

August 10, 2015

**EX PARTE**

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Re: *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278

Dear Ms. Dortch:

On August 6, 2015, Traci Braun of Exelon Corp., Aryeh Fishman of Edison Electric Institute (“EEI”), Jennifer Bagg and Kristine Devine of Harris, Wiltshire & Grannis, and I met with Alison Kutler, John Adams, Christina Clearwater, and Beau Finley of the Consumer & Governmental Affairs Bureau.

We discussed EEI’s pending Petition for Expedited Declaratory Ruling filed in this docket on February 12, 2015. In particular, we discussed the unique position of EEI’s members as highly regulated public utilities whose industry defines the phrase “critical infrastructure.” We noted that there is little, if anything, more important to the health and welfare of the public than the safe, consistent, and efficient provision of electric power. Any interruption or disruption of that power has strong health and safety implications.

Because of the critical importance of electric power, our customers—unlike consumers of other services—truly want to receive messages from their electric utilities about planned and unplanned outages, service restoration, potential disconnections due to failure to pay a bill, and eligibility for subsidies because of disability or income. We noted that, in many states, EEI’s members are, in fact, required to make some, if not all, of these calls to their customers by the state regulator.

At the same time, however, uncertainties about the scope of the TCPA has created an untenable litigation risk for electric utilities. We discussed the class action lawsuit filed against ComEd, in which that utility faced potential damages of between 600 million and 1.8 billion dollars. The financial risk presented by that suit led ComEd to curtail its two-way power outage notification program, even though its customers liked the program and now complain they aren’t receiving expected outage-related texts. The chilling effect on communications to utility consumers—communications those consumers want to receive—is just one unintended consequence of the uncertainty in this area.

Ms. Marlene H. Dortch

August 10, 2015

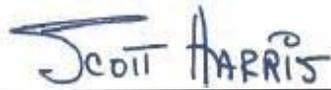
Page 2 of 2

We noted that the record reflects extraordinary support for EEI's petition, not only from industry but also from state officials and consumer advocates. We pointed out that EEI narrowed its request in response to concerns raised by some commenters, agreeing to omit post-termination debt collection calls and calls about demand-response pricing. And we discussed the importance of granting EEI's relief by defining the scope of "consent" rather than by defining what constitutes an emergency communication because doing so will allow consumers to opt out of communications if they choose to do so.

Finally, we reiterated the importance of quick action on EEI's petition, particularly as hurricane season ramps up and winter approaches.

Pursuant to the FCC's rules, I have filed a copy of this notice electronically in the above-noted proceedings. If you require any additional information please contact the undersigned.

Respectfully submitted,

A handwritten signature in blue ink that reads "SCOTT HARRIS". The signature is written in a cursive style with a horizontal line underneath it.

Scott Blake Harris

*Counsel to the Edison Electric Institute*

cc: John Adams  
Christina Clearwater  
Beau Finley  
Alison Kutler