

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

*In the Matter of* )  
 )  
Rules and Regulations Implementing the ) CG Docket No. 02-278  
Telephone Consumer Protection Act of 1991 )

**Reply Comments of the Credit Union National Association**

The Credit Union National Association (“CUNA”) submits these reply comments in response to the Notice of Proposed Rulemaking for the above-captioned proceeding to implement Section 8 of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act.)<sup>1</sup> The initial comments demonstrate overwhelming support for retaining the current exemptions, particularly the exemption for commercial informational calls to residential lines, without imposing additional restrictions. CUNA also supports modest but important revisions to the financial services exigent circumstances exemption for wireless calls. Moreover, a number of commenters support extending to wireless numbers the exemptions currently limited to residential lines, as CUNA has previously advocated.

**I. The Record Strongly Supports Retaining the Commercial Informational Call Exemption Without Imposing New Obligations**

The initial comments overwhelmingly support retention of the exemption for commercial calls to residential lines that do not include a solicitation and to refrain from setting arbitrary limits on the number of such calls or imposing new opt-out or do-not-call record keeping

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<sup>1</sup> *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking, CG Docket No. 02-278, FCC 20-140 (rel. Oct. 1, 2020) (“Notice”).

requirements.<sup>2</sup> The comments describe the important and often critical nature of the types of information provided in these calls, ranging from public safety and health to financial status to service-specific alerts and reminders.<sup>3</sup> Setting an arbitrary cap on the number of these often critical calls will impede entities' ability to reach their customers and therefore inflict potential harm on consumers.<sup>4</sup> Limiting the number of call attempts will become even more problematic

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<sup>2</sup> Comments of American Bankers Association, CG Docket No. 02-278, at 4-5 (Oct. 27, 2020) (“ABA Comments”) (describing survey results showing strong support from consumers for informational calls); Comments of ACA International, CG Docket No. 02-278, at 1 (Oct. 27, 2020) (“ACA Comments”); Comments of Encore Capital Group, CG Docket No. 02-278, at 2-3 (Oct. 27, 2020) (“Encore Comments”); Comments of FedEx Corporation, CG Docket No. 02-278, at 9-10 (Oct. 27, 2020) (“FedEx Comments”); Comments of Heartland Credit Union Association, CG Docket No. 02-278, at 2 (Oct. 27, 2020) (“Heartland Credit Union Association Comments”); Comments of Indiana Credit Union League, CG Docket No. 02-278, at 2 (Oct. 27, 2020) (“Indiana Credit Union League Comments”) (new regulatory obligations on informational exemptions will “damage and greatly limit” credit unions’ ability to communicate vital information to their members); Comments of NCTA - The Internet & Television Association, CG Docket No. 02-278, at 4 (Oct. 27, 2020) (“NCTA Comments”) (imposing arbitrary call limits will impede important information and raises First Amendment concerns while requiring opt-out would frustrate consumers who unwittingly bar calls); Comments of Professional Association for Customer Engagement, CG Docket No. 02-278, at 2 (Oct. 26, 2020) (“PACE Comments”) (noting reliance interest on well-established exemptions and that imposing specific opt out mechanisms would be “disruptive, costly, or potentially injurious to consumers”); Comments of Receivables Management Association International, CG Docket No. 02-278, at 2 (Oct. 27, 2020) (“RMAI Comments”).

<sup>3</sup> *See, e.g.*, ABA Comments at 4-5 (describing various time-critical financial-related communications covered by the informational calls exemption); Comments of Credit Union National Association, CG Docket No. 02-278, at 1-3 (Oct. 26, 2020) (“CUNA Comments”) (describing range of informational calls necessitated by unique relationship between credit unions and their member-owners); NCTA Comments at 3-4 (noting that informational calls involve matters of public safety, network and service outages, account security as well as service- and account-related messages). A further vital exemption exists for HIPAA-related calls to residential lines. *See, e.g.*, Comments of UnitedHealthcare, CG Docket No. 02-278, at 2-3 (Oct. 26, 2020) (“UnitedHealthcare Comments”).

<sup>4</sup> ABA Comments at 3-4, 7; Encore Comments at 2-3; Comments of CTIA, CG Docket No. 02-278, at 13 (Oct. 27, 2020) (“CTIA Comments”).

given the increasing prevalence of call blocking and labelling programs that erroneously block or label legitimate calls, requiring callers to make more attempts once those errors are resolved.<sup>5</sup>

Claims that the number of informational calls should be restricted often focus on debt collection calls.<sup>6</sup> The record demonstrates, however, that debt collection calls are already heavily regulated under other Federal or state laws, and the Consumer Finance Protection Bureau (CFPB) recently finalized rules governing debt collection calls.<sup>7</sup> The CFPB's comprehensive rule includes provisions limiting debt collection calls to no more than seven calls over a seven-day period and requiring electronic communications such as texts to include a reasonable and simple opt-out mechanism.<sup>8</sup> There is therefore no "gap" in consumer protection, as NCLC claims, that requires modifying exemptions under the TCPA.<sup>9</sup>

Finally, NCTA makes a compelling argument that imposing numerical limits on informational calls raises substantial First Amendment issues. Call limitations predicated on whether a call is noncommercial or commercial but not advertising are content-based,

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<sup>5</sup> ACA Comments at 5 (noting that limiting the number of calls will compound the difficulties of reaching consumers in light of increased blocking of legitimate calls); CUNA Comments at 5-6.

<sup>6</sup> *See, e.g.*, Comments of National Consumer Law Center et al., CG Docket No. 02-278, at 6 (Oct. 27, 2020) ("NCLC et al., Comments").

<sup>7</sup> Bureau of Consumer Financial Protection, Debt Collection Practices, Docket No. CFPB-2019-0022, Final Rule (rel. Oct. 30, 2020) available at [https://files.consumerfinance.gov/f/documents/cfpb\\_debt-collection\\_final-rule\\_2020-10.pdf](https://files.consumerfinance.gov/f/documents/cfpb_debt-collection_final-rule_2020-10.pdf) ("Debt Collection Rule"). *See also* ACA Comments at 6 (describing FDCPA rules barring abusive calls and enabling consumer opt out); Encore Comments at 3-4 (noting federal law – FDCPA – already provides consumers with the ability to opt out of debt collection calls and CFPB slated to soon issue rules on call limits, opt-outs and related restrictions); RMAI Comments at 7-8 (same).

<sup>8</sup> Debt Collection Rule at 4-5.

<sup>9</sup> NCLC et al., Comments at 8.

presumptively unconstitutional and subject to strict scrutiny.<sup>10</sup> As NCTA correctly notes, there is no compelling state interest to overcome the presumption of unconstitutionality.<sup>11</sup>

NCLC wrongly claims that section 8 of the TRACED Act requires the Commission to set limits on the number of informational calls.<sup>12</sup> The relevant provision states that the Commission “shall ensure” that an exemption “contains requirements” with respect to the number of calls that may be made.<sup>13</sup> The language thus merely requires that the Commission ensure that an exemption “contains requirements” with respect to call limits. The Commission has appropriately recognized that this requirement may be satisfied by adopting a rule that call volume will not be limited.<sup>14</sup> The Commission has ample discretion to conclude, as suggested in the Notice, that the informational calls exemption “shall not be limited in terms of the number of calls it makes under the exemption.”<sup>15</sup>

A number of commenters also are in concert with CUNA’s arguments that the Commission should refrain from imposing opt-out and do-not-call record keeping requirements on the informational call exemption.<sup>16</sup> Echoing CUNA’s arguments, commenters explain that mandating specific opt-out mechanisms and do-not-call record keeping requirements will impose significant and unnecessary burdens while creating substantial customer confusion and frustration if customers unwittingly opt out of important calls.<sup>17</sup> Commenters also note that

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<sup>10</sup> NCTA Comments at 8-9.

<sup>11</sup> *Id.*

<sup>12</sup> NCLC et al., Comments at 5.

<sup>13</sup> Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Public Law No. 116-105, § 8 (2019) (“TRACED Act”).

<sup>14</sup> *See* ABA Comments at 6 (The TRACED Act does not mandate imposition of call limits); NCTA Comments at 5 (same).

<sup>15</sup> Notice at ¶ 15.

<sup>16</sup> CUNA Comments at 6-10.

<sup>17</sup> *See, e.g.*, ABA Comments at 8 (noting difficulty in discerning consumers’ scope of opt out rights); ACA Comments at 8 (opt out requirements would impose unnecessary burdens);

imposing an opt-out requirement would effectively nullify consent-based exemptions by enabling a consumer to revoke consent that was not required in the first instance.<sup>18</sup>

## **II. The Commission Should Modify the Financial Services Exemption**

CUNA supports the ABA's comments to modify the exemption for certain time-sensitive financial alerts to wireless phones.<sup>19</sup> As ABA notes, certain restrictions on this exemption undermine its utility. For the reasons set forth in ABA's comments, CUNA supports the specific proposals to: (1) remove the requirement that the called number be provided by the customer to the financial institution; (2) permit three exempted calls to each authorized user of an account for breach or fraud-related communications; and (3) provide a limited expansion of the 160-character limit for texts.<sup>20</sup>

## **III. There Is Substantial Support to Extending the Residential Informational Call Exemption to Wireless Calls**

Commenters recognize that the telecommunications landscape has changed dramatically since enactment of the TCPA and that cell phones have replaced residential landlines in the

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Comments of Consumer Bankers Association, CG Docket 02-278, at 1-2 (Oct. 27, 2020) (noting consumer might inadvertently opt-out of important calls); Indiana Credit Union League Comments at 1-2; NCTA Comments at 4. *See generally* CTIA Comments at 12 (opposing opt out for wireless company to subscriber calls); Comments of National Association of Chain Drug Stores, CG Docket 02-278, at 5-6 (Oct. 27, 2020) (opposing opt requirements for HIPAA-related calls to residential lines); PACE Comments at 2 (noting that imposing specific opt out mechanisms would be “disruptive, costly and potentially injurious to consumers). *See also* Comments of Verizon, CG Docket No. 02-278, at 8 (Oct. 27, 2020) (requiring opt out for wireless company to subscriber calls would lead to unnecessary cost and consumer frustration at missing important calls).

<sup>18</sup> CTIA Comments at 11.

<sup>19</sup> ABA Comments at 10-14.

<sup>20</sup> ABA Comments at 12-14. FedEx also calls on the Commission to expand the 160-character limitation on text messages for package delivery notifications. FedEx Comments at 5-6. As ABA and FedEx explain, the current 160-character limit provides insufficient space to include necessary information.

majority of households.<sup>21</sup> Traditional distinctions between landline and wireless services have blurred, and it is time for the Commission to harmonize its rules by extending to cell phones the same informational call exemptions that exist for traditional residential lines.<sup>22</sup> Commenters also note that the Commission should consider removing the requirement applicable to wireless call exemptions that the call or text be free to the end user.<sup>23</sup> Given the prevalence of unlimited voice and text plans, which render calls and texts free under the Commission’s framework, the free to end user requirement imposes unnecessary cost and complexity. As noted by PACE, most callers do not have experience in setting up free to end user communications, and, as further noted by Noble Systems, services ensuring calls are free to end users are costly and of limited availability.<sup>24</sup> Requiring callers to incur the costs of ensuring that calls are free to the end user when the vast majority of calls and texts are in fact free is unreasonable and unnecessarily constrains the utility of these important call exemptions. This was a key point made in CUNA’s pending petition to extend the information call exemption to wireless calls.<sup>25</sup>

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<sup>21</sup> *See, e.g.*, CUNA Comments at 11; UnitedHealthcare Comments at 3.

<sup>22</sup> *See, e.g.*, CUNA Comments at 11-12; Heartland Credit Union Association Comments at 1; Comments of Illinois Credit Union League, CG Docket No. 02-278, at 2 (Oct. 26, 2020). *See also* Comments of America’s Health Insurance Plans, CG Docket No. 02-278, at 9-10 (Oct. 27, 2020) (extend HIPAA-related call exemption to wireless numbers); UnitedHealthcare Comments at 3 (same).

<sup>23</sup> *See, e.g.*, Comments of HMS, CG Docket No. 02-278, at 3-4 (Oct. 26, 2020); Comments of Noble Systems Corporation, CG Docket No. 02-278, at 6 (Oct. 27, 2020) (“Noble Systems Comments”) PACE Comments at 5.

<sup>24</sup> PACE Comments at 5; Noble Systems Comments at 6.

<sup>25</sup> Credit Union National Association Petition for Declaratory Ruling, CG Docket No. 02-278 at 17 (filed Sept. 29, 2017).

Respectfully submitted,

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/s/

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