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B. Dan Berger
President & Chief Executive Officer

National Association of Federally-Insured Credit Unions

January 8, 2020

The Honorable Michael O’Rielly
Commissioner
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: Telephone Consumer Protection Act (CG Docket No. 02-278; CG Docket No. 18-152)

Dear Commissioner O’Rielly:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I would like to thank you for your efforts to provide clarity to consumers and callers under the Federal Communication Commission’s (FCC) rules implementing the *Telephone Consumer Protection Act* (TCPA). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 119 million consumers with personal and small business financial service products. We appreciate you taking the time to meet with us last year to discuss credit union issues. NAFCU continues to hear concerns regarding the current unclear TCPA landscape, which poses operational challenges and the potential for costly litigation. As the goal of eliminating illegal robocalls gains more attention in Congress, NAFCU urges the FCC to continue to lead in efforts to delineate between illegal robocalls and legitimate communications by providing callers with clarity under the TCPA. NAFCU requests the FCC consider the following negative impacts posed by the TCPA to promptly issue a clarification order that enables consumers to receive time-sensitive information.

NAFCU has regularly met with the FCC, including the Consumer Policy Division, to outline a variety of issues with the TCPA. This includes the overly restrictive nature of the fraud and data breach exemption in the FCC’s 2015 Declaratory Ruling and Order as well as the continued uncertainty surrounding the “automatic telephone dialing system” (autodialer). One of the major concerns among recently surveyed credit unions is the difficulty in implementing procedures to share important information with their members under policies that would not violate the TCPA.

Credit unions are growing increasingly frustrated by the uncertainty of the autodialer definition, which is affecting communication with their members. Credit unions have taken a variety of measures to avoid the risk of frivolous TCPA litigation. For example, many credit unions completely turn off their autodialer to mitigate litigation risks. As a result, consumers may not swiftly receive important and wanted information and could incur hundreds of thousands of dollars

due to delays in notifications. A NAFCU member credit union assessed the costs associated in delays in notifying members about delinquencies and determined that it could prevent \$415,000 to \$520,000 in loan charge-offs per quarter using an efficient autodialer. Additionally, use of an autodialer could help prevent the reporting of hundreds of borrowers' accounts to credit bureaus, enhancing consumers' financial well-being.

Another autodialer concern shared by one of NAFCU's member credit unions is the enormous costs associated with using a vendor to make calls regarding suspected fraud and credit card related information. For example, a small credit union, with roughly \$100 million in assets, recently went through a merger and had to more than double the amount it spends with its vendor to make calls regarding credit card related information to comply with the current prior express consent requirements. For credit unions, especially small credit unions, adding a single product to their portfolio of communications can be very expensive when attempting to contact new members because there is uncertainty on whether there is prior express consent. The autodialer definition is especially burdensome on credit unions because they have a unique relationship with and operate in good faith when contacting their members.

Moreover, credit unions have indicated that the current fraud and data breach exemption limits their ability to reach members regarding critical issues. The current exemption to no more than three calls over a three-day period immediately following the fraud, data breach, or related event is insufficient to timely notify consumers to take action to resolve subsequent issues, including economic losses. Credit unions report running out of the allotted communications before making live contact with a member. The three communications restricts a credit union to only two calls and one text message or another combination of phone calls and text messages available within this limitation. This is problematic for both consumers and credit unions because within a short period of time, a member's credit card balance could be maxed out or their debit card account depleted.

Many credit unions have very limited resources and cannot afford to use a vendor service that offers automatic freezes in the event of suspected fraud. Instead, these credit unions have to rely on their limited fraud departments, which sometimes consists of only one or two employees, to contact the affected consumer. The FCC could help callers to prevent fraud-related losses by providing credit unions with more opportunity to establish live contact with their members. Expanding the fraud exemption would give credit unions the necessary tools to combat the ongoing rise of data breaches. NAFCU maintains that the FCC should expand the existing exemption for data breach and fraud events to six communications over a one-week period immediately following an event to provide more opportunities for credit union members to receive information on important, time-sensitive matters regarding their accounts.

Credit unions, as member-owned, not-for-profit cooperative financial institutions, always put their members first and work hard to provide their communities with key financial products and services. However, growing litigation has had a chilling effect on helpful, time-sensitive communications with members, while leaving fewer resources for credit unions to provide necessary services to their local communities. Another example of the impact of the current problematic TCPA landscape is the difficulty credit unions have experienced in trying to reach

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consumers in a timely manner during natural disasters and recent government shutdowns, leaving consumers without critical products and services in times of need. These consumers, who lost their homes or were working without pay during a shutdown, struggled to make timely payments on their accounts without assistance.

Regardless of their approach, credit unions agree that clarification of the autodialer definition would provide increased flexibility to inform consumers of time-sensitive information, including fraud and disaster notifications to help protect their personal financial information. Without the FCC's clear guidance on the definition of an autodialer or broader TCPA reform, many credit unions have indicated that they will simply not use an autodialer to communicate with their members. This is mainly due to the compounding litigation risk and uncertainty around the TCPA. As a result, credit unions will continue to bear great costs associated with contacting their members, while consumers miss out on timely notifications. It is especially necessary for the FCC to promptly clarify that to constitute an autodialer under the TCPA, dialing equipment must possess all of the functions referred to in the statutory definition. NAFCU supports and encourages the FCC to adopt an autodialer definition to mean equipment that uses a random or sequential number generator to dial numbers without human intervention.

I appreciate your continued support for TCPA clarity so that consumers can receive legitimate, useful, and often time-sensitive information. If you have any questions or if I may be of assistance to you in any way, please do not hesitate to contact me directly.

Sincerely,



B. Dan Berger
President and CEO

cc: The Honorable Chairman Ajit Pai