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B. Dan Berger
President & Chief Executive Officer

National Association of Federally-Insured Credit Unions

January 23, 2017

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

RE: Telephone Consumer Protection Act

Dear Chairman Pai:

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 would like to take this opportunity to congratulate you on your designation as the new chairman of the Federal Communications Commission (FCC). NAFCU looks forward to continuing to work with you in your new position.

I am also writing to you in regard to a matter of great concern to all financial institutions – the ability to communicate freely and effectively with consumers regarding their sensitive financial information. Although NAFCU and our member credit unions appreciate the FCC's efforts to modernize the Telephone Consumer Protection Act (TCPA), the FCC has stopped short of ensuring that consumers have access to important notifications and updates about financial developments affecting their existing accounts, on both mobile and residential phone lines. The FCC's July 10, 2015 Declaratory Ruling and Order (the Order) does more harm than good by making it extremely difficult for credit unions to contact their members about potentially fraudulent activity, identify theft, and data breaches. Based on discussions from our previous meetings with you, and your dissent in the Commission's Order, NAFCU urges you, as Chairman, to continue to take steps to fix the injustices caused by this Order and safeguard the original purpose of the TCPA. The TCPA should protect, not harm, consumers.

NAFCU is concerned with several aspects of the Commission's Order, including:

1. The restrictive "free end user calls" exemption;
2. The sprawling definition of "automatic telephone dialing system" (auto-dialers);
3. Antiquated distinctions between mobile and residential phones;
4. The extremely vague standard for revoking previous consent; and

5. A lack of flexibility with regard to the portability of wireless numbers from one consumer to another.

More specifically, the FCC's exemption for "free end user calls" made by financial institutions is prohibitively restrictive and has bred technical questions that are oftentimes impossible for a credit union to answer, such as whether a member's plan provider will charge for text messages or calls related to the issues covered by the exception. The FCC should increase flexibility related to the requirements of this exemption, especially given that this exemption is intended to apply in exigent circumstances to protect consumers.

The Order's expansive definition of auto-dialers is also troubling because it leaves credit unions in the dark as far as what type of technology is actually covered. This vague definition will likely stop credit unions from making important communications to their members for fear of violating the TCPA. Such a result is hardly consistent with the original purpose of the regulation. NAFCU asks the FCC to put consumers first and make sure the TCPA is not preventing consumers from receiving important notifications and updates from their financial institutions in favor of a blanket definition of the type of technology used for potentially abusive telemarketing communications.

The TCPA's outdated distinctions between a mobile and residential phone provides another reason why consumers may not be receiving vital information from their financial institutions. Cell phones have largely replaced landlines and consumers expect to receive the same service from their credit union regardless of the type of phone line they have listed. The FCC should, therefore, remove any such distinction relative to automated informational calls to consumers about their existing accounts.

The FCC's Order establishes an absurdly vague standard for revoking previous consent to receive autodialed and prerecorded calls. The "any reasonable means" standard leaves no room for credit unions to monitor and control how a consumer may revoke consent. If credit unions cannot provide their members with a limited list of options through which they may revoke consent, then credit unions may be exposed to limitless liability. Credit unions may also be unreasonably exposed to substantial liability because of the Order's restrictions on reassigned numbers. The Order's "constructive knowledge" standard punishes credit unions acting in good faith because there is no clear process for verifying that a phone number has been reassigned and a consumer's consent to be contacted is no longer valid. The FCC should clarify and rein in the standards for revoking previous consent and reassigned numbers so that credit unions are not left guessing whether their members would like to be contacted telephonically about important financial information.

Despite ongoing litigation relative to the TCPA, now is the time for the FCC to repair the above-mentioned problems caused by its Order. NAFCU hopes that you, as a proponent of heightened transparency, will lead the FCC into an era of transparent modernization of the TCPA. The decisions made by the FCC affect millions of consumers and credit unions all across the country. Therefore, NAFCU believes it is imperative that credit unions and other financial institutions

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affected by the TCPA be kept abreast of any developments regarding the modernization of this regulation.

NAFCU is eager to continue this dialogue with you and would greatly appreciate the opportunity to set up a meeting to discuss the modernization of the TCPA. If you have any questions or concerns, please do not hesitate to contact me at (703) 842-2215, or Ann Kossachev, Regulatory Affairs Counsel, at (703) 842-2212 or akossachev@nafcu.org.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Dan Berger", with a stylized flourish extending to the right.

B. Dan Berger
President and CEO