



Jim Nussle
President & CEO

Phone: 202-508-6745
jnussle@cuna.coop

99 M Street SE
Suite 300
Washington, DC 20003-3799

May 21, 2019

The Honorable Rodney Hood
Chairman
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

Dear Chairman Hood:

On behalf of America's credit unions, I am writing to bring to your attention our serious concerns with the Federal Communication Commission's (FCC or the Commission) draft Declaratory Ruling (the Ruling) and Third Further Notice of Proposed Rulemaking (FNPR) (CG Docket No 17-59, WC Docket No. 17-97). CUNA represents America's state and federal credit unions and their 115 million members.

The FCC is scheduled to consider the ruling at its upcoming June 6, 2019, open meeting and, as a result, interested parties have only two weeks from its release date to propose changes to the draft order. Accordingly, we urge your prompt attention to this issue and ask that you immediately engage Chairman Pai and other FCC Commissioners to express credit unions' concerns regarding the impact that their proposed actions could have on credit unions' ability to communicate with their member-owners. Specifically, credit unions are concerned that—despite Chairman Pai's and the FCC's well-meaning intentions—their proposed actions will run directly counter to the encouragement that NCUA and other financial regulators have given financial institutions to use modern communication methods to immediately provide members with important and time-sensitive account information. CUNA believes that that FCC's ruling will, unfortunately, further erode credit unions' ability to relay information on and implement consumer protections regarding fraud, privacy, and account activity. As a result, the proposed declaratory ruling could not only potentially endanger consumers' financial well-being, but also safe and sound credit union practices.

Background

Since the enactment of the Telephone Consumer Protection Act (TCPA) in 1991, more than half of American consumers have come to rely on a cell phone as their exclusive means of telephone communication. For many credit union members, that means a call or text to their cell phone is the **only** way to quickly contact them to relay important, time-sensitive information—such as fraud alerts. Yet, the current confusion surrounding the TCPA, the Federal Communications Commission's implementing regulations, and conflicting judicial interpretations among the courts has forced many credit unions to refrain from contacting members to provide them with this urgent information due to the very real threat of costly litigation.

It is a fact that credit union members and other consumers are harmed when they cannot receive time-sensitive calls and text messages containing information from the legitimate businesses that they contract with, like their credit union. Fraud alerts, data breach notifications, low-balance alerts, and similar communications are consumer-benefitting calls that must be placed immediately to be of value to the recipient. **It is critical that these calls and text messages reach consumers.**

CUNA has been urging both Congress and the FCC to act on this dilemma by clearly distinguishing between illegal callers and calls from legitimate businesses with pre-existing relationships in its TCPA regulations. However, on May 16, FCC Chairman Ajit Pai announced that the Commission would consider the Ruling and the FNPR at its open meeting on June 6, 2019. Credit unions legitimately fear that the impending proposed actions will only exacerbate the challenges that financial institutions and others face when attempting to communicate critical information to their customers.

According to the fact sheet released by the FCC, the Declaratory Ruling would:

- *Clarify that voice service providers may, as the default, block calls based on call analytics that target unwanted calls, as long as their customers are informed and have the opportunity to opt out of the blocking.*
- *Clarify that voice service providers may offer customers the option to block calls from any number that does not appear on a customer's "white list" or contact list, on an opt-in basis.*

The Commission also intends to seek comment on a FNPR that, according to the fact sheet, would:

- *Propose to create a safe harbor for voice service providers that block calls for which Caller ID authentication fails and seek comment on extending the safe harbor to the blocking of calls that are unsigned.*
- *Propose to require voice service providers that block calls to ensure that emergency calls reach consumers.*
- *Seek comment on protections and remedies for callers whose calls are erroneously blocked.*

Explanation of Credit Unions' Concerns

Credit unions' communication with their members has already been hampered by the Commission's 2015 Telephone Consumer Protection Act (TCPA) Omnibus Declaratory Ruling and Order that, among other things, included an overly broad definition of an Automated Telephone Dialing System (ATDS or Autodialer). This definition has rendered any telephonic device more complicated than a rotary dial telephone to fit the definition of an autodialer. As a result, CUNA understands that many credit unions, who often lack the necessary internal staff resources to devote to manual calls, have taken steps to retain third parties to manually dial calls to members at significant and otherwise unnecessary expense.

While we support efforts to reduce illegal robocalls that frustrate consumers, we have significant concerns that the action the Commission intends to take is overly broad and could have a significant adverse impact on credit unions' and other financial service providers' ability to communicate with their members and customers. Our concerns are compounded by fact that the Commission's order will become effective upon adoption in less than three weeks.

Enhanced Call-Blocking

While we are still analyzing the draft Ruling and continue to discuss this matter with our credit union members, their immediate feedback relates to the ability of consumers to opt-in to enhanced call blocking—which would allow only calls from telephone numbers on their personal white list or contacts list. This would effectively block credit union calls from reaching members that have opted-in unless all the credit unions’ telephone numbers are stored in their consumers’ devices. Credit unions and their service providers may originate calls from different numbers depending on the service or information that the call is based on; it would be impossible for a member to know all the numbers from which the credit union might possibly call. This could be particularly problematic for members who may be applying for a loan and need to be contacted by a loan officer who may not be calling from the main credit union line that a member could feasibly have stored in his or her phone. It could also complicate credit unions’ collection efforts, which could delay borrowers getting critical information regarding the debt and subjecting them to adverse credit reporting.

While it is unclear how many consumers may choose to opt-in to this type of service, we are concerned given the immediate effective date of this order that consumers will have insufficient information relating to the consequences of a decision to opt-in to enhanced call blocking in the short timeframe that the FCC is proposing.

Opt-Out for Voice-Service Call Blocking

Today, consumers can opt-in to call blocking services offered by their voice service. The commission intends to reverse this practice and allow consumers to opt-out of these services. Part of the justification for the Ruling is that consumers were not aware of their right to opt-in and so few did. However, if consumers did not have enough information to know their right to opt-in, it is unlikely that they will have enough information to know their right to opt-out.

The Commission’s draft ruling takes the choice to receive a call out of consumers’ hands and places it in the hands of the voice service provider. There is a myriad of socio-economic implications for this decision, but the bottom line for credit union members is that they will not know which calls from their credit union their voice service has blocked. In the interim, consumers may face costly charges in the form of general liability for fraud charges ranging from \$0 to \$500 for debit account fraud identified within the first 60 days to the full amount of any fraud identified after, \$50 for each instance of credit-card fraud, plus account overdraft fees or over-the-limit fees based on their credit limits.

Financial Impact for Credit Unions

As noted by the NCUA, “[t]raditional credit card holders often are unaware their personal information has been compromised until fraudulent charges appear on their monthly billing statements or a credit card company contacts them.”¹ In addition to the costs for consumers noted above, the impact for delaying or denying the ability for credit unions to engage in the latter effort by immediately contacting and providing consumers with information pertaining to fraud alerts and suspicious account activity is substantial for financial institutions. A 2017 survey by the Federal Reserve Bank of Minneapolis found

¹ The NCUA Report, “Credit Unions, Members and EMV Cards,” available at <https://www.ncua.gov/newsroom/ncua-report/2016/credit-unions-members-and-emv-cards> (last accessed on 05/20/2019)

that 75% of all financial institutions, 3 out of 4, experience card fraud losses.² Further analysis found that for every \$1.00 of credit or debit card fraud, banks and credit unions incur roughly \$2.92 in reimbursement and other expenses for remediation to consumers.³

We are beginning to hear from credit unions regarding the specific impact of the current TCPA regulatory burden. One credit union recently told the FCC that the steps they have taken to hire third parties to manually dial their members and to mail notices that could be delivered electronically have cost them as much as \$250,000 annually.⁴ We expect this is just the tip of the iceberg in terms of impact on credit unions and that these costs will likely increase if the FCC's declaratory ruling goes into effect.

Given these statistics and the fact that more than 90% of all credit unions have less than \$500 million in assets, the costly impact of the FCC's proposed ruling to block immediate cell phone or text notifications, such as those pertaining to fraudulent activity, presents a tangible threat to credit unions' financial bottom line that cannot be overemphasized.

NCUA Must Engage the FCC Prior to Consideration of the Ruling

Given the impact the Ruling will have on credit unions, and their ability to communicate with their members, we believe that this represents a significant threat to the credit union system and we urge you to intervene with Chairman Pai and the Commission to ask them to delay and reconsider the Ruling.

On behalf of America's credit unions and their 115 million members, thank you for your consideration of our concerns.

Sincerely,



Jim Nussle
President & CEO

² Federal Reserve Bank of Minneapolis, 2017 Payments Fraud Mitigation Survey, at 16, available at <https://www.minneapolisfed.org/~media/files/about/what-we-do/frb-mpls-2017-fi-pymts-fraud-mitigation-report.pdf?la=en> (last accessed 05/20/2019).

³ American Bankers Association, State of Card Fraud: 2018, available at <https://www.aba.com/Products/Endorsed/Documents/Rippleshot-State-of-Card-Fraud.pdf> (last accessed on 05.20/2019).

⁴ American Airlines Federal Credit Union. Notice of Ex Parte Presentation: Rules and Regulations Implementing the Telephone Consumer Protection Act CG Docket No. 20-278; Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of Telephone Consumer Protection Act of 1991, CG Docket No. 18-152. May 17, 2019.