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

In the Matter of	)	
	)	
Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991	)	**CG Docket No. 02-278**
	)	
Petition for Expedited Declaratory Ruling of The American Gas Association and Edison Electric Institute	)	

REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

The National Association of Regulatory Utility Commissioners (NARUC) respectfully submits these comments on the *Petition for Expedited Declaratory Ruling* (*Petition*) filed in the above-captioned proceeding February 12, 2015 by the American Gas Association (AGA) and Edison Electric Institute (EEI).[1]

NARUC, a nonprofit organization founded in 1889, has members that include the government agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with regulating the activities of telecommunications,[2] energy, and water utilities.

Congress and the courts[3] have consistently recognized NARUC as a proper entity to represents the collective interests of the State public utility commissions. In the Federal

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[1] *Petition for Expedited Declaratory Ruling*, GC Docket No. 02-278 (filed Feb. 12, 2015); Public Notice, DA 15-244 (Feb. 24, 2015), online at: http://apps.fcc.gov/ecfs/comment/view?id=60001016327.

[2] NARUC's member commissions have oversight over intrastate telecommunications services and particularly the local service supplied by incumbent and competing local exchange carriers (LECs). These commissions are obligated to ensure that local phone service supplied by the incumbent LECs is provided universally at just and reasonable rates. They have a further interest to encourage unfettered competition in the intrastate telecommunications market as part of their responsibilities in implementing: (1) State law and (2) federal statutory provisions specifying LEC obligations to interconnect and provide nondiscriminatory access to competitors. *See*, *e.g.*, 47 U.S.C. § 252 (1996).

Telecommunications Act,[4] Congress references NARUC as "the national organization of the State commissions" responsible for economic and safety regulation of the intrastate operation of carriers and utilities.[5]

NARUC is very concerned that the declaratory relief sought by EEI and AGA is too broad. *However, we strongly agree that there should be no question about utilities' ability to provide both outage and post-outage service restoration notifications.*

With summer storms on the horizon, the FCC should *immediately* declare that such calls qualify as – calls made for "emergency purposes." The *Telephone Consumer Protection Act of 1991* (*TCPA*)[6] exempts calls for "emergency purposes" from its prohibitions.

It is in the public interest for the FCC to issue a declaratory ruling to construe all calls about planned and emergency service outages, service restoration information during emergencies, service restoration confirmation, and utility-related work such as meter repair/replacement work (though not meter reading notifications) and tree trimming – calls that could impact consumer service within the "called" area/area receiving the "texts", as within that emergency exemption, as described, *infra*.

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[3] See, *United States v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), aff'd 672 F.2d 469 (5th Cir. 1982), aff'd en banc on reh'g, 702 F.2d 532 (5th Cir. 1983), rev'd on other grounds, 471 U.S. 48 (1985). See also *Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976).

[4] *Communications Act of 1934*, as amended by the *Telecommunications Act of 1996*, 47 U.S.C. §151 et seq, Pub.L.No. 101-104, 110 Stat. 56 (1996) (West Supp. 1998) ("Act" or "1996 Act").

[5] *See*, 47 U.S.C. § 410(c) (1971) (NARUC nominates members to FCC Joint Federal-State Boards which consider universal service, separations, and related concerns and provide formal recommendations that the FCC must act upon; Cf. 47 U.S.C. § 254 (1996) Cf. *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where the Court explains "...Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system.) .

[6] 47 U.S.C. § 227.

Utilities must have the ability to provide consumers with information about planned or emergency outages and service restoration.

However, wireless consumers should not have to pay for other communications from utilities that they may not wish to receive.

The association is agnostic on the legal approach the Commission adopts as long as it accomplishes those goals.

If the Commission determines that the FCC cannot construe §227(b)(1)(A)&(B) "emergency purposes" to include the communications listed *infra*, then, instead of granting the AGA/EEI requested clarification, NARUC respectfully suggests the FCC should instead grant a narrow exception to the rules under 47 U.S.C. § 227(b)(2)(B)&(C) applicable to utility services generally, as described *infra*. Alternatively, NARUC would not oppose a carefully conditioned grant of Petitioner's requests, *but only if the Commission is confident that 47 U.S.C. § 227 provides the agency with authority to condition the grant of EEI and AGA's request to exclude communications regarding energy efficiency, service disconnections, bill collection, and other potentially unwelcome programs and alerts, as outlined below and only if the FCC indicates that the permitted uses will be narrowly construed*.

In support of this position, NARUC states as follows:

DISCUSSION

The AGA/EEI *Petition* asks the Federal Communications Commission (FCC or 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 *TCPA* and the Commission's rules[7] to receive non-telemarketing, informational calls at such number that relate to the customer's utility service.

Instead of granting the AGA/EEI requested clarification, the FCC should instead issue a declaratory ruling that the utility notifications listed, *infra*, are covered by the definition of "emergency purposes" and are exempt from the prohibitions in the Act.

American consumers continue to be plagued with unwanted telemarketing calls, which in many cases violate the law.

Many consumers still pay separately for each text message – particularly seniors on limited-use wireless plans. Prepaid wireless customers also pay for a specified number of minutes of use and/or text messages. Lifeline customers have a limited amount of usage available without incurring additional costs. As petitioners note on page 8 of their petition, <u>all</u> wireless customers pay "for both outgoing and incoming calls."

For these reasons, if the FCC provides any declaratory ruling on the scope of "emergency purposes," it should carefully delineate its limits and note those limits will be strictly enforced.

Customers should not have to pay for text and autodialed calls they do not wish to receive.[8]

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[7] 47 C.F.R. § 64.1200.

[8] Tech-savvy wireless subscribers that receive unwanted "informational" calls may be able to block calls from specific numbers if the service is misused and thereby also block future safety-related notifications.

A very narrowly defined declaratory ruling (or exception) that only covers public safety and the described emergency notifications is in the public interest.

The FCC should allow utilities to call/text wireless numbers *warning* about outages, repair work that might inconvenience a particular group of customers, the timing of restoration in an outage, or emergencies. Such notifications are clearly in the public interest.[9]

However, the FCC must make clear that its ruling does not extend to other "informational" texts or calls addressing energy efficiency or other utility services, service disconnection for non-payment,[10] calls concerning customer disputes, collection efforts, marketing and other commercial messages.

In terms of the specific requests listed on page 5 of the petition, it is reasonable for the FCC to clarify the rules to allow an energy utility to contact existing customers through wireless texting/calling about public safety concerns such as:

"(a) *warn[ing] about …service outages;"*

"(b) *provid[ing] updates about outages or service restoration;"*

"(c) *ask[ing] for confirmation of service restoration or information about the lack of service"* (unless the text or call references and is related to an overdue/unpaid or underpaid bill); and

"(d) *provid[ing] notification of meter work, tree-trimming, or other field work"* (but <u>only</u> when said field work is likely to inconvenience a group of the targeted homeowners).

These all can be reasonably construed to fit with the definition of "emergency purposes."

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[9] <u>See,</u> <u>e.g.</u> The Board's Review of The Utilities' Response to Hurricane Irene, Order Accepting Consultant's Report and Additional Staff Recommendations and Requiring Electric Utilities to Implement Recommendations, Docket No. EO11090543, Recommendation 23-G-3 (Bd. of Pub. Utils., N. J., Jan. 23, 2013) (recommending that utilities "provide additional methods to report and check on the status of an individual outage" including via text messaging).

[10] Most jurisdictions have in place specific procedures in place that require specific types of notification before service can be disconnected.

Even in these four use cases, customers should retain the ability to opt out of receiving such messages.

It is *not* reasonable for a utility to use texts/auto-dialed calls to wireless phones to:

(e) *verify eligibility for special rates or services, such as medical, disability, or low-income rates, programs and services;*

(f) *warn about payment or other problems that threaten service curtailment;* or

(g) *provide reminders about time-of-use pricing and other demand-response events*.

Any declaration or exception granted should not permit these uses.

Utilities should *not* be able to send texts or auto-dial calls "informing their consumers about, and encouraging participation in, conservation, energy efficiency, demand response, and other demand-side management programs."

Utilities should *not* be able to utilize any FCC waiver to facilitate any communications that smack of bill collections or any kind of marketing.

Many consumers sign up for the national do-not-call list expecting it will block exactly these types of texts/spam and auto-dialed calls.

If a customer is interested in reminders/text messages/autodialed calls covering (e), (f) or (g), they can provide written permission at the time they (1) sign up for the special rate or service, or (2) sign up to participate in demand-response programs.[11]

Electric and gas utilities should have the ability to contact their customers to inform them of emergency situations and about possible service curtailment, outages, service restoration, or fieldwork in their area that might or will impact service.

[11] Energy customers may elect to provide an email address to receive "marketing" information related to their service without incurring usage charges.

State commissions have a particular interest in the ability of energy utilities to communicate with consumers and often take them to task for failure to keep customers informed when their service is impacted.

However, we want to make sure wireless consumers do not have to pay for or receive unwanted solicitations/information from their energy utility. The FCC should grant the narrow clarification/exemption as outlined, *supra*.

CONCLUSION

With summer storms on the horizon, the FCC should act expeditiously to declare that such calls qualify as "emergency calls" exempt from TCPA requirements, as described, *supra*. If the Commission cannot construe §227(b)(1)(A)&B "emergency purposes" to include the listed communications, infra, then, instead of granting the AGA/EEI requested clarification, NARUC respectfully suggests the FCC should provide instead grant a narrow exception under 47 U.S.C. § 227(b)(2)(B)&(C) applicable to utility services generally, as described *supra.*[12] NARUC respectfully requests the agency incorporate the positions listed, *supra*, in its final rules in this proceeding.

Respectfully Submitted,

James Bradford Ramsay
GENERAL COUNSEL
National Association of Regulatory Utility Commissioners
1101 Vermont Ave, NW Suite 200
Washington, DC 20005
202.898.2207

April 10, 2015

[12] NARUC would not oppose a carefully conditioned grant of Petitioner's requests, *but only if the Commission is confident that 47 U.S.C. § 227 provides the agency with authority to condition the grant of EEI and AGA's request to exclude communications regarding energy efficiency, service disconnections, bill collection, and other potentially unwelcome programs and alerts, as outlined*.