



Edison Electric
INSTITUTE

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August 11, 2021

Via Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: Ex Parte Notice: Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, CG Docket No. 02-278

Dear Ms. Dortch:

On August 9, 2021, Aryeh Fishman, Associate General Counsel, Regulatory Affairs, for the Edison Electric Institute (“EEI”), and representatives from San Diego Gas & Electric Company, Southern California Edison, and Pacific Gas & Electric Company (collectively the “California Utilities”) met by telephone with members of the Federal Communications Commission’s (“FCC” or “Commission”) Consumer and Governmental Affairs Bureau.¹ During the meeting, EEI and the California Utilities asked the Commission to grant the Petition for Partial Reconsideration (“Petition”) filed by EEI and other stakeholders on April 20, 2021, in the above-referenced proceeding.²

EEI and the California Utilities explained that the electric industry shares the FCC’s goals of protecting consumers from illegal automated calls while ensuring that consumers continue to receive important, often time-sensitive calls from lawful businesses and, in particular, calls closely related to their utility service. However, the *TCPA Exemptions Order*,³ by adopting arbitrary limits on informational, prerecorded calls to residential landlines that have been exempt from the Telephone Consumer Protection Act’s (“TCPA”) prior express consent requirement for decades, will significantly hinder customers’ ability to receive important information that is closely related to their utility service.

EEI Member companies, including the California Utilities, provide homes and businesses with electricity and natural gas that are critical to the economy, public health and safety, and our modern way of life. These services are not only wanted but an integral necessity to customers’ lives, so much so that they want to be alerted directly from the utility provider of any potential

¹ The meeting’s participants are listed in Appendix A to this letter.

² See Petition for Partial Reconsideration of ACA International, the Edison Electric Institute, the Cargo Airline Association, and the American Association of Healthcare Administrative Management, CG Docket No. 02-278 (filed March 29, 2021)(“Petition”).

³ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 35 FCC Rcd 15188 (2020) (“*TCPA Exemptions Order*”).

interruptions. Moreover, it is the exception when electric and gas companies engage in telemarketing; it is far more typical that these companies are sharing pertinent, highly relevant information that customers not only want but expect to have conveyed to them proactively, because the information can impact the health, safety, and comfort of people's daily lives. Thus, enabling dissemination of information through prerecorded calls to residential landlines is necessary, and the TCPA should not arbitrarily limit these calls to make sure that customers receive such wanted outreach from their utilities.

Given this important public interest in proactive customer communications, the California Utilities expressed strong support for the Petition and explained their concerns about the impact of the *TCPA Exemptions Order* on their ability to effectively communicate with their customers.⁴ Arbitrarily capping calls at just three (3) calls per consecutive 30 days will be both extremely challenging to implement and potentially very harmful to customers. The current rule would effectively force the California Utilities to distinguish how they communicate with customers based on the type of phone that they have (wireless versus residential landlines). The California Utilities explained that they do not wish for residential landline customers to receive less information, whether about rates, billing, potential disconnection, or safety issues such as planned and unplanned outages, as a result. The Commission should reevaluate the limit of three (3) calls in a consecutive 30-day period for informational calls, considering the many types of informational calls utility service customers want and expect to receive, as discussed further below.

There is also no need for prior express written consent for informational calls and the California Utilities explained that they do not believe the Commission ever intended to require this level of consent. The California Utilities urged the Commission to consider issuing an erratum to ensure their customers can continue to receive important information closely related to their utility service without additional consent requirements. The California Utilities explained that they have an obligation to serve all of the customers in their service territories, but that the companies are very unlikely to obtain 100% written consents from their existing customers. As a result, some landline customers would very likely be left behind under a prior express written consent requirement as it is expected that there will always be some people that do not realize the new need to give consent.

The California Utilities explained to staff that in contrast to the *TCPA Exemptions Order*, the Commission got it right in issuing its 2016 Declaratory Ruling that held that when customers provide their wireless phone numbers to their utility, they expressly consent to receive calls and texts reasonably and closely related to their utility service.⁵ The California Utilities asserted that it is critical for the Commission to confirm that its 2016 Declaratory Ruling applies to residential landline customers and wireline customers alike, as there is no rational basis to treat the same types of communications differently simply based on the nature of the customer's phone service. Furthermore, it is unhelpful and burdensome. Since the content of utilities' customer

⁴ See Joint Reply Comments of California Utilities , CG Docket No. 02-278 (filed May 6, 2021).

⁵ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Blackboard, Inc. Petition for Expedited Declaratory Ruling, Edison Electric Institute & American Gas Association Petition for Expedited Declaratory Ruling, Declaratory Ruling, 31 FCC Rcd. 9054, ¶ 10 (2016) ("2016 Declaratory Ruling").

communications is pro-consumer and unique, and given the fact the companies are not contacting customers to try to sell them widgets, but to literally keep their lights on, these calls should be treated uniquely.

Finally, the California Utilities asserted that the Commission does not need to extend the full opt-out and Do Not Call List requirements applicable to telemarketing calls to informational calls. Imposing the Commission's requirements for telemarketing represents an additional and unnecessary burden on the companies' ability to communicate with customers. The California Utilities explained that customers always have the option of removing their contact information from their accounts but, in practice, only a very small number of customers do not provide their phone numbers to their utility. Informational prerecorded calls to landlines should simply abide by the same standards that exist for wireless calls, such as a toll-free opt-out number. These measures are appropriate to protect consumers from unwanted informational calls and, by adopting such a policy, the Commission would allow parity between wireless and landline customers ensuring no customers are deprived of information regarding their utility service.

During the meeting, the California Utilities also described the wide array of calls that the companies make to customers that would be adversely impacted by the *TCPA Exemptions Order*:

- Notifications and updates about planned and unplanned service outages.
- Payment reminders when payment is past due.
- Disconnection warnings for past-due accounts.
- Notifications that the companies will be doing safety inspections on equipment on the customer's property.
- Notifications that the companies will be doing maintenance or construction on equipment on the customer's property.
- Notifications that the companies will be doing tree trimming or removal on the customer's property.
- Rate change notifications.
- Notifications that the customer's usage is approaching high usage thresholds that will lead to increased rates and cost.
- Confirmation of scheduled field visits to a customer's residence(s) or business(es).
- Demand Response Program notifications to request the customer reduces usage on days where California faces capacity limitations.
- Notifications and reminders that personnel will be on the property and a reminder about securing dogs to ensure the safety of the meter reader, for customers where the companies physically read their electric or gas meter.

The California Utilities further explained that they know their respective customers not only desire the information provided in these calls, but customers expect them to be disseminated proactively given the criticality of this information. As a result, there are situations where a company may need to reach out to customers more than three (3) times within 30 days. For example, for planned outages, customers want more communication about the status of the

outage, including phone reminders the day before and immediately prior. Further, if an unplanned outage occurs (i.e., an outage where a company has a piece of equipment fail which causes an unexpected outage), one of the California Utilities explained that a customer may receive more than five (5) phone calls related to that one outage alone.⁶ Additionally, if that same customer is also experiencing bill payment challenges and is being notified that they are at risk of disconnection, they may receive two (2) more calls within the same 30 days. Moreover, because some customers own multiple units or meters, they could potentially receive calls for each of these meters/service addresses, which they expect and desire, but would likewise increase the risk that the number of calls placed by the companies would exceed the *TCPA Exemptions Order*.

The California Utilities also provided further details on calls to customers related to budget plans. Southern California Edison described a program that provides reduced rates for income-qualified customers whereby the company places calls to customers to remind them to recertify their participation in the program, to continue obtaining reduced rates, while other calls are placed giving notice to a customer when their monthly bill is due and up to three (3) budget alerts per month advising on electricity consumption. The financial risk to these customers that may lead to disconnections is ultimately a safety issue. It is therefore contrary to the public interest to adopt rules that would have the effect of depriving them of this critical information which helps to keep their utility services connected and operational.

Pursuant to Section 1.126(b)(2) of the Commission's Rules, this letter is being filed electronically with your office. Please feel free to contact me if you have any questions.

Respectfully submitted,

/s/ Aryeh Fishman

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⁶ Such notices would consist of (i) an initial outage notification; (ii) notice that a repair crew has been dispatched; (iii) notice that the crew is onsite; (iv) an estimated time to restore power, including, if known, the reason for the outage; and (v) notice that the outage has been rectified, including the reason for the outage (if not provided previously). Additional messages may be sent if the outage start or restoration time changes, the outage is cancelled or other unexpected schedule changes occur.

APPENDIX A

Meeting Attendees

Consumer & Governmental Affairs Bureau

Aaron Garza
Erica McMahon
Richard Smith
Mark Stone
Kristi Thornton

Edison Electric Institute

Aryeh Fishman
Richard Ward

San Diego Gas & Electric Company

Charles E. Dispenzieri
Tim H. Ransdell

Southern California Edison

Dennis Capili,
Pamela Deahl
James Devaine Mckinney
Andrew Schmerl
JP Shotwell
Angela Whatley

Pacific Gas & Electric Company

Megan Ardell
Cliff Geicher
Natalie Joubert