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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
Advanced Methods to Target and Eliminate)
Unlawful Robocalls) CG Docket No. 17-59

Comments of the Credit Union National Association

Pursuant to the *Public Notice* in the above-referenced proceeding,¹ the Credit Union National Association (“CUNA”) submits these comments on the recommendations of the North American Numbering Council (“NANC”) for structuring usage fees for the reassigned number database (“RND”).²

I. Introduction and Summary

CUNA has been a strong supporter of the RND since the Federal Communications Commission (“Commission”) proposed its development in 2017.³ In its previous filings, CUNA has urged that the use of the RND be affordable and that the Commission look to elements of the fee structure for the Do Not Call (“DNC”) Registry as a model.⁴ CUNA reiterates those points

¹ *Wireline Competition Bureau and Consumer and Governmental Affairs Bureau Seek Comment on NANC Recommendations on Cost Funding and Fee Structure for Reassigned Number Database*, Public Notice, CG Docket No. 17-59, DA 20-197 (rel. Feb. 26, 2020) (“*Public Notice*”). NANC’s recommendations are appended to the *Public Notice* (“*NANC Recommendations*”).

² CUNA is the nation’s largest credit union association serving the country’s 5500 federal and state-chartered credit unions and their 115 million members. Credit unions are tax-exempt, nonprofit, member-owned financial cooperatives that serve defined communities with a common bond of location, place of employment or occupation.

³ Comments of Credit Union National Association, CG Docket No. 17-59 (filed June 7, 2018)(“CUNA June 7, 2018 Comments”); Reply Comments of the Credit Union National Association, CG Docket No. 17-59 (filed September 26, 2017) (“CUNA September 26, 2017 Reply Comments”); Comments of Credit Union National Association, CG Docket No. 17-59 (filed August 28, 2017) (“CUNA August 28, 2017 Comments”).

⁴ CUNA June 7, 2018 Comments at 3-4.

here and in particular that tax-exempt, non-profit organizations and de minimis users be afforded free access to the RND, consistent with the DNC Registry.

It has also become clear that the development of the RND is far more complex, and potentially costly, than the Commission assumed when it authorized its creation in 2018.⁵ In that order, the Commission directed NANC to provide a funding recommendation by June 2019. For reasons beyond NANC's control, the organization was unable to meet that timeline and has sought several extensions.⁶ It is still unable to provide any estimates of the startup or operational costs of the RND, leaving parties to comment on a fee structure without any information regarding potential fee levels. The Commission should allow stakeholders to further comment once cost estimates are available.

For now, CUNA respectfully requests that the Commission take the following actions:

- Given delays in setting up the RND, the Commission should promptly revisit its definition of the called party and find that it refers to the intended recipient;
- Provide free access to the RND for non-profit, tax-exempt organizations, such as credit unions, and for de minimis usage;
- RND users should not be required to repay carriers for RND development costs to the extent the carriers passed those costs through to their end-user customers; and
- Adopt NANC's recommendation to expand the RND safe harbor to include "no data" responses.

⁵ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Report and Order, 33 FCC Rcd 12024 (2018) ("RND Order"). In comparing the RND's costs versus benefits in the 2018 Order, the Commission estimated that the RND's set up would take a matter of weeks at a cost of approximately \$32,400. *Id.* at 12048, ¶ 69.

⁶ *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Order, 34 FCC Rcd 8005 (2019). NANC noted that its work has been slow due to the complexity of the task and the reluctance by vendors of similar databases to provide assistance out of concern they might be disqualified from bidding to become the database administrator.

II. In Light of Continuing Delays in Establishing the RND, the Commission Should Revisit the Definition of a Called Party

The RND, and the safe harbor from liability for those using it, is intended to be a technical solution to the problem created by the Commission’s decision to define the called party as the current number subscriber instead of the intended recipient.⁷ The continued delay in actually setting up and operationalizing the RND has left callers vulnerable to litigation for inadvertently calling a reassigned number. With no definitive timeline for when callers could expect to start utilizing the RND, the Commission should consider promptly revising the called party definition to mean the intended recipient, as Chairman Pai and Commissioner O’Reilly have advocated.⁸ The D.C. Circuit made clear that this definition is well within the Commission’s discretion.⁹

In overturning the Commission’s reassigned number framework and the arbitrary and capricious one-call safe harbor, the D.C Circuit referenced the RND as a potential solution, even if the Commission did not reverse its previous definition.¹⁰ Having miscalculated the time it would take to set up the RND, and the concomitant delay in the RND safe harbor, the Commission should provide alternative relief by redefining the called party as the intended recipient. The Commission could even promulgate the revised definition as an interim step pending the completion of the RND or the Commission’s comprehensive resolution of the TCPA issues remanded by the D.C. Circuit.

⁷ *Rules and Regulations Implementing the Telephone Consumer Protection Act*, Declaratory Ruling and Order, 30 FCC Rcd 7961, 8000-01 ¶ 73 (2015) (“2015 TCPA Order”), aff’d in part rev. in part, *ACA Int’l v. FCC*, 885 F.3d 687, 709 (D.C. Cir. 2018)(“*ACA Int’l*”).

⁸ *2015 TCPA Order*, 30 FCC Rcd at 8072, Dissenting Statement of Commissioner Ajit Pai; *id.* at 8084, Statement of Commissioner Michael O’Reilly Dissenting in Part and Approving in Part.

⁹ *ACA Int’l*, 687 F.3d at 706.

¹⁰ *ACA Int’l*, 687 F.3d at 709 (noting the Commission was “already on its way to designing a regime [the RND] to avoid the problems of the 2015 ruling’s one-call safe harbor” for calling a reassigned number).

III. The Commission Should Follow the Do Not Call Registry Model by Affording Tax-Exempt Non-Profit Entities and De Minimis Users Free Access

The Commission has previously suggested that the fee structure of the DNC Registry could serve as a model for the RND.¹¹ The NANC, however, chose not to recommend use of the fee structure used by the DNC Registry, which sets fees based on the number of area codes used, and instead is recommending a tiered structure tying usage charges to the volume of queries to the RND.¹² Assuming the Commission agrees with the recommended structure, it should nevertheless adopt two elements of the DNC Registry's fee structure that serve important policy outcomes: (1) The Commission should exempt all tax-exempt not-for-profit entities, such as credit unions, from any fees; and (2) It should create an exemption for de minimis use, as is the case for the DNC Registry, and thereby encourage use by smaller businesses.

Access to the DNC Registry is free for tax-exempt non-profit organizations that chose to use the Registry.¹³ Tax-exempt, non-profit organizations serve important purposes and confer public benefits. This is true for credit unions, which are tax-exempt organizations under the IRS code.¹⁴ Congress conveyed tax-exempt status on credit unions due to their unique ownership

¹¹ *RND Order*, 33 FCC Rcd at 12046, ¶ 61.

¹² *NANC Recommendations* at 8.

¹³ The Federal Trade Commission rules provide free access to the do not call registry for entities that qualify as "exempt organizations," including certain tax-exempt nonprofit organizations, entities that do not make telemarketing calls or those that only contact their own customers. *See* Q&A for Telemarketers & Sellers About DNC Provisions in TSR, Federal Trade Commission, <https://www.ftc.gov/tips-advice/business-center/guidance/qa-telemarketers-sellers-about-dnc-provisions-tsr> (last visited March 5, 2020). *See also*, *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014, 14043-45 ¶¶ 42-45 (2003) ("2003 TCPA Order").

¹⁴ *See* 26 U.S.C. § 501(c)(1) (exempting federal credit unions under the supervision of the National Credit Union Association); *id.* at § 501(c)(14)(A) (exempting credit unions chartered under state credit union laws that operate without profit).

structure and special mission.¹⁵ Credit unions are member-owned, democratically governed, not-for-profit cooperative financial institutions generally managed by volunteer boards of directors with a specified mission of promoting thrift and providing access to credit for provident purposes to their members, especially those of modest means.¹⁶ Credit union earnings redound to the benefit of their members and their lower costs and conservative lending practices provide much-needed capital in many financially underserved areas. Credit unions, like other tax-exempt, non-profit entities, should have free access to the RND, just as non-profit, tax-exempt entities enjoy free access to the DNC Registry.

Additionally, all small businesses should have free access for a limited number of queries, again consistent with the model of the DNC Registry. The Commission has previously recognized that access to the RND should be affordable, particularly for small businesses.¹⁷ The NANC as well recognizes that keeping access fees low will encourage participation.¹⁸ NANC's recommended fee structure, however, does not include a fee exemption for limited usage, as does the DNC Registry. As noted, the fee structure for the DNC Registry is based on area codes and exempts limited usage from charges. This is accomplished by making the first five area codes free.¹⁹ This fee structure also reflects the Commission's recognition that many entities operate in discrete geographic areas and do not need, and hence should not be required to pay for, broad

¹⁵ Credit Union Not-For-Profit Tax Status: History, Benefits and Public Policy Considerations, Credit Union National Association Research and Policy Analysis, April 2019, at 4, available at https://www.cuna.org/uploadedFiles/Global/About_Credit_Unions/CUTaxStatusWhitePaper_April19.pdf.

¹⁶ *Id.*

¹⁷ See, e.g., *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Further Notice of Proposed Rulemaking, 33 FCC Rcd 3203, 3210, ¶ 29 (2018).

¹⁸ *NANC Recommendations* at 7-8.

¹⁹ Users of the do not call registry pay a per area code fee (to be set at \$65 per area code with a cap of \$17,765 beginning in FY 2020) with the first five area codes free. See Q&A for Telemarketers & Sellers About DNC Provisions in TSR, Federal Trade Commission, <https://www.ftc.gov/tips-advice/business-center/guidance/qa-telemarketers-sellers-about-dnc-provisions-tsr> (last visited March 5, 2020).

national access.²⁰ This perfectly fits the manner in which credit unions operate. Credit unions, by law, only serve discrete fields of membership that are defined either by a common bond of geography or employment.²¹ Thus, credit unions typically serve only persons living within one or more specified cities or counties, and/or working in one or more places of employment. They would thus only need to scrub the RND for a relatively small range of numbers.

Affordable access for small businesses is particularly important for CUNA given that many of its member credit unions are very small. More than 40 percent of the approximately 5,500 credit unions have five or fewer full-time employees and the majority of credit unions have assets of less than \$20 million. Thus, to the extent that credit unions are not afforded free access as tax-exempt non-profit entities, providing free access for a de minimis number of queries will help ensure that they utilize the database and minimize the potential for inadvertently calling a reassigned number.

IV. Users Should Not Have to Reimburse Carriers for RND Startup Costs to the Extent They Passed Those Costs Through to Their Customers

NANC recommends that carriers should pay for the startup costs of the RND and then be reimbursed through usage fees by those accessing the database.²² Specifically, NANC recommends that the startup costs, which are currently unknown, be collected as a contribution along with other North American Numbering Plan (“NANP”) fees.²³ These fees are set as a percentage of carrier end-user revenues based on the amount of funding required. For example, the current NANP contribution factor is 0.0000908 percent of each telecommunications carriers’

²⁰ *2003 TCPA Order* at 14048-49, ¶ 54.

²¹ *See* 12 U.S.C. § 1759(b)(1)-(3).

²² *NANC Recommendations* at 6.

²³ *NANC Recommendations* at 4.

end-user revenues for the prior calendar year.²⁴ Carriers typically pass through such charges as a line item on customer bills and they are thus effectively revenue neutral for the carrier. It would be particularly appropriate to pass through RND start up fees because the database would benefit all users of the telephone networks who would be spared the annoyance of receiving calls intended for someone else.

To the extent that carriers have effectively been reimbursed for these startup fees by collecting them from their customers, requiring RND users to again reimburse carriers would be tantamount to a double recovery by the carriers. CUNA would thus urge the Commission to consider whether it is appropriate to reimburse carriers for startup costs that they have passed through and already recouped from their customers.

V. The Commission Should Adopt NANC's Recommendation to Expand the Safe Harbor

The Commission established a safe harbor for callers that scrub their calls against the RND. Upon querying the database regarding whether the number to be called has been permanently disconnected, the RND will return one of three answers: (1) Yes (the call has been disconnected); (2) No (the call has not been disconnected and thus should still be associated with the customer); or (3) No Data.²⁵ The safe harbor would only apply if the RND erroneously reported that “No,” the number has not been disconnected.²⁶

²⁴ *Wireline Competition Bureau Announces the Proposed North American Numbering Plan Administration Fund Size Estimate and Contribution Factor for October 2019 through September 2020*, Public Notice, CC Docket No. 92-237, DA 19-810 (rel. Aug. 22, 2019).

²⁵ *RND Order*, 33 FCC Rcd at 12031, ¶ 19.

²⁶ *RND Order*, 33 FCC Rcd at 12043, ¶ 55.

CUNA supports NANC's recommendation that the safe harbor be expanded to include when the RND reports "No data."²⁷ The recommendation correctly notes that expanding the safe harbor in this way will "help stimulate usage of the RND."²⁸ It also recognizes that a caller has made a good faith effort to determine whether the number remains valid yet is provided no actionable information from the database, for whatever reason. Absent extension to the safe harbor to include a "No Data" response, the caller is left making a difficult risk assessment. It can either make the call and risk liability for calling a reassigned number, including the possibility of facing a class action, or it can refuse to make the call and deprive its customer of potentially important information, such as an overdue payment or another account problem. As the Commission acknowledged, the RND is designed to help callers avoid this dilemma.²⁹

It does not serve the purposes of the TCPA to place credit unions or other callers in this position. Extension of the safe harbor to include "No Data" responses would still require that the caller had obtained consent, fulfilling one of the fundamental criteria of the TCPA. A "No Data" response may be the result of various factors outside the caller's control, such as a disconnection long before the database becomes operational or otherwise outside of the RND's relevant time frames. The Commission should adopt NANC's recommendation and extend the safe harbor to include a "No data" response.

²⁷ *NANC Recommendations* at 9.

²⁸ *Id.*

²⁹ *RND Order*, 33 FCC Rcd at 12043, ¶ 54 (stating that it shares concerns reflected in the record "about good-faith callers being subject to liability for TCPA violations, a threat that can cause callers to be overly cautious and stop making wanted, lawful calls out of concern over potential liability for calling a reassigned number.").

CONCLUSION

CUNA respectfully urges the Commission to adopt the proposals set forth above to encourage use of the RND and reduce the number of calls to reassigned numbers.

Respectfully submitted,

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