

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of	)	
1991	)	

**COMMENTS OF THE EDISON ELECTRIC INSTITUTE AND  
THE NATION RURAL ELECTRIC COOPERATIVE ASSOCIATION**

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July 31, 2023

## SUMMARY

The Edison Electric Institute (“EEI”) and the National Rural Electric Cooperative Association (“NRECA”) (collectively the “Utility Associations”) support the goals of protecting customers against unlawful robocalls and ensuring that customers continue to receive important, time-sensitive information they rely on from electric companies. Accordingly, Utility Associations submit these comments in response to the Notice of Proposed Rulemaking issued by the Federal Communications Commission (“FCC” or Commission”), which proposes to clarify and strengthen customers’ ability to grant or revoke consent to receive robocalls and robotexts under the Commission’s rules pursuant to the Telephone Consumer Protection Act of 1991 (“TCPA”).

As public utilities, the Utility Association’s respective members have been requested by their customers, and required in many instances by their regulators, to provide notifications about service interruptions, information about the status of facility repair efforts, service restoration, updates, and other similar information. Overall satisfaction among customers who receive information closely related to their electric service is much higher than among those who do not receive such information. Nonetheless, the Utility Associations support the Commission’s effort to make clear that customers have the right to decide which robocalls and robotexts they wish to receive by exercising their ability to grant or revoke consent to receive such calls and texts. Moreover, given that utilities face significant liability under the TCPA, it is beneficial for the Commission to codify and clarify caller’s obligations under the Commission’s rules to honor such requests in a timely manner.

As electric utilities do confront ambiguous expressions of intent by customers to revoke consent, the Commission should clarify reasonable methods for revocation requests and provide a caller with a rebuttable presumption of reasonableness where clear and conspicuous instructions for the customer to revoke consent are provided. The Commission should clarify what language the callers can consistently use without risk of costly litigation so that the processes and procedures for honoring revocation requests can be automated and therefore expedited at reduced costs to customers. Additionally, to encourage callers to automate the process of honoring revocation requests, the Commission should encourage callers to aid customers by providing clear and conspicuous instructions for revocation methods that are not burdensome to implement.

Revocation requests should be honored in a reasonable time, and the Commission should clarify that non-telemarketing, informational callers must honor such requests within 10-business days. It is not reasonable for the Commission to set a 24-hour deadline for callers to honor these requests. Such a deadline does not reflect the process and procedures or technological capabilities of electric companies, particularly in absence of the Commission delineating standardized means to revoke consent. Providing callers with 10 business days to honor revocation requests would allow sufficient time for hand-offs between vendors and business units, and would avoid problems and costs associated with the scenario of revocation requests that come in on weekends and holidays, or have been misdirected.

Finally, the Commission should clarify that callers may send a one-time text-message to confirm and clarify the scope of revocation requests. The Commission should find that a

customer's revocation of consent is limited to the type of message to which the customer has replied. Given that electric service customers may sign up for multiple types of texts and calls from any electric company, it is problematic for the Commission to find that a customer's lack of response to such a request for clarification expresses the intent to revoke consent to all communications.

## **TABLE OF CONTENTS**

<b>I. The importance of electric service-related communications. ....</b>	<b>7</b>
<b>II. Electric companies face significant liability under the TCPA. ....</b>	<b>9</b>
<b>III. The Commission should clarify reasonable methods for revocation requests and provide a caller with a rebuttable presumption of reasonableness where clear and conspicuous instructions to revoke consent are provided. ....</b>	<b>9</b>
<b>IV. The Commission should clarify that non-telemarketing, informational callers must honor opt-out requests within 10-business days. ....</b>	<b>14</b>
<b>V. The FCC should clarify that callers may send a one-time text message to confirm and clarify the scope of a revocation request. ....</b>	<b>16</b>
<b>VI. Callers need a reasonable transition period to comply with proposed rule changes. ....</b>	<b>17</b>

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The Edison Electric Institute (“EEI”) and the National Rural Electric Cooperative Association (“NRECA”) (collectively the “Utility Associations”) support the goals of protecting customers against unlawful robocalls and ensuring that customers continue to receive important, time-sensitive information they rely on from electric companies. Accordingly, Utility Associations submit these comments in response to the Notice of Proposed Rulemaking issued by the Federal Communications Commission (“FCC” or Commission”),<sup>1</sup> which proposes to clarify and strengthen customers’ ability to grant or revoke consent to receive robocalls and robotexts under the Commission’s rules pursuant to the Telephone Consumer Protection Act of 1991 (“TCPA”).<sup>2</sup>

**INTRODUCTION & SUMMARY**

EEI is the association that representing all U.S. investor-owned electric companies. EEI members provide electricity for more than 235 million Americans and operate in all 50 states

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<sup>1</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking, CG Docket No. 02-278, 88 FR 42034 (June 9, 2023) (“NPRM”).

<sup>2</sup> Pub. L. No. 102-243, 105 Stat. 2394, codified at 47 U.S.C. § 227 et seq. (“TCPA”).

and the District of Columbia. The electric power industry supports more than seven million jobs in communities across the United States. EEI members invest more than \$140 billion annually to make the energy grid smarter, cleaner, more dynamic, more flexible, and more secure; to diversify the nation's energy mix; and to integrate innovative technologies that benefit both customers and the environment.

NRECA is the national service organization for more than 900 not-for-profit rural electric cooperatives that provide electric energy to approximately 42 million people in 48 states -- approximately 12 percent of all U.S. electric customers. Rural electric cooperatives serve 88% of U.S. counties, including 327 of the Nation's 353 "persistent poverty counties." All but three of NRECA's member cooperatives are small businesses as defined by the U.S. Small Business Administration. In addition, over 200 NRECA members provide, or are working towards providing, commercial fixed broadband service today, deploying fiber-based, fixed wireless or combination fiber and fixed wireless networks to fill gaps not met by traditional telecommunications providers.

Our collective electric utility members are major users of telecommunications systems to support the goals of clean power, grid modernization and enhancing customer experience. They also participate in unique mutual assistance programs to help restore power to customers in the event of emergencies and outages. On behalf of the owners and operators of a significant portion of the U.S. electricity grid, EEI and NRECA have filed comments before the Commission in various proceedings affecting electric utilities' telecommunications rights and obligations that are impacted by the FCC's rules and policies. Accordingly, the Utility Associations and their

members have a strong interest in the Commission's various proposals to protect American consumers, including electricity customers, from unwanted and illegal robocalls, while also protecting legitimate, good-faith callers from abusive TCPA class action litigation. As public utilities, the Utility Association's respective members have been requested by their customers, and required in many instances by their regulators, to provide notifications about service interruptions, information about the status of facility repair efforts, service restoration, updates, and other similar information.

## **COMMENTS**

### **I. The importance of electric service-related communications.**

Electric utilities are committed to providing safe, reliable, and efficient service. In furtherance of these efforts, many utilities have implemented notification programs to provide customers with the most-up-to-date information regarding service issues. The notifications placed by electric utilities may convey information about planned or unplanned outages, service curtailment, service restoration, notice of eligibility for subsidized or low-cost service, natural disasters and other emergencies, delinquent bills that could lead to a cessation of service, and low-balance alerts that allow customers to manage electric bills and consumption. In addition to voice calls to residential landlines, communications may also be initiated to wireless phones via voice calls and via text messaging. Using these technologies increases the speed and reliability with which energy utilities can disseminate critical and potentially life-saving communications and decreases the costs associated with providing such notice to customers.



Electric customers need and demand this type of information. Some state regulations mandate notification programs,<sup>3</sup> and in other cases, electric utilities have adopted these programs at the urging of regulatory authorities. Electric utilities are sensitive to customer complaints and strive to improve customer service by doing what they can to contact customers about service-related issues.

The elimination of, or a limitation on, an electric utility's ability to provide automated communications to customers would decrease customer satisfaction and increase the cost of delivering this important information, while simultaneously increasing the risk that important information goes unnoticed by customers.<sup>4</sup> The great number of electricity customers and the time-sensitivity of important service communications means that electric utilities generally do not have the option to manually call each of their customers, particularly during emergency situations. In addition to cost,<sup>5</sup> utilizing live agents to make a large volume of outbound calls would significantly degrade service provided to customers who contact a utility for regular business issues.

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<sup>3</sup> See, e.g., *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).

<sup>4</sup> For example, according to the J.D. Power 2017 Electric Utility Residential Customer Satisfaction Study, overall satisfaction among customers who receive outage information is much higher than among those who do not receive such information. <https://www.jdpower.com/business/press-releases/jd-power-2017-electric-utility-residential-customer-satisfaction-study>

<sup>5</sup> Outbound calls can be delivered for significantly less than as compared to a live agent call or a letter delivered via the US Postal Service.

## **II. Electric companies face significant liability under the TCPA.**

Like numerous other businesses throughout the country, despite good-faith compliance efforts, some electric utilities have been subject to TCPA litigation. Also, like many of the other TCPA defendants, the electric utilities subject to TCPA litigation were not engaged in the type of unsolicited telemarketing calls that the TCPA was intended to restrict. Rather, they were trying to efficiently communicate important, time-sensitive, service-related information to their customers.

The Commission has recognized the importance of electric utilities' notification programs and has confirmed that, under the TCPA, providing a wireless or residential telephone number to an electric company constitutes "prior express consent" to receive, at that number, non-telemarketing, informational calls closely related to the customer's electric service, which are placed using an autodialer or an artificial or prerecorded voice.<sup>6</sup>

## **III. The Commission should clarify reasonable methods for revocation requests and provide a caller with a rebuttable presumption of reasonableness where clear and conspicuous instructions to revoke consent are provided.**

The NPRM proposes to codify the 2015 Declaratory Ruling and Order,<sup>7</sup> wherein the Commission concluded that "a called party may revoke consent at any time through any reasonable means" – orally or in writing – "that clearly expresses a desire not to receive further

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<sup>6</sup> *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Backboard, Inc., Petition for Declaratory Ruling, Edison Electric Institute and American Gas Association, Petition for Expedited Declaratory Ruling, CG Docket No. 02-278, Declaratory Ruling, 31 FCC Rcd 9054, FCC 16-88 (Aug. 4, 2016); *see also In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Order on Reconsideration and Declaratory Ruling, FCC 22-100 (Dec. 27, 2022).

<sup>7</sup> *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 30 FCC Rcd 7961, 7999, (July, 10, 2015)("2015 Declaratory Ruling and Order").

messages.”<sup>8</sup> In that decision, the Commission indicated that to assess whether a revocation request meets the “reasonable means” standard, it would consider “the totality of the circumstances.”<sup>9</sup> In the NPRM, the Commission specifically proposes that customers may revoke consent through any reasonable means including using the words such as “stop,” “revoke,” “end,” or “opt out.”<sup>10</sup> The NPRM proposes to clarify that callers may not infringe on that right by designating an exclusive means to revoke consent that precludes the use of any other reasonable method.<sup>11</sup> Additionally, the NPRM states that reasonable methods to revoke consent typically include revocation requests made by text message, voicemail, or email “to any telephone number or email address at which the consumer can reasonably expect to reach the caller.”<sup>12</sup> Under this approach, the NPRM proposes that when a customer uses any reasonable method to revoke consent, doing so creates a presumption that the customer has revoked consent, absent evidence to the contrary.

Although the NPRM states that words “such as ‘stop,’ ‘revoke,’ ‘end,’ or ‘opt out,’”<sup>13</sup> clearly express a customer’s desire not to receive further calls or text messages, it does not prescribe or describe what other words may be reasonable or unreasonable. For example, the NPRM does not address whether a customer that texted a “no,” an “x”, an emoji, or an

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<sup>8</sup> See *id.* at 7989-90.

<sup>9</sup> See *id.* at 7996.

<sup>10</sup> See NPRM at 9.

<sup>11</sup> See *id.*

<sup>12</sup> See *id.* at ¶ 10.

<sup>13</sup> See *id.* at 9.

obscurity has clearly expressed a desire not to receive further calls or text messages.<sup>14</sup> The NPRM also does not clarify whether misspelled words are reasonable means to revoke consent.

As noted, the NPRM also broadly proposes that reasonable methods to revoke consent typically include revocation requests made by text message, voicemail, or email to **any** telephone number or email address at which the consumer can expect to reach the caller. However, the NPRM does not clearly delineate what "reasonably expect to reach the caller" means. For example, the NPRM does not address at the extreme whether a customer can email any electric company employee or leave a voicemail at any number associated with the electric utility. Additionally, the NPRM does not discuss the situation when a caller sends a text message to a customer and the text recipient subsequently seeks to revoke consent by voicemail or email to a telephone number or email address not specified in the caller's initial communication. It is challenging for callers to address this type of scenario because it would be difficult to determine which outbound messages the recipient wishes to opt-out of when the customer did not use the method utilized by the caller for the initial outbound message.

Given the lack of specificity in the proposed rule, the caller would be forced rely on human resources to perform additional interpretations of revocation requests and monitoring to redirect misdirected customer communications in lieu of automating the process for honoring revocation requests. Hence, holding as reasonable revocation requests made by text, voicemail, and email without specifically designating appropriate parameters compounds the

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<sup>14</sup> The Utility Association members have received a wide variety of responses that include obscenities, but also ambiguous language such as "I prefer not to receive...", "I hate you," "stop bothering me," and "oh yes?"

unworkability of the proposed 24-hour period for honoring revocation requests. In sum, the proposed rule is overbroad in that it presumes nearly all responsive communications to be “reasonable” regardless of whether a customer could have used a readily available option provided by the caller or text sender but failed to do so.

To balance the interests of callers and customers, including facilitating automation to expedite requests and reduce costs for all customers, the Commission need not designate exclusive means to revoke consent, but should further clarify what methods of revoking consent are “reasonable” under its proposed new rule. For automation to work to the benefit of customers, there needs to be language that callers can consistently use without risk of costly litigation. Hence, it is a good first step for the Commission to find that sending a STOP message in response to a message that indicates the texting protocol allows for reply texts is a reasonable means of opting out. The Commission should further clarify that the language “revoke,” “end,” and “opt out,” as well as other industry standard language to revoke prior express consent, such as “cancel,” and “unsubscribe,” are also reasonable. Standardizing the language that constitutes reasonable responses should make it more likely callers’ processes may be automated and therefore expedited at reduced costs to customers.<sup>15</sup> Therefore, the Commission should amend its proposed rule to clarify that sending “STOP” ***or other words or phrases specified by the text sender*** in a reply to an incoming text message creates a presumption that the customer has revoked consent in a reasonable way.

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<sup>15</sup> The Commission should develop the record regarding what additional language texting platforms may allow for revocation requests when customers reply to texts.

The Commission should also find that the burden should be on the call or text recipient to demonstrate by clear and convincing evidence that an alternative method used by said individual to revoke consent was reasonable where a caller or text sender provides clear and conspicuous instructions to revoke consent by: (i) an automated, interactive voice- and/or key press-activated opt-out mechanism, in accordance with 47 C.F.R. § 64.1200 (b)(3); (ii) a toll-free telephone number or email address that permits the call or text recipient to revoke consent; and/or (iii) a reply text, using a word or phrase specified by the text sender.<sup>16</sup> This approach would encourage callers to automate the process of honoring revocation requests, and aid customers by providing clear and conspicuous instructions for revocation methods that are not burdensome to implement, all of which is to the benefit of customers.

Finally, the Commission should amend its proposed rule so that when a call or text recipient uses the method of revoking consent indicated in the initial communication (e.g., a reply text message, voicemail, email to a telephone number or email address ***provided by the caller or text sender***) there is a rebuttable presumption that the customer has revoked consent absent evidence to the contrary.<sup>17</sup> For example, a customer using FCC-approved language, as discussed above, and following instructions with regard to channels to convey the revocation request, as were indicated in the initial communication, would create a rebuttable presumption

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<sup>16</sup> In *ACA International, et al., vs. FCC, et al.*, 885 F.3d 687, 710 (2018) (DC Cir.), the court reasoned, that if recipients sidestep the available methods in favor of “idiosyncratic or imaginative revocation requests” might well be seen as unreasonable and “betray the absence of any ‘reasonable expectation’ by the consumer that she could ‘effectively communicate’ a revocation request in the chosen fashion.”

<sup>17</sup> NPRM at 10.

that that customer has revoked consent to receive further communications notwithstanding a one-time confirmation, as discussed below.

Towards these approaches, the Utility Associations have provided proposed regulatory language for revising 47 C.F.R § 64.1200 as Appendix A, attached with these comments.

**IV. The Commission should clarify that non-telemarketing, informational callers must honor opt-out requests within 10-business days.**

The Commission's rules currently do not provide a specific deadline for honoring opt-out and revocation of consent requests for robocalls and robotexts made to residential or wireless telephone numbers.<sup>18</sup> The NPRM proposes to require that all requests to revoke prior express consent and prior express written consent made in a reasonable manner must be honored in a reasonable time not to exceed 24-hours from receipt of such a request.<sup>19</sup> The NPRM indicates that this deadline is appropriate because it has conditioned other categories of exempted calls to wireless phone numbers on honoring opt-out request immediately.<sup>20</sup>

Electric companies' typical process for honoring revocation requests entails collection, tracking, and distribution of revocation requests to the appropriate business units that process the revocation request. Electric companies also often utilize third-party vendors for these functions which entails managing hand-offs of information between third-party vendors and business units. Electric companies also have large amount of telephone numbers, fax numbers,

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<sup>18</sup> In the 2015 Declaratory Ruling and Order, the Commission merely confirmed that customers must be able to revoke their consent to receive autodialed and prerecorded or artificial voice calls and texts through "any reasonable manner." 30 FCC Rcd 7961, 7999.

<sup>19</sup> See NPRM at ¶ 13.

<sup>20</sup> See, e.g., 47 CFR § 64.1200(a)(9)(ii)-(iv).

email addresses and mailing addresses to which a revocation request might arrive and must be monitored. The Utility Association members also report that their various systems that perform these functions require time to synchronize making it infeasible to scrub call lists on an enterprise-wide basis within the proposed deadlines.

As discussed, above, such short deadlines for honoring revocation requests are not feasible. Standardizing the means to revoke consent to receive communications, making it possible to automate such processes, will contribute to speedier responses. For example, without the ability to automate the process, if a revocation request comes in on a weekend or holiday, a 24-hour response would be burdensome as it would require human resources that may not be available or increase costs to the customers to ensure said availability.<sup>21</sup> If the Commission better defines how customers may revoke consent, as discussed above, then instead of a 24-hour requirement to honor revocation requests, the Commission should amend its rule so that all requests to revoke prior express or written consent made in any reasonable manner must be honored within 10-business days from receipt of such request. This would be consistent with the prohibition on initiating email contact more than 10-business days after the receipt of a revocation request from the recipient by any sender of commercial electronic email messages.<sup>22</sup> Providing callers with 10 business days to honor revocation requests would allow sufficient time for hand-offs between vendors and business units, and would avoid problems

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<sup>21</sup> Allowing a single business day for compliance is likewise problematic.

<sup>22</sup> See Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, 15 U.S.C. §§ 7701-7713 (2003).



and costs associated with the scenario of revocation requests that come in on weekends and holidays, or have been misdirected.

Towards this approach, the Utility Associations have provided proposed regulatory language for revising 47 C.F.R § 64.1200 as Appendix A, attached with these comments.

**V. The FCC should clarify that callers may send a one-time text message to confirm and clarify the scope of a revocation request.**

The NPRM proposes to codify that a one-time text message confirming a customer's requests that no further text messages be sent does not violate the TCPA or the Commission's rules as long as the confirmation text merely confirms the party's opt-out request and does not include any marketing or promotional information, and the text is the only additional message sent to the called party after receipt of the opt-out request.<sup>23</sup>

The Commission should find that a one-time text message confirming a customer's revocation request does not violate the TCPA or the Commission's rules. In addition, it is helpful for the Commission to clarify that senders can include a request for clarification in such a one-time confirmation text. However, it is problematic for the Commission to find that a customer's lack of response to such a request for clarification expresses the intent to revoke consent to all communications, particularly when a customer may have signed up for multiple categories of communications from the caller. Often electric company customers will sign up for multiple types of texts/calls from an electric company. If a customer opts-out of one type of text/call, an electric company should be able to send a text to confirm that request, but if the customer

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<sup>23</sup> NPRM at 16.

does not respond, under the NPRMs proposal, the electric company will have to treat it as if the customer revoked consent for all types of informational text/calls. This is problematic and a poor result because the customer may not desire to opt-out of all communications from its electric company and as a result may be deprived of critical information closely related to the customer's electric service.

The Commission should find that a customer's revocation of consent is limited to the type of message to which the customer has replied. The Commission should also revise its rule so that when a customer has consented to several categories of messages, an electric company's confirmation message may request clarification from the customer as to whether the revocation request was meant to encompass all such messages and/or may provide a link to a web portal that enables the text recipient to select (or-unselect) the categories of messages from the electric company that they desire to receive.

Towards this approach, the Utility Associations have provided proposed regulatory language for revising 47 C.F.R § 64.1200 as Appendix A, attached with these comments.

**VI. Callers need a reasonable transition period to comply with proposed rule changes.**

The Commission should provide a reasonable transition period for compliance with any revised rules. The time needed to comply will depend on the changes to the rule; accordingly, the Utility Associations intend to recommend a potential effective date based upon the comments and reply comments submitted in this proceeding.

## CONCLUSION

The Utility Associations support the Commission's goals of protecting consumers against unlawful robocalls and ensuring that consumers continue to receive important, time-sensitive information that they rely on from legitimate businesses. The Commission should avoid an approach to revocation of consent to receive robocalls and robotexts that impedes automation of honoring such requests and presents potential cost and resource burdens that may ultimately discourage informational, non-telemarketing calls that are important to and desired by customers. Accordingly, the Utility Associations urge the Commission to balance the interests of legitimate callers, like electric utilities, and customers under its rules implementing the TCPA for revoking consent to receive robocalls and robotexts as discussed in these comments.

Respectfully submitted,

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July 31, 2023