



INTERGOVERNMENTAL ADVISORY COMMITTEE
TO THE
FEDERAL COMMUNICATIONS COMMISSION
ADVISORY RECOMMENDATION NUMBER 2016-11

In the Matter of: Petition for Declaratory Ruling filed by National Cable & Telecommunications Association and American Cable Association (MB Docket No. 16-126)

In the Matter of: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (Petition for Declaratory Ruling filed by the Edison Electric Institute and the American Gas Association) (CG Docket No. 02-278)

The Intergovernmental Advisory Committee (IAC) to the Federal Communications Commission submits this Advisory Recommendation.

Re: MB Docket No. 16-126: This docket filed by the National Cable and Telecommunications Association and the American Cable Association requests a declaratory ruling clarifying the written information” requirement of Section 76.1602 (b). The applicants seek a ruling that electronic dissemination by email to subscribers for whom a cable operator has a confirmed email address satisfies the requirement if the information is available in writing upon request.

This docket is similar to one filed in 2015 by the Edison Electric Institute and the American Gas Association seeking clarification on when electronic communications are adequate to meet previous FCC rulings.

CG Docket No. 02-278: Related to Electric and Natural Gas Utilities Contacting Customers for Public Safety Messages

1. The Telephone Consumer Protection Act (TCPA) has been interpreted by a few courts as prohibiting electric and natural gas utilities from contacting customers with public safety, but non-emergency, messages.

2. Such messages provide information to customers about planned or unplanned outages, repair work, service cancellation, service restoration, and other topics of public importance and safety.
3. The Federal Communications Commission has on more than one occasion clearly stated that utilities' emergency communications are exempt from any prior consent requirement in the TCPA.
4. It has not issued a declaration regarding the consent under the TCPA required for non-emergency public safety and public convenience messages. The Edison Electric Institute and the American Gas Association filed a petition for expedited declaratory ruling on this issue (CG Docket No. 02-278).
5. The American Gas Association's and Edison Electric Association's members, and other energy utilities and their professional associations have state and federal mandates to: a) warn customers about planned or emergency/unplanned service outages; b) provide updates about expected service resumption, c) provide notification of meter work, tree-trimming, and other field work, d) verify eligibility for special rates or services, and e) warn about payment or other problems that may result in service curtailment.
6. Energy companies historically used pre-recorded message telephone calls to customers about these service and safety issues. Such calls no longer reach a majority of customers who have transitioned to wireless and VOIP communications devices.
7. State regulators and customers do not recognize the utilities' inability to provide the same customer service and safety messages simply because the customer has transitioned to another form of communications device/system.
8. When the TCPA was initially promulgated, the Commission recognized that land line customers were not charged for each call received, but that many wireless providers charged customers for calls made and received. The Commission correctly imposed a greater standard on auto-dialed calls to wireless telephones.
9. When the Commission updated the TCPA rules in 2012, it declined to require prior express written consent for all calls to a wireless number using an auto-dialer or pre-recorded message. It also recognized that wireless calls include text messages in 2012 TCPA Order, paragraph 29.

10. The Commission adopted a rule that requires express written consent only for telemarketing calls to wireless numbers, leaving intact the prior express consent requirement for non-telemarketing calls. The exemption for emergency calls was retained and the Commission favorably cited utility industry filings that calls about energy consumption, and planned and unplanned outages are types of wireless calls that should not require prior express written consent.

11. The Commission noted in the 2012 TCPA Order, paragraph 29 that requiring prior express written consent for these calls would “serve as a disincentive to the provision of services on which consumers have come to rely.”
12. The Commission in 2012 TCPA Order, paragraph 29 found that prior oral consent satisfies the “prior express consent” requirement. The Commission in the 1992 TCPA Order paragraph 31 found that providing a telephone number within the context of a transaction serves to provide “prior express consent” to receive calls related to that transaction.
13. The Commission in the 1992 Order, Paragraph 51 found that “service outages and interruptions in the supply of water, gas or electricity could in many instances pose significant risks to public health and safety, and the use of pre-recorded message calls could speed the dissemination of information regarding service interruptions or other potentially hazardous conditions to the public.”
14. In the absence of a Commission definitive statement that non-telemarketing, informational calls to telephone numbers provided by customers are made with prior express consent has resulted in lawsuits. The utility industry in CG Docket No. 02-278 provides examples of utilities that have been sued by customers (e.g., Grant v. Commonwealth Edison).
15. Therefore, the Commission and appropriate Bureaus are urged to clarify for both the energy utilities and the telecommunications providers in a series of Orders.
16. Specifically, the Commission is urged to issue a decision expeditiously in CG Docket No. 02-278 on the grounds that the Commission has previously addressed the issues of public safety and non-telemarketing communications, but not in a concise manner that incorporates decisions rendered in multiple rulings.
17. The Commission is urged to determine that non-telemarketing calls and texts to wireless and VOIP devices meet Congressional intent and are in the consumer’s best interests

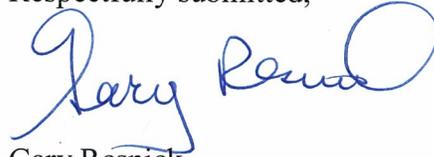
regarding public safety, maintenance of utility services, energy efficiency, and energy affordability.

18. Further the Commission is urged to reaffirm that consumers providing telephone numbers to the utility constitutes prior express consent for the utility to contact the consumer with non-telemarketing information.

19. The Commission is urged to affirm that service-related informational messages delivered to wireless and VOIP devices is not a violation of the TCPA, but constitutes a service and benefit to consumers by providing time sensitive public safety and consumer value information.
20. The Commission is urged to determine that the substantive issue of how and when a customer gives a service provider the right to contact that customer electronically is similar in both the energy and telecommunications dockets. While public safety weighs more heavily on the energy docket, both essentially ask for clarification of existing FCC Rules.
21. Of course we support the environmental and efficiency aspects of electronic communications over paper communications but Petitioners' requests at this point should be denied since other necessary consumer safeguards, including those listed above, in place. Safeguards should include:
 - Providers should ask customers to opt in, as opposed to automatically be placed on an email notification list;
 - Providers should ask customers to verify email addresses,
 - Providers should not be able to sell or to market customers' email addresses – they should be consider confidential subscriber information,
 - Providers should not use emails for billing or collection purposes,
 - Providers should allow customers to request materials in writing through an email link, and should provide such information in a timely matter,
 - Any order on the Petition should not impact requirements for state, local, or tribal notifications under applicable laws and franchises,
 - If providers are afforded the ability to provide important notifications solely to an email address, there should be consumer safeguards with respect to ensuring access to email. Currently, subscribers emails could be down for weeks or months and there is no requirement for providers to restore service within a set time frame. Before a provider is allowed to use email notifications, there should be a requirement that outages of Internet service be addressed within a reasonable timeframe, and
 - There should be no extra charge to customers who decide to obtain notifications either in writing or via email.

22. In addition, the IAC recommends that the Commission open a proceeding to consider modernization of consumer protection provisions, rather than consider granting exceptions to individual requirements. It is our understanding that the existing regulations were adopted in the 1990s and last amended in 2002. Obviously, there's been significant changes since then. Many existing regulations would likely not be relevant now and new regulations would need to be adopted. Since many states, local governments, franchises, and private contracts default to the FCC customer service standards, it is important that the Commission adopt customer service standards that will protect consumers.

Respectfully submitted,



Gary Resnick
Chair of the IAC
July 12, 2016