

**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)	
)	
Petition for Expedited Declaratory Ruling of)	
The American Gas Association and)	
Edison Electric Institute)	

To: The Commission

**COMMENTS OF
THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

The National Rural Electric Cooperative Association (“NRECA”) respectfully submits these comments in support of the Petition for Expedited Declaratory Ruling (“Petition”) filed in the above-referenced proceeding on February 12, 2015 by the American Gas Association (“AGA”) and Edison Electric Institute (“EEI”).¹ AGA and EEI have asked the Federal Communications Commission (“Commission”) to declare that providing a telephone number, in particular a wireless number, to an energy utility constitutes the “prior express consent” required by the Telephone Consumer Protection Act of 1991 (“TCPA”)² and the Commission’s rules³ to receive non-telemarketing, informational calls at such number that relate to the customer’s utility service.

¹ Petition for Expedited Declaratory Ruling, GC Docket No. 02-278 (filed Feb. 12, 2015) (“Petition”); Public Notice, DA 15-244 (Feb. 24, 2015).

² 47 U.S.C. § 227.

³ 47 C.F.R. § 64.1200.

NRECA urges the Commission to grant the Petition because NRECA's members -- not-for-profit electric cooperatives -- and other energy utilities need relief from liability under the TCPA for important non-telemarketing, service-related calls and text messages that may be made to a customer's wireless number provided by the customer to the utility. These types of consumer-friendly communications are not made for the benefit of the utilities, but rather for the benefit of their customers. Without the declaratory ruling requested in the Petition, the TCPA requirements and threat of lawsuits arising out of a utility's alleged failure to obtain the required "prior express consent" decrease the ability of energy utilities to effectively serve their customers and provide customers with important, time-sensitive, service-related information that they need and want.

I. INTRODUCTION

NRECA is the national service organization for more than 900 not-for-profit rural electric utilities that provide electric energy to approximately 42 million people in 47 states or approximately 12 percent of electric customers. Rural electric cooperative infrastructure covers 75% of the land mass of the United States. Rural electric cooperatives were formed to provide safe, reliable electric service to their member-owners at the lowest reasonable cost. Electric cooperatives are private, non-profit entities that are owned and governed by the members to whom they deliver electricity.

NRECA member cooperatives are committed to providing safe, affordable, reliable, and efficient service to their member-owners. In furtherance of these efforts, some NRECA members have implemented notification programs to provide customers with timely service-related information. These communications may be made using prerecorded messages and automatic telephone dialing systems, and may be made to wireless phones via voice or text

messaging, in addition to residential landlines. The messages may relay important information about planned or unplanned service outages, service interruptions and restoration, natural disasters and other emergencies, prepayment programs, account balances, and demand response or energy-efficiency initiatives.

While some of the communications that electric cooperatives make to their members may be made for “emergency purposes” and are therefore exempt from the TCPA “prior express consent” requirement,⁴ many of the examples provided above do not constitute emergencies under the TCPA. They are nevertheless important non-telemarketing, informational communications that are critical to providing safe, affordable, efficient, and reliable service and meeting the cooperatives’ obligations to the communities they serve. Accordingly, NRECA supports the Petition filed by AGA and EEI seeking confirmation that a customer’s act of providing a telephone number, in particular a wireless number, to an electric cooperative constitutes “prior express consent” to receive these types of informational, service-related calls and text messages to the number provided.

II. INFORMATIONAL CALLS BENEFIT CONSUMERS

The Petition describes the importance of timely contact with energy utility customers. AGA and EEI outlined their efforts in developing and implementing notification programs to provide customers with the best and most current information regarding service issues.⁵ As explained in the Petition, consumers have generally demanded service-related calls from their utilities, and they have complained when they have not received important information relating

⁴ 47 U.S.C. § 227(b); 47 C.F.R. § 64.1200(a)(1). *See also Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, FCC 92-443, 7 FCC Rcd 8752, ¶ 51 (1992) (“1992 TCPA Order”); Petition at p. 9.

⁵ Petition at p. 3.

to their service.⁶ NRECA's member cooperatives provide similar information to their member-owners via voice and text messaging. Such communications are important so that member-owners can take steps to prepare for and/or address service-related issues and avoid possible disconnection for failure to pay amounts owed for services.

The technology that is available for communicating with customers today, such as text messaging, did not exist at the time the TCPA was enacted more than twenty years ago. Indeed, the Commission has acknowledged the tremendous expansion of wireless use since the TCPA was enacted and that "wireless services offer access to information that consumers find highly desirable."⁷ Unfortunately, however, as explained in the Petition,⁸ some plaintiffs' lawyers have taken advantage of the statutory language and used the TCPA as the basis for filing lawsuits that challenge certain types of communications and penalize entities for providing communications that actually benefit consumers.

The lack of a definitive ruling by the Commission specific to informational communications from energy utilities to their customers creates an untenable risk of litigation over whether the required "prior express consent" was obtained to send communications that their customers want and expect. While some courts have granted defendants' motions to dismiss TCPA lawsuits challenging whether the requisite "prior express consent" was obtained for non-telemarketing, informational communications,⁹ not all courts have acted in the same

⁶ Petition at p. 4, note 5.

⁷ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, FCC 12-21, 27 FCC Rcd 1830, ¶¶ 28-29 (2012).

⁸ Petition at pp. 10-12.

⁹ See e.g., *Shaya Baird v. Sabre Inc.*, NO.2:13-cv-00999-SVW-JRP, 2014 WL 5511039 (C.D. Cal. January 28, 2014) (finding that the plaintiff's act of providing a cell phone number to an

manner.¹⁰ Absent the definitive ruling requested by AGA and EEI regarding the “prior express consent” required for energy utilities to send non-telemarketing, informational communications to their customers, NRECA members and other utilities may be forced to curtail important notifications that benefit their customers. This would create situations where consumers might not receive timely information that they want and expect. Consumer-friendly, service-related communications should be encouraged, not discouraged.¹¹

III. GRANTING THE PETITION IS CONSISTENT WITH THE PURPOSE OF THE TCPA AND COMMISSION PRECEDENT

When Congress enacted the TCPA more than twenty years ago, its intent was to help consumers avoid unwanted telephone solicitations that intrude into their daily life. Congress expressly acknowledged that there are certain types of business communications that consumers want and expect to receive. The TCPA legislative history offers as examples of normal business communications that Congress deemed “expected or desired” by customers messages that “advise a customer (at the telephone number provided by the customer) that an ordered product had arrived, a service was scheduled or performed, or a bill had not been paid.”¹² The types of informational calls and texts made by NRECA member cooperatives and other energy utilities to their customers relating to their utility services are likewise expected and desired. These messages are delivered to consumers at the numbers they provide to the utilities in connection with the provision of service.

airline when booking a flight constituted “prior express consent” to be contacted via cell phone about flight-related matters and granting the defendant’s motion to dismiss).

¹⁰ See Petition at pp. 10-12.

¹¹ *Michael O’Rielly, TCPA: It is Time to Provide Clarity*, Official FCC Blog (Mar. 25, 2014) (available at <http://www.fcc.gov/blog/tcpa-it-time-provide-clarity>).

¹² House Report 102-317, 1st Sess., 102nd Cong. (1991) at 17.

With regard to how “prior express consent” for non-telemarketing calls to wireless phones should be obtained, the Commission has acknowledged that it has discretion to interpret the requirement since the TCPA is silent on the issue. The Commission has also acknowledged that “Congress did not expect the TCPA to be a barrier to normal, expected, and desired business communications.”¹³ Thus, it was not the intent of Congress or the Commission to discourage the transmission of purely informational, service-related calls and texts to wireless phones.

As explained in the Petition, the Commission has over the years issued declaratory rulings regarding application of the “prior express consent” requirement to other types of informational calls. For example, the Commission has clarified that autodialed and prerecorded message debt collection calls made to a wireless number provided by a consumer on a credit application are informational calls made with the “prior express consent” of the consumer, and therefore permitted under the TCPA.¹⁴ The Commission’s reasoning was based on a prior finding that “persons who knowingly release their phone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary.”¹⁵ These rulings serve as strong precedent for the Commission to declare that an energy utility customer’s provision of a telephone number to the utility satisfies the consent requirement for the utility to send non-telemarketing, informational calls and texts to the number provided.

¹³ *GroupMe, Inc./Skype Communications S.A.R.L. Petition for Expedited Declaratory Ruling, Rules and Regulations implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling, FCC 14-33, 29 FCC Rcd 3442 ¶ 8 (2014) (“GroupMe Order”).

¹⁴ *Rules and Regulations implementing the Telephone Consumer Protection Act of 1991, Request of ACA International for Clarification and Declaratory Ruling*, Declaratory Ruling, FCC 07-232, 23 FCC Rcd 559 ¶ 9 (2008) (“ACA Order”); Petition at p. 8.

¹⁵ ACA Order ¶ 9 (citing 1992 TCPA Order ¶ 31). *See also* GroupMe Order ¶ 10; Petition p. 8.

IV. CONCLUSION

Making informational, service-related calls and texts such as those described in the Petition is a widespread practice among energy utilities and other organizations. Consumers have overwhelmingly embraced this practice, expecting and wanting these types of messages. The Commission's TCPA policy should better promote consumer preference and not serve to inhibit these types of calls that benefit consumers and enable energy utilities to more effectively provide safe, reliable, and efficient service. NRECA therefore urges the Commission to expeditiously declare that providing a telephone number, in particular a wireless number, to an energy utility constitutes the "prior express consent" required by the TCPA to receive non-telemarketing, informational calls at such number that relate to the customer's utility service.

Respectfully submitted,

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