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June 6, 2016

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

RE: Response to the Commission's Notice of Proposed Rulemaking on the Telephone Consumer Protection Act

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) Notice of Proposed Rulemaking on implementing the changes to the Telephone Consumer Protection Act (TCPA) as required by the Bipartisan Budget Act of 2015. *See* 81 FR 31889 (May 20, 2016). NAFCU remains concerned that the FCC's interpretation of the TCPA is harming consumers by reducing legitimate communications regarding their existing financial services.

### **Covered Parties Under the Proposal**

NAFCU and our members appreciate the FCC's consideration of the exemption under the TCPA that removes the consent requirement for robocalls "made solely to collect a debt owed to or guaranteed by the United States." The FCC in its proposal seeks comments on what the scope of the calls should be under the exemption and the person or persons to whom covered calls may be made. NAFCU and our members believe that the most reasonable interpretation of the statute would be an expansive understanding of a "debt owed to or guaranteed by the United States," in order to facilitate communications with struggling or delinquent borrowers. We would caution the FCC against adopting the interpretation that "solely to collect a debt" means only those calls made to obtain payment after the borrower is delinquent or in default. *See* 81 FR 31890. This would limit the ability of financial institutions to help borrowers who are experiencing financial hardships and have proven to be at-risk for a default. Providing at-risk borrowers with information on repayment options in advance of a default could help the borrower avoid more severe financial consequences.

### **Reassigned Numbers**

NAFCU believes that the FCC's narrow one-call limitation on reassigned numbers will severely limit the scope of this proposal. The FCC proposal does not provide enough flexibility to credit unions with regards to these situations. Instead, the Declaratory Ruling and Order (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. 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 urges the FCC to reconsider its proposed interpretation of reassigned wireless numbers and only impose liability after a caller has actual knowledge that the number has been reassigned to a new person.

### **Limits on Number and Duration of Covered Calls**

NAFCU and our members are concerned that the proposed limits on the number and duration of calls run afoul of many existing laws on the collection of debt. The proposal would restrict the number of covered calls to three per month, per delinquency, and only after delinquency. In particular, the Department of Housing and Urban Development (HUD) requires that for an FHA-insured loan, telephone contact must be made within the 20th day of delinquency at least 2 times per week until contact is established or it is determined that the property is vacant or abandoned. *See* Statement of FCC Commissioner Michael O'Rielly (May 4, 2016). Additionally, a mortgage loan covered by the Treasury's HAMP program requires that the debtor make a minimum of 4 telephone calls to the last known phone numbers of record, at different times of the day, within a 30-day period. *Id.* Not only is the FCC's proposed interpretation contrary to the Congressional intent to encourage meaningful conversations with delinquent borrowers that have a debt guaranteed or insured by the United States government, but this also requires debt collectors to either violate the TCPA or to violate existing regulations.

NAFCU has concerns with the FCC's proposal to restrict the number of covered calls to include any initiated call, even if it is unanswered and the consumer does not speak with anyone. The purpose of this rule is to increase consumer education regarding an outstanding debt owed to the government in order to reduce the risk of default for the borrower. In order to promote the intent of the statute, FCC should remove the requirement that unanswered calls are counted toward the three-call requirement.

Further, NAFCU believes that FCC must revise the proposal to remove any limitations on the duration of the calls. If a borrower is speaking with a live agent regarding repayment options, the conversation should not be arbitrarily limited in a way that would hamper meaningful financial education.

### **Definition of Autodialer**

The FCC's proposal adopts the agency's existing definition of an "autodialer" to define covered calls as defined in its Order. The Order defines auto-dialers broadly to include 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 not only because it is contrary to the statute's terms, but also since it leaves 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 discourage credit unions from making important communications to their members about their financial accounts for fear of violating the regulation and possibly incurring substantial liability.

### **Conclusion**

NAFCU understands that the TCPA is a consumer protection statute. As mobile and online technologies have become the most pervasive mechanisms 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 (703) 842-2234, or Alexander Monterrubio, NAFCU's Director of Regulatory Affairs at (703) 842-2244 or [amonterrubio@nafcu.org](mailto:amonterrubio@nafcu.org).

Sincerely,



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