

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

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

**REPLY COMMENTS OF THE NATIONAL RURAL ELECTRIC COOPERATIVE
ASSOCIATION (NRECA) AND AMERICAN PUBLIC POWER ASSOCIATION (APPA)
ON THE PETITION FOR PARTIAL RECONSIDERATION OF ACA
INTERNATIONAL, THE EDISON ELECTRIC INSTITUTE, THE CARGO AIRLINE
ASSOCIATION, AND THE AMERICAN ASSOCIATION OF HEALTHCARE
ADMINISTRATIVE MANAGEMENT**

The National Rural Electric Cooperative Association (NRECA) and American Public Power Association (APPA) hereby file the following reply comments in response to the petition for declaratory ruling filed by ACA International, the Edison Electric Institute, Cargo Airline Association, and America Association of Healthcare Administrative Management (“Petitioners”)¹ urging the Federal Communications Commission (“Commission”) to reconsider certain aspects of its *TCPA Exemptions Order*, which amended longstanding exemptions from the Telephone Consumer Protection Act’s (“TCPA”) consent requirements for certain categories of informational calls.²

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 or approximately 12 percent of electric customers, including 327 of the nation’s 353 “persistent

¹ *Petition for Reconsideration In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, filed by ACA International, the Edison Electric Institute, the Cargo Airline Association, and the America Association of Healthcare Administrative Management (“Petitioners”), March 29, 2021.

² *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 35 FCC Red. 15188 (2020) (“TCPA Exemptions Order”).

poverty counties” (92 percent). Of the 42 million Americans served by cooperatives, an estimated 4 million live in persistent poverty counties. Rural electric cooperatives serve 88 percent of the counties of the United States. Rural electric cooperatives were formed to provide safe, reliable electric service to their member-owners at the lowest reasonable cost. Rural electric cooperatives are dedicated to improving the communities in which they serve; management and staff of rural electric cooperatives are active in rural economic development efforts. Electric cooperatives are private, not-for-profit entities that are owned and governed by the members to whom they deliver electricity. Electric cooperatives are democratically governed and operate according to the seven Cooperative Principles. NRECA and its members are intensely interested in the deployment of advanced telecommunications capabilities within the rural communities and areas in which electric cooperatives provide electric service. Over 200 NRECA members in 37 states provide fixed broadband service today.

APPA is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. The association represents public power before the federal government to protect the interests of the more than 49 million people that public power utilities serve and the 93,000 people they employ. APPA advocates and advises on electricity policy, technology, trends, training, and operations. APPA members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power. Public power utilities strive to provide customers with reliable electric power at the lowest reasonable cost, consistent with good environmental stewardship. Ensuring the safety, reliability, and resilience of the electric delivery system is a central element of the public power business model. As such, APPA spends considerable time and effort supporting public power utilities in establishing and maintaining a culture of preparedness for natural or man-made, disasters.

I. Summary

As providers of electric service to millions of Americans, NRECA and APPA member utilities have many legitimate reasons to contact their customers both on landlines and on wireless phones, which we will discuss in more detail below. NRECA and APPA fully support the Petitioner's request and urge the FCC to act upon it expeditiously. Specifically, the Petitioners request the Commission adopt changes to the *TCPA Exceptions Order* in four ways:

- First, the FCC should promptly issue an Erratum to confirm that telemarketing consent is not required for informational prerecorded calls to landlines.
- Second, the FCC should reconsider its decision to extend its telemarketing opt-out requirements to certain informational prerecorded calls.
- Third, the FCC should reconsider its decision to impose uniform call frequency limitations, currently three calls per 30 days, on all exempted informational landline calls.
- Finally, the FCC should confirm that its past guidance regarding "prior express consent" for wireless calls in the *2016 EEI Declaratory Ruling* applies to residential landline calls.

II. THE IMPORTANCE OF ELECTRIC UTILITY SERVICE-RELATED COMMUNICATIONS

Electric utilities are committed to providing safe, reliable, and efficient service. In furtherance of those efforts, many electric utilities have implemented notification programs to provide customers with the most-up-to-date information available regarding service issues. The many informational notifications placed by electric utilities may convey information about planned or unplanned outages, service curtailment, service restoration, natural disasters and other emergencies, delinquent bills that could lead to a cessation of service, or low balance alerts that allow customers to manage utility bills and consumption. These communications may be placed manually or using automated technologies, and they may be placed to wireless phones via voice or text messaging, in addition to residential landlines. Use of these technologies increases the

speed and reliability with which electric utilities can disseminate critical and potentially lifesaving communications.

Electric utility customers need, and have come to expect, this type of information. This is especially true for younger customers who are accustomed to immediate access to account information, which empowers them to control their energy usage and bills, as well as plan their activities. Some state regulations mandate notification programs.³ In other cases, NRECA and APPA members have adopted these programs at the urging of regulatory authorities, at the direction of their Board of Directors or governing boards, or in response to consumer demand. Community-owned electric utilities are especially 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.⁴ Given the great number of electric utilities customers and the time sensitivity of important informational service communications, electric utilities generally do not have the option to manually call each of their customers, particularly during emergency situations. In addition to cost, utilizing live agents to make a large volume of outbound calls would significantly degrade customer service provided to customers who contact a utility for regular business issues. This is especially burdensome for smaller utilities.

³See, 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).

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

III. TIMELY CUSTOMER NOTIFICATIONS ARE ESPECIALLY NECESSARY FOR LOW-INCOME CONSUMERS

Electric utilities have increasingly developed programs to assist low-income consumers by increasing payment flexibility. This can be particularly relevant to electric cooperatives who service 92 percent of the persistent poverty counties identified by the U.S. Census Bureau. One highly successful initiative is the prepaid metering program, which allows customers to take control of their electricity usage and provides flexibility to manage a variety of budget requirements. These programs are mostly subscribed to by low-income populations. Upon consent, customers are provided with low balance and/or disconnect notifications upon joining the program. Most customers establish a default low balance, which becomes the notification threshold once active. Timely information is vital to providing a consumer-member friendly prepaid program.

Under this program alone, depending on their established low balance threshold, a subscribed customer is likely to receive more than three informational notifications per month. As a result, the electric utility would be in violation under new provisions of the *TCPA Exceptions Order*. This problem would be exacerbated by the apparent unintentional change in the rules to now require “prior express written consent.” This would require a utility to make additional calls or contacts to the customer in an attempt to obtain express written consent to receive notifications they had already consented to receive. To add to the complexity, if a consumer were to switch between the landline and wireless phone as the preferred method of contact, different consent rules would apply. This is illogical and will cause consumer confusion and add administrative difficulty to the utility. Meanwhile, any restriction or delay to these timely notifications could lead to a consumer missing a low balance alert and having vital power services temporary shut off.

IV. CONCLUSION: THE COMMISSION SHOULD GRANT THE RELIEF SOUGHT BY PETITIONERS IN A TIMELY FASHION

Unfortunately, the *TCPA exceptions order* restricts legitimate communications and notifications between utilities and their customers and could jeopardize consumer safety and negatively impact customer service. NRECA and APPA fully support the requests of Petitioners and urge the Commission to grant the relief sought in a timely manner.

Respectfully,

NATIONAL RURAL ELECTRIC
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