

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

**COMMENTS OF THE
EDISON ELECTRIC INSTITUTE
TO SECOND NOTICE OF INQUIRY**

Edison Electric Institute

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Pursuant to sections 1.415 and 1.419 of the Federal Communications Commission’s (“FCC” or “Commission”) rules, 47 C.F.R. §§ 1.415, 1.419, the Edison Electric Institute (“EEI”), on behalf of its member companies, submits these Comments in response to the above-referenced Second Notice of Inquiry (“Second NOI”).¹ EEI supports the Commission’s efforts to help reduce the number of unwanted robocalls² to American consumers by specifically addressing the problem of reassigned numbers. Given the rise of class action litigation under the Telephone Consumer Protection Act (“TCPA”) against legitimate, good-faith callers,³ electric companies are interested in cost-effective and reliable methods of identifying and verifying reassigned numbers before placing calls and texts. If the Commission should act to develop a database by any of the means described in the Second NOI or similar approaches,⁴ then in order to help protect companies against abusive litigation, it is critical that the Commission establish one or more safe harbor(s) from liability under the TCPA for companies that make good faith or reasonable efforts to comply with the law.

I. Introduction

EEI is the trade association that represents all U.S. investor-owned electric companies. Our members provide electricity for 220 million Americans, and operate in all 50 states and the District of Columbia. As a whole, the electric power industry supports over seven million jobs in communities across the United States. In addition to our U.S. members, EEI has more than 60 international electric companies, with operations in more than 90 countries, as International

¹ See *In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, Second Notice of Inquiry, CG Docket No. 17-59 (adopted July 13, 2017).

² The Second NOI appears to use the term “robocall” as discussed in the *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al.*, CG Docket no. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, 30 FCC Rcd 7961 (2015) (“2015 TCPA Order”) (encompassing both autodialed and prerecorded or artificial voice calls and text messages).

³ See 47 U.S.C. § 227 *et seq.* See also, e.g., Comments of the U.S Chamber Institute for Legal Reform at 2 (TCPA-related litigation increased 46 percent in the 17 months after the FCC issued its 2015 TCPA Order).

⁴ EEI does not address the Commission’s authority to create a database.

Members, and hundreds of industry suppliers and related organizations as Associate Members. Organized in 1933, EEI provides public policy leadership, strategic business intelligence, and essential conferences and forums. EEI's members are major users of telecommunications systems to support the goals of clean power, grid modernization, and providing customer solutions. On behalf of the owners and operators of a significant portion of the U.S. electricity grid, EEI has filed comments before the Commission in various proceedings affecting the telecommunications' rights and obligations of its members who are impacted by the FCC's rules and policies.

Telephone call and text message communications are important because they help electric companies keep their customers timely informed about things of critical importance. As demonstrated by the recent series of hurricanes that have hit the United States, the services that electric companies provide are essential to the public – electric services are used to heat, cool, cook, light and power homes, factories and offices. Electric companies have a public service obligation to serve all customers within their franchised service areas and must communicate with all of them. For example, electric companies often need to contact their customers to: (a) provide notification about planned or unplanned service outages; (b) provide updates about outages or service restoration; (c) ask for confirmation of service restoration or information about the lack of service; (d) provide notification of meter work, tree-trimming, or other field work; (e) verify eligibility for special rates or services, such as medical, disability, or low-income rates, programs, and services; (f) inform about payment or other problems that threaten service curtailment; and (g) provide reminders about time-of-use pricing and other demand-response events. It bears emphasis that—during circumstances like hurricanes, floods, tornadoes, and other severe weather incidents or natural disasters—customers may be forced to

leave their homes. As a result, often the only way to reach these customers with timely information about restoration efforts is by calling their wireless phone numbers using advanced technologies. Accordingly, EEI and its members have a strong interest in the Commission's proposals to protect American consumers, including electricity customers, from unwanted and illegal robocalls, while still protecting legitimate, good-faith callers from abusive TCPA class action litigation.

II. Comments

EEI appreciates that the Commission has initiated an inquiry to examine the problem of robocalls made to phone numbers of customers who had consented to receive calls but whose phone numbers have subsequently been reassigned to a new subscriber. It is appropriate that the Commission issued a Notice of Inquiry to first evaluate its options before creating solutions beyond those already offered by vendors to help mitigate TCPA liability for good faith callers that unknowingly call reassigned numbers. Regardless of whether the Commission ultimately pursues a database-centric approach such as one of those presented in the Second NOI, EEI strongly believes that the Commission should establish some sort of safe harbor(s) for good faith callers who make reasonable efforts to avoid calls to reassigned numbers, whether by using existing vendor compliance solutions or through other tools to mitigate risk.

EEI emphasizes that revisions to the interpretation of "called party" in the FCC's 2015 TCPA Order would be the best way to solve this problem, but nonetheless supports the Commission's efforts to explore a variety of additional solutions (*e.g.*, a new database of reassigned numbers) in combination with protecting companies that use such a database from abusive litigation.

A. In view of current FCC rules on reassigned numbers, to mitigate risk, electric companies and their affiliates need timely, accurate, and affordable methods to discover all reassignments.

The great number of customers and the time sensitivity of important service communications mean that electric companies generally do not have the option to manually call each of their customers. At the same time, electric companies risk substantial fines under the TCPA.⁵ For example, a significant concern for electric companies is that a party who consents to receive outage restoration information may get more than one update in a day as a series of calls or text messages throughout the duration of a day may be needed to provide appropriate service outage and restoration information. These calls or texts could pose significant TCPA risk. The Commission's "one free call attempt" on a mistaken call to a reassigned number is not meaningful relief to an electric company because of the nature of the updates that a consenting customer anticipates (*i.e.*, a text mistakenly sent to a reassigned number will be followed with another such text). Hence, the first call to a wireless number after reassignment often will not serve as an opportunity for an electric company caller to obtain constructive or actual knowledge of reassignment especially when the company must make several calls in succession to the same number. Therefore under the present rules, to manage their risk, electric companies and their affiliates need timely, accurate, and affordable methods to discover all reassignments.

B. EEI supports establishing protections for businesses that make use of a reassigned number database or other reasonable tools to comply with the TCPA.

Separate from a change in the Commission's interpretation of "called party" in the 2015 TCPA Order, which is at the heart of the problem, a reassigned number database might be

⁵ See 2015 Omnibus Order at ¶¶ 72-84. Under the 2015 TCPA Order, callers who place non-marketing calls and texts to wireless numbers using an autodialer or prerecorded voice must have the prior express consent of the current subscriber or customary user. Robocallers may only place one call or text message to the reassigned number before they become liable for steep penalties. While there is an exception to TCPA liability in the case of a call or text made for emergency purposes, the boundaries and application of that exception are not well-settled.

helpful to reduce the risk of TCPA liability – but establishing a reassigned number database by itself, in any of the ways described in the Second NOI, will not fully provide EEI’s members with sufficient protection from TCPA liability for good faith calls.

Electric companies use robocallers to contact their customers for legitimate, time-sensitive, and important reasons, but have finite resources to reach their customers at customer-provided phone numbers. EEI is concerned that any database may be expensive to create and maintain with the result of making it difficult for regulated electric companies to afford to use a new database.⁶ Furthermore, it is not clear how a company that uses a reassigned number database could ensure immediate knowledge of a reassignment. Moreover, it would be too burdensome for electric companies, which are relying on phone numbers that are provided by their customers, to continuously access a database for every call because there is a possibility that the number has been changed since the last communication. This would likely be very expensive and inhibit the use of certain calls and texts. Thus, if the FCC acts to establish a reassigned numbers database, then it should also establish safe harbor protections for companies that use it to try to comply with the law.

To be valuable, a voluntary use of a reassigned number database should be combined with a safe harbor from TCPA liability for companies that make use of the database to locate and remove recycled numbers from their customer records.⁷ A safe harbor from TCPA liability for calls placed to reassigned numbers makes sense when a company takes steps to scrub its call lists against the database/query system in a regular and systematic way. The Commission also should extend this safe harbor to companies that make use of current TCPA compliance solutions,

⁶ See Second NOI at P 25.

⁷ See *id.* at ¶ 14.

which should help promote competition among solutions providers to the benefit of callers and customers, and to companies that take other reasonable steps to prevent calls to reassigned numbers. Establishing such protections for callers that take steps to prevent against calling reassigned numbers will encourage companies to proactively scrub their existing phone number lists to eliminate reassigned numbers.

III. Conclusion

EEI applauds FCC's efforts to help reduce the number of unwanted calls to reassigned numbers. In support of this goal, the Commission should revisit the interpretation of "called party" in the 2015 TCPA Order, as well as provide one or more safe harbor(s) from liability under the TCPA for companies that make reasonable efforts not to call reassigned numbers, especially if the Commission goes forward with any of the Second NOI's reassigned number database proposals.

Respectfully submitted,

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