michael O'Rielly noted that existing solutions are incomplete and not timely updated. As a result, in July 2017, the FCC released a Reassigned Numbers Notice of Inquiry (NOI) to solicit information regarding potential ways to reduce unwanted calls to reassigned numbers. The FCC solicited comment on ways that service providers should report

information about number reassignments and how that information can most effectively be made available to callers. Of the thirty-three comments received, most supported a comprehensive and timely database overseen by the FCC that allows callers to verify whether a number has been reassigned before making a call. The FCC has also received requests from members of Congress to move forward with a rulemaking to create a reassigned numbers database. In March 2018, the FCC released this Second Further Notice of Proposed Rulemaking and approved the proposal for publication in the *Federal Register* during its Open Commission meeting that month.

NAFCU supports the creation of a single, centralized database that is overseen by the FCC as the best option to tackle this issue. The other proposed alternatives are dispersed and incomplete, which has the potential to create confusion for callers and inconsistency across the voice service provider industry. If, after rigorous study and analysis of the costs and benefits, the FCC should decide that greater economies of scale may be achieved through the modification of one of the existing numbering databases overseen by the Commission, NAFCU would support requiring service providers to report information to one or more commercial data aggregators, subject to certain parameters. Again, even this method should aim to create a centralized and timely-updated repository of reassigned numbers instead of continuing the fragmented and ineffective approach to compiling reassigned numbers that exists currently. NAFCU also urges the FCC to expressly exempt credit unions from any cost associated with using the reassigned numbers database. Below are NAFCU's specific responses to several of the requests for comment in the order in which they appear in this proposal.

### **Database Information, Access, and Use**

NAFCU encourages the FCC to move forward with formal rulemaking to create a centralized reassigned numbers database. Credit unions, as member-owned, not-for-profit, cooperative financial institutions, operate with their members' best interests in mind and seek to contact them with vital information regarding their accounts and services. NAFCU is hopeful that the creation of a centralized reassigned numbers database will provide some relief from TCPA liability to credit unions acting in good faith in contacting their members.

#### *Type of Information Needed*

Credit unions have detailed personal information about their members so that they may best serve their financial needs. As such, when attempting to contact a member, a credit union has on hand the name and telephone number of their member. Additionally, credit unions typically have information regarding the last contact they made with the member. With regard to the use of a reassigned numbers database, credit unions would seek to find information about when the member's telephone number was reassigned. In particular, it would be most helpful for a reassigned numbers database query to provide the following information: (1) the date the number was disconnected; (2) whether this was a permanent disconnection or the number is in temporary suspension status (due to, for example, non-payment); (3) the current stage of the reassignment process (e.g., disconnected, aged, available for assignment, and assigned to a new subscriber); and (4) whether the number is a residential or mobile phone number.

All of this information would greatly help credit unions determine whether the telephone number is still assigned to the member in question and what steps they should take moving forward to communicate with the member while complying with the requirements of the TCPA. In order for this information to be effective and efficient in informing callers before they attempt to contact a consumer, the FCC should provide guidance on the definition of the terms "temporary suspension status" and "disconnected," clarifying that the latter is a permanent deactivation of the telephone number. Moreover, the FCC should clarify that ported numbers (i.e., numbers that have been transferred to another voice service provider or moved from a residential line to a mobile line) do not qualify as reassigned numbers for the purposes of reporting to a reassigned numbers database as a way to avoid false positives and confusion. NAFCU urges the FCC to tackle such definitional obstacles first even before determining what information is and is not to be included in a reassigned numbers database.

#### *Comprehensiveness of Database Information*

NAFCU maintains that all types of voice service providers, including wireless, wireline, interconnected VoIP, and non-interconnected VoIP providers should submit all of their reassigned numbers data to the centralized database. Receiving data from all voice service providers is the best way to ensure the database contains the most up-to-date and complete list of reassigned numbers. To be clear, the database should contain only those numbers that have been disconnected or placed in temporary suspension status and not all numbers allocated by a numbering administrator to a service provider. If all numbers were to be included, the database would surely become unwieldy, difficult to navigate, and confusing for users. Additionally, to further enhance the usability of the database, the FCC should limit the reported reassigned numbers information to no more than 10 years.

#### *Timeliness of Database Information*

NAFCU's member credit unions would like a reassigned numbers database to be as current as possible; therefore, voice service providers should be required to update the reassigned number information they report to such a database on a regular basis. Approximately 100,000 cell phone numbers are reassigned to new users every day, so providing updates infrequently would defeat the purpose of the database. Voice service providers of all sizes and across all regions of the country should be held to the same reporting standard.

More specifically, voice service providers that age their numbers quickly should be required to report disconnection information on at least a daily basis to provide callers with as close to real-time updates as possible. For those service providers that age their numbers for 45 days or more, reporting should be permitted less frequently because a requirement to report the same information on a more frequent basis would not serve the best interests of callers. Ideally, the FCC would require all voice service providers to comply with a minimum aging period of at least 30 days to minimize confusion and limit the possibility of false positives. In that instance, service providers should be required to report disconnected numbers only on a weekly basis but then update the database as soon as the number has been reassigned. These parameters would

help create consistency across voice service providers and assist credit unions and other users of the reassigned numbers database to access the most timely and accurate information possible.

#### *User Access to Database Information and Cost to Use Database*

Reassigned numbers database users should certainly be required to login to the database in order to access the information. This login would require the user to create an account at little or no cost, and supply information including their name, affiliation, and address. NAFCU would support a requirement that during the process of creating an account, the user must certify that they will use the database only to seek information for the purposes of TCPA compliance and to reduce unwanted calls to reassigned numbers. This would help protect the integrity of the database. Users should not be subject to audits or other reviews unless there is reason to believe the user is engaging in suspicious behavior. Most importantly, access to the database should be affordable to institutions of all sizes, meaning the creation of an account should come at little or no cost. Credit unions have limited resources, yet need to comply with the whole spectrum of applicable federal and state regulations, which requires an immense amount of dedication and hard work from credit union compliance officers. NAFCU urges the FCC to consider these constraints on credit unions and exempt them from any costs associated with access to a reassigned numbers database.

#### *Database Use and TCPA Compliance*

NAFCU and its member credit unions wholeheartedly support the adoption of a safe harbor for those callers that use the reassigned numbers database. Section 251(e) of the *Communications Act of 1934*, as amended by the *Telecommunications Act of 1996*, provides the FCC with the statutory authority to implement a safe harbor for reassigned numbers. If a database user takes all necessary steps to determine whether a telephone number has been reassigned, yet either receives incorrect information from the database or somehow inadvertently makes a call to a reassigned number after checking the database, the user should be protected from liability for a TCPA violation. A safe harbor for callers using existing commercial solutions is not practicable because the information contained on those databases is often times incomplete and untimely. Those callers who use the newly established database and make reassigned-number calls in good faith or receive inaccurate or untimely information should be shielded from TCPA liability. The U.S. Court of Appeals for the D.C. Circuit's recent ruling in *ACA International v. FCC* does not prevent the FCC from establishing a safe harbor, but simply holds that the one-call safe harbor is arbitrary and capricious. NAFCU encourages the FCC to craft a safe harbor for users of the reassigned numbers database as explained above.

#### **Approaches to Database Administration**

The D.C. Circuit's recent decision has only made it clearer just how important it is for the FCC to move ahead with the creation of a reassigned numbers database. The Court notes the Commission's acknowledgment in the 2015 Order that a consumer could "purposefully and unreasonably" not inform a good-faith caller about their reassigned number simply to accrue statutory penalties. These perverse incentives are precisely what the FCC should be combatting.

There is no excuse for the influx of incredibly expensive lawsuits alleging TCPA violations that have emerged since the 2015 Order and waiting any longer to create a reassigned numbers database would only further exacerbate this issue. This litigation risk forces many credit unions to shy away from contacting their members because they cannot afford to be wrong about a telephone number and face an expensive TCPA lawsuit. The benefits of establishing a centralized, FCC-designated database largely outweigh the costs of doing so and the ongoing costs of maintaining the database. NAFCU urges the FCC to act swiftly to create a comprehensive, centralized reassigned numbers database.

#### *Mandatory Reporting to Single Database*

Although NAFCU and its member credit unions strongly support the creation of a single database overseen by the FCC, it may be possible to expand or modify one of the existing numbering databases to achieve the same purpose in a more efficient manner. NAFCU supports cost-saving initiatives and would support a process such as transforming an existing database to create the centralized database so long as the final result is as inclusive and functional as it would be otherwise. NAFCU encourages the FCC to consult with all relevant parties with expertise in numbering, such as the North American Numbering Council, to establish the reassigned numbers database. If, after a rigorous evaluation of all available options to expand or modify existing databases, the FCC finds that building up an existing database would require more work than just developing a completely new database, then it should proceed to create an entirely new database.

Moreover, the FCC should evaluate all possible options for funding of an FCC-designated reassigned numbers database. NAFCU urges the FCC to consider the resource constraints faced by credit unions and expressly exempt credit unions from paying for the use of a reassigned numbers database. If the FCC is not willing to create an exemption for credit unions, NAFCU urges the FCC to find the best pricing scheme (e.g., charge per query or a flat fee) that will create the cheapest option for credit unions while adequately funding the database. Users should be billed through the accounts they created to access the database to eliminate any additional steps and avoid paper billing.

#### *Mandatory Reporting to Commercial Data Aggregators*

If the costs of creating a centralized, FCC-designated database are too high, then NAFCU would support the mandatory reporting to a single commercial data aggregator, provided that the FCC creates clear requirements and regulations for the data aggregator. Having more than one commercial data aggregator in this space raises concerns that reassigned numbers information would become jumbled and inconsistent; however, it also creates competition and the potential for cost-savings. Additionally, with more than one data aggregator, NAFCU is apprehensive about a race to the bottom regarding the accuracy of reassigned numbers information. If the FCC could establish a disincentive for data aggregators to be the "first" to report reassigned numbers, NAFCU would support this option as well. Nonetheless, under this alternative, the parameters for the database would be the same as explained above for a centralized, FCC-designated database. Namely, all service providers should be required to report data to the aggregator(s) and use of the database should come at little or no cost to credit unions. Should there be greater

efficiencies with this approach, NAFCU supports the FCC pursuing this type of database, so long as the parameters outlined above are implemented.

*Voluntary Reporting to Commercial Data Aggregators*

NAFCU and its member credit unions are strongly opposed to the creation of a voluntary reporting regime to commercial aggregators. This approach is antithetical to the idea of a complete, up-to-date reassigned numbers database that helps consumers avoid unwanted calls and good-faith callers avoid TCPA liability. Service providers would have no incentive to report data more than they do now and it is clear that the present "solutions" are not really solutions at all. Therefore, NAFCU urges the FCC to reject this idea and focus on creating a single, FCC-designated database or, alternatively, mandatory reporting to one or more commercial data aggregators, subject to the parameters explained above.

**Conclusion**

NAFCU is thankful for the opportunity to comment on this proposed rule for the creation of a reassigned numbers database and looks forward to continuing to work with you to modernize the TCPA and lessen its burden on credit union operations. If you have any questions or concerns, please do not hesitate to contact me at (703) 842-2212 or [akossachev@nafcu.org](mailto:akossachev@nafcu.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Ann Kossachev". The signature is fluid and cursive, with the first name "Ann" and last name "Kossachev" clearly distinguishable.

Ann Kossachev  
Senior Regulatory Affairs Counsel