

**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

**REPLY COMMENTS OF THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Introduction and Summary**

The Pennsylvania Public Utility Commission (Pa. PUC) files these Reply Comments in accordance with the Public Notice (PN) in CG Docket No. 02-278, DA 15-244 issued by the Federal Communications Commission (FCC or Commission) on February 24, 2015, soliciting comments on the Expedited Petition of Edison Electric Institute (EEI) and American Gas Association (AGA) for expedited declaratory ruling under the Telephone Consumer Protection Act (TCPA)<sup>1</sup>. Comments were due on or before March 25, 2015, and Reply Comments are due on or before April 10, 2015.

As an initial matter, these Reply Comments should not be construed as binding on the Pa. PUC in any matter before the Pa. PUC. Moreover, the Pa. PUC's position set forth in these Reply Comments could change in response to later events, including Ex Parte filings, legal proceedings or other regulatory developments at the state or federal level. The Pa. PUC urges the Commission to issue a declaratory order that determines that non-telemarketing, informational communications, placed using an autodialer or a prerecorded or artificial voice, by regulated public utilities to customers about their utility

---

<sup>1</sup> 47 U.S.C. § 227.

service at the number provided by the customer in connection with their utility service does not violate the TCPA.

## **Background**

On February 12, 2014, EEI and AGA filed their petition for expedited declaratory ruling (Joint Petition) requesting that the Commission confirm, under the TCPA, that providing a telephone number to an energy utility constitutes “prior express consent” to receive, at that number, non-telemarketing, informational calls related to the customer’s utility service, which are placed using an automatic telephone dialing system (“autodialer”) or an artificial or prerecorded voice. EEI and AGA have indicated that their members often need to contact their customers, for example, to: provide notification about planned or unplanned service outages; provide updates about outages or service restoration; ask for confirmation of service restoration or information about the lack of service; provide notification of meter work, tree-trimming, or other field work; or warn about payment or other problems that threaten service curtailment.

With regard to such notifications, EEI and AGA stated that their members have long used prerecorded message telephone calls and autodialers to reach their customers about service or other related issues. As utility customers increasingly have transitioned to using wireless phones, EEI and AGA note that their members also have transitioned to using new technologies for notifying their customers, including using wireless-only technologies, such as text messaging. Thus, according to EEI and AGA, its member utilities use automated texting technologies to notify customers who have provided wireless numbers with information on service or other related issues. In light of these developments, EEI and AGA requested the Commission to clarify that nontelemarketing,

informational communications, placed using an autodialer or a prerecorded or artificial voice, to customers about their utility service at the number provided by the customer in connection with establishing or continuing their utility service do not violate the TCPA. The Pa. PUC's Reply Comments adopt many of the positions of the utility's supporting the Joint Petition and requesting the FCC to provide clarification on this matter.

## **Discussion**

The Pa. PUC does not oppose the Joint Petition, and we agree that the Commission should clarify whether regulated public utilities can continue to employ emerging communication technologies to contact their diverse customers, including public safety entities, government users, enterprise customers, and consumers, with time-sensitive information related to their utility service. The Pa. PUC agrees with those commentators that assert that such a ruling will assist public utilities in providing safe, reliable and affordable utility service to their customer base. The Pa. PUC acknowledges that utility companies need to be able to communicate in real time with customers about matters that directly affect their service, such as: planned or unplanned service outages and status of service restoration, and natural disasters.

Accordingly, the Pa. PUC urges the Commission to issue a Declaratory Ruling that determines that the utility customer's provision of a telephone number, including a cellphone number, to a regulated public utility satisfies the TCPA consent requirements for such customer to receive non-telemarketing, informational calls from said utility about the customer's utility service. However, the Pa. PUC asserts the Commission should limit the messaging to issues related to *emergencies and service outages*, unless the customer opts in to receiving messaging for all of the other options like marketing, billing notifications, and energy efficiency/demand response programs. In other words, the default message setting should be limited to emergencies and service outage

information, with the customer retaining the option to receive all other non-emergency, non-outage-related messages.

At the same time, it is imperative that customers be able to tailor the alerts they receive, or even opt out entirely, as permitted by the TCPA. Thus, customers should always retain the choice to opt out of all utility messaging, in case any of those customers did not want to receive informational messages, including messages about emergencies and service outages.

Alternatively, if the Commission finds that a utility customer's provision of a telephone number, including a cellphone number, to a regulated public utility does not satisfy the applicable consent requirements, the Pa. PUC agrees with certain commenters that the Commission should grant a narrow waiver of the rule applicable to utility services generally. The narrow waiver would permit water, electric, and gas utilities to contact their customers about *emergencies and service outage information only*. Any waiver, however, would not include messaging about energy efficiency/demand response programs, bill collections, or any kind of marketing.

## **Conclusion**

To ensure customers receive important notifications, the Commission should clarify that a customer has given "prior express consent" to receive non-telemarketing, informational communications related to the customer's utility service upon providing a phone number to the utility company. However, to the extent there is a valid concern that customers might receive be inundated with too many messages or messages that they would not want to receive from the utilities, the Pa. PUC suggests that the default setting of the messaging system should be limited to issues related to service provision and emergencies unless customers opt in to receive all of the other messaging options. Furthermore, an opt-out option, even for the "default" messaging should always be available to customers who would seek to limited unwanted messages.

The Pa. PUC appreciates this opportunity to file Reply Comments in this proceeding.

Respectfully submitted,

/s/\_\_\_\_\_

David E. Screven  
Assistant Counsel  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105

Dated: April 10, 2015