

MEMORANDUM OF EX PARTE COMMUNICATION

DOCKET: CG Docket No. 18-152; CG Docket No. 02-278

DATE OF EX PARTE COMMUNICATION: October 23, 2018

SUBJECT: Telephone Consumer Protection Act

PARTICIPANTS:

FCC:

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NAFCU:

Ann Kossachev, Senior Regulatory Affairs Counsel

MEMO PREPARED BY: Ann Kossachev, Senior Regulatory Affairs Counsel, NAFCU

NAFCU met with FCC staff to share credit union concerns regarding the interpretation of the Telephone Consumer Protection Act (TCPA). NAFCU explained its opposition to the Ninth Circuit's interpretation of the TCPA in *Marks v. Crunch San Diego, LLC*. Credit unions support the following definition of automatic telephone dialing system (ATDS): equipment that uses a random or sequential number generator to store or produce numbers and dial those numbers without human intervention. NAFCU urged the FCC to reject the Ninth Circuit's decision and instead develop a definition of ATDS that aligns with the D.C. Circuit's approach in *ACA International v. FCC* so that smartphones and other internet-connected devices are not swept into the definition.

NAFCU informed FCC staff that credit unions continue to struggle to contact their members because they fear violating the TCPA and facing an expensive lawsuit. NAFCU noted ongoing concerns stemming from the FCC's 2015 Omnibus Declaratory Ruling and Order, and reiterated its support for a single, FCC-designated reassigned numbers database and a safe harbor for those who use the database. NAFCU also asked the FCC to permit institutions to create a clear

standard for revocation of consent. The outdated distinction between residential and mobile lines was also discussed – NAFCU urged the FCC to support a legislative fix should it find that it does not have the authority to remove the distinction. Finally, NAFCU asked the FCC for an expanded exemption for data breach and fraud communications. NAFCU plans to submit a supplemental filing detailing its request.