

September 30, 2015

EX PARTE

Marlene Dortch
Secretary
Federal Communications Commission
445 12th 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:

The record reflects a broad consensus that the declaratory ruling requested in the pending Edison Electric Institute (“EEI”) petition, and modified by EEI’s June 9, 2015, letter, should be granted.¹ Industry, state utility regulators, and even consumer advocates have shown little opposition to EEI’s request for a declaration that providing a telephone number to an energy utility constitutes “prior express consent” under the Telephone Consumer Protection Act (“TCPA”) to receive non-telemarketing, informational calls at that number related to the customer’s utility service.

Recently, however, several groups led by the National Consumer Law Center (“NCLC”) weighed in, opposing some of the calls in the EEI petition.² NCLC’s position is, however, simply inconsistent with the data in the record about what energy consumers want. NCLC just assumes that energy consumers have little more interest in hearing from their electric utility. But in this they are simply mistaken.

The real problem is that NCLC implicitly treats electric service as an ordinary good or service. It is not. *Electricity is a necessity* to survive in a modern society: it provides heat, light, and cooling; it is needed to keep food and to cook food; it allows one to connect to the outside world through the internet and through the use of mobile phones; and in rural areas it is often necessary for access to water. The loss of electricity—even temporarily—is a major event to anyone it affects. And to those who lose electricity, it simply does not matter whether one family affected or one thousand families are affected. Moreover, it does not matter if the electricity is out because of a hurricane, a blown transformer, line work, or unpaid bills. Thus, it is no surprise that all of the evidence indicates that consumers want to hear from their utilities about their electric service.

¹ Petition for Expedited Declaratory Ruling of Edison Electric Institute and American Gas Association, CG Docket No. 02-278 (filed Feb. 12, 2015); Letter from Scott Blake Harris, Counsel, EEI, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278 (filed June 9, 2015) (“EEI June 9 Letter”).

² Letter from Margot Saunders, National Consumer Law Center, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278 (filed Aug. 24, 2015) (“NCLC August Ex Parte”).

Indeed, study after study and myriad media reports show that consumers want more, not less, contact from their power companies.³ For example, a recent nationwide electric utility customer satisfaction survey conducted by J.D. Power concluded that while “[u]tility companies are doing a better job at the fundamentals—minimizing service interruptions, communicating with customers and improving customer service” *consumers felt that “[p]roactive communication during power outages remains a challenge, suggesting that utilities should focus on improving in this area.”*⁴ Another study concluded that “[d]issatisfied customers . . . predominantly expressed a need for more information” and “customers can be positively influenced with diverse message content and multiple communication channels.”⁵ Regulators have also called on utilities to implement and improve upon consumer-friendly communications protocols.⁶

Given this data, it is not surprising that the New Jersey Division of Rate Counsel—whose exclusive mission is to protect utility consumers—concurred with the majority of EEI’s petition.⁷ In particular, Rate Counsel recognized “the importance of communications from public utilities with their customers on emergent issues that directly affect public safety and health and the provision of safe, adequate and reliable service.”⁸ Rate Counsel agreed that the FCC should grant EEI’s request with regards to all the categories of calls that EEI originally proposed except for collection calls and calls related to demand response pricing. EEI subsequently eliminated the calls to which Rate Counsel objected and narrowed its request.⁹

³ Of course, customers also want the freedom and ability to opt out of receiving unwanted calls, something EEI has acknowledged in this proceeding. EEI June 9 Letter at 2. Indeed, even NCLC acknowledges that customers may be “unable to refuse to provide [a] number” to a utility company, Letter from Margot Saunders, National Consumer Law Center, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278, at 5 (filed Sept. 22, 2015) (“NCLC September Ex Parte”)—even more reason to ensure that customers have the ability to opt out of such calls. But NCLC’s proposals—including to deem any permissible calls from a utility to its customer to be “emergency” calls—would deprive consumers of this ability.

⁴ See Press Release, *J.D. Power Reports: Communicating with Customer and Higher Price Satisfaction Increase Overall Satisfaction for Residential Electric Utilities*, J. D. Power McGraw Hill Financial (July 15, 2015); see also, e.g., Letter from Scott Blake Harris, Harris, Wiltshire & Grannis, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278, at 2 (June 9, 2015) (“EEI Ex Parte”);

⁵ Mark Konya & Kathy Ball, *Customer Perception and Reality: Unraveling the Energy Customer Equation*, Paper 1686-2014, SAS Institute and Ameren Missouri, at 10 (2014). See also Reply Comments of Edison Electric Institute and American Gas Association, CG Docket No. 02-278, at 3-4 (filed Apr. 10, 2015).

⁶ See, e.g., Reply Comments of the Pennsylvania Public Utility Commission at 4, CG Docket No. 02-278 (filed Apr. 10, 2015); *Ike and Ice: The Kentucky Public Service Commission Report on the September 2008 Wind Storm and the January 2009 Ice Storm*, at B19 (Nov. 19, 2009) (“Automated outbound calling (similar to reverse 911 systems) could serve as an effective means of providing customer-specific restoration updates....The Commission also recommends that utilities explore the possibility of developing such outbound information services based on e-mails or text messages to wireless devices designated by customers.”)

⁷ Reply Comments of The State of New Jersey Division of Rate Counsel, CG Docket No. 02-278 (filed Apr. 9, 2015).

⁸ *Id.* at 1.

⁹ *Id.* at 2-3; EEI June 9 Letter at 3.

But NCLC says utilities should be limited to making emergency calls and that the Commission should declare that many outage related calls are *not* emergency calls. The positions NCLC has taken, outlined below, do not help consumers and are inconsistent with their wishes.

1. NCLC argues that consumers should not receive a notification that they are about to have their electricity turned off due to failure to pay utility bills unless “there is a threatened disconnection in the middle of winter or during a heat wave.”¹⁰ *But electricity is vital to consumers regardless of the outside temperature. Without electricity, consumers cannot use any common household appliances required for cooking, cleaning, or computing, and will lose food that can no longer be refrigerated. For those in rural America who rely on well systems for access to water, no electricity also means no water.*
2. NCLC further argues that calls about impending service termination for unpaid bills constitute harassment since “[i]t makes little sense to burden these consumers with robocalls . . . in an attempt to harass them into paying a bill they cannot afford.”¹¹ NCLC also claims that service-related calls from a utility are a particular burden for Lifeline customers.¹² But the evidence is otherwise. *Electric utility companies that provide notifications to consumers who are about to lose their service have found that up to 80% of those customers are able to avoid service termination.¹³ In other words, the majority of utility customers are able to avoid service disconnection simply by receiving a notification from their utility company. As EEI and others have noted, many state utility regulators recognize the importance of such notifications and obligate utilities to contact a customer facing service disconnection due to an unpaid bill.¹⁴ And Lifeline service is specifically designed to “help low-income Americans afford access to vital communications”¹⁵—including communications about critical services like electricity.*
3. NCLC, unlike Rate Counsel, does not believe that utilities should let customers who are having troubles paying their bills know that they may be eligible for subsidies and says consent for such calls should only be inferred where a customer has called to inquire about such programs.¹⁶ *NCLC does not say how a customer is supposed to know to ask about subsidies if they cannot be told about them by the utilities. A consequence of NCLC’s position is that a customer could lose electricity for non-payment even though a subsidy that could have helped with the electric bill was available.*

¹⁰ NCLC August Ex Parte at 4.

¹¹ NCLC August Ex Parte at 4 (“It makes little sense to burden these consumers with robocalls . . . in an attempt to harass them into paying a bill they cannot afford.”).

¹² NCLC September Ex Parte at 3.

¹³ EEI June 9 Letter at 4.

¹⁴ Reply Comments of the National Association of Regulatory Commissioners, CG Docket No. 02-278, at 5 (filed Apr. 10, 2015) (“NARUC Comments”); EEI Ex Parte at 3-4.

¹⁵ Tom Wheeler, Chairman, FCC, *A Lifeline for Low-Income Americans*, OFFICIAL FCC BLOG (May 28, 2015), <https://www.fcc.gov/blog/lifeline-low-income-americans>.

¹⁶ NCLC August Ex Parte at 5.

4. NCLC also asserts that the FCC should limit emergency calls to natural disasters, disconnections during certain seasons, or “where the utility has reason to know that someone in the household relies upon electricity to operate equipment required for their health or safety.”¹⁷ *But as noted above, the loss of electricity can be life-threatening in any season. And the loss of electricity can be life-threatening for any reason, whether caused by a “disaster” or non-disaster and regardless of whether a disaster is natural or man-made. NCLC also does not explain how a utility is supposed to know that a customer has a special need for electricity for health reasons, but surely any mechanism for discovering and documenting utility customer health issues is more intrusive than providing customers with an outage notification.*

At bottom, NCLC asks the Commission to prevent electric utilities from making autodialed calls to wireless phones “on any subject remotely related to the provision of utility service.”¹⁸ That position, though, fundamentally misunderstands the nature of electric service. Calls related to service outages and restoration, and to subsidies and other programs are, in fact, calls related to the “specific purpose for which the number was provided.”¹⁹ If calls about service outages to a wireless number given to a service provider when ordering that service are not related to the “specific purpose” for which that number was provided, then what would be?

EEI asks the Commission to move quickly to grant its petition, which reflects consumer needs and wishes, and would enable utilities to reach out to their consumers with critical service-related information.

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, slightly stylized font.

Scott Blake Harris
Counsel to the Edison Electric Institute

cc: John Adams, Christina Clearwater, Beau Finley, Alison Kutler

¹⁷ NCLC August Ex Parte at 4, 5.

¹⁸ NCLC September Ex Parte at 5.

¹⁹ *Id.*