Before the
Federal Communications Commission
Washington, D.C. 20554

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

DECLARATORY RULING

Adopted: June 9, 2025 **Released: June 9, 2025**

By the Acting Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. Ever-increasing demand for power along with aging infrastructure have strained American electric grids.[1] A tool utilities have to manage grid burden is "demand response" communications that inform customers of actions that they can take to help avoid potential service disruptions and price increases during high demand periods, often saving money on their bills in the process.[2] In this declaratory ruling, we apply Commission precedent to ensure that the Telephone Consumer Protection Act (TCPA) and the Commission's implementing rules do not impede demand response communications that help ensure reliable utility services.

2. Specifically, we grant Edison Electric Institute's (EEI) Petition for Declaratory Ruling and confirm that when a consumer gives a utility their phone number they give their prior express consent to receive non-telemarketing demand response calls and texts.[3] In so doing, we confirm that such calls and texts are "closely related" to the utility service. Our action will promote reliable utility service to customers as well as cost savings to consumers.

II. BACKGROUND

A. Telephone Consumer Protection Act

3. The TCPA generally requires any person making certain calls to obtain the recipient's prior express consent before making the call absent an emergency purpose.[4] In relevant part, the TCPA's

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[1] *See, e.g.*, Robert Walton, '*Explosive' demand growth puts more than half of North America at risk of blackouts: NERC* (Dec. 18, 2024), http://www.utilitydive.com/news/explosive-demand-growth-blackouts-NERC-LTRA-reliability/735866.

[2] According to one report, the cost of electricity rose over 20% in the last five years. *See* Heath Knakmuhs, *Pipeline Bottlenecks, Increasing Demand Driving Up Electricity Prices* (Apr. 28, 2025), https://www.uschamber.com/energy/pipeline-bottlenecks-increasing-demand-driving-up-electricity-prices.

[3] *See* Petition for Declaratory Ruling of the Edison Electric Institute, CG Docket No. 02-278 (filed Mar. 10, 2025) (EEI Petition). For purposes of this declaratory ruling, "demand response communications" refers to calls and texts from electric and gas utilities during times of peak or near-peak usage that are made with the primary goal of preserving capacity by influencing customer behavior to reduce peak demand for the utility provided.

[4] 47 U.S.C. § 227(b)(1).

restrictions apply to "robocalls" made: (1) using an automatic telephone dialing system (autodialer) or artificial or prerecorded voice to a wireless phone;[5] and (2) using an artificial or prerecorded voice to a residential telephone line.[6] The Commission has interpreted the TCPA to cover robotexts, including short message service (SMS) texts, when sent using an autodialer.[7]

4. For robocalls and robotexts that include or introduce an advertisement or constitute telemarketing, callers must obtain prior express written consent from the consumer, and callers are subject to certain disclosure requirements in obtaining that consent.[8] On the other hand, a consumer who simply gives the sender their phone number consents to informational messages closely related to the service they signed up for, absent instructions to the contrary.[9]

5. Most relevant to the latter point and to the EEI request, the Commission in 2016 clarified that utility consumers consent to informational robocalls and robotexts closely related to the utility service when they provide their phone number to the utility.[10] The Commission also concluded that "calls closely related to the service include those that warn about planned or unplanned service outages; provide updates about service outages or service restoration; ask for confirmation of service restoration or information about lack of service; provide notification of meter work, tree trimming, or other field work that directly affects the customer's utility service; notify consumers they may be eligible for subsidized or low-cost services due to certain qualifiers such as, *e.g.*, age, low income or disability; and calls that provide

[5] 47 U.S.C. § 227(b)(1)(A); 47 CFR § 64.1200(a)(1).

[6] 47 U.S.C. § 227(b)(1)(B); 47 CFR § 64.1200(a)(3). For purposes of this declaratory ruling, the term "robocalls" means any call made using an autodialer or artificial or prerecorded voice message unless otherwise noted.

[7] *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003) (*2003 TCPA Order*).

[8] *See* 47 CFR § 64.1200(a)(2)-(3), (f)(9).

[9] *See, e.g.*, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd 8752, 8769, para. 31 (1992) (*1992 TCPA Order*) (stating that "persons who knowingly release their phone numbers have in effect given their invitation or permission to be called at the number which they have given, absent instructions to the contrary"); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, *Request of ACA International for Clarification and Declaratory Ruling*, CG Docket No. 02-278, 23 FCC Rcd 559, 564, para. 9 (2008) (a party who provides their wireless number to a creditor as part of a credit application "reasonably evidences prior express consent by the cell phone subscriber to be contacted at that number regarding the debt"); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al.*, CG Docket No 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, 30 FCC Rcd 7961, 8028-29, paras. 140-41, n.474 (2015) (*2015 TCPA Declaratory Ruling*) (clarifying that, in the case of healthcare providers, the provision of a phone number constitutes prior express consent if the covered entities are making calls within the scope of the consent given, and absent instructions to the contrary); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, *Blackboard, Inc. Petition for Expedited 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, 9064, para. 23 (2016) (confirming that the provision of only a wireless phone number by a parent or student to a school provides prior express consent to receive communications from the school closely related to the educational mission of the school or to official school activities absent instruction to the contrary from the party who provides the phone number) (*2016 Declaratory Ruling*); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, *U.S. Department of Health and Human Services Petition for Declaratory Ruling*, CG Docket No. 02-278, Declaratory Ruling, 38 FCC Rcd 404, 409, paras. 13-14 (CGB 2023) (confirming that the provision of a telephone number on an application for eligibility or benefits under government health care programs constitutes consent to be called at that number regarding eligibility for, or ongoing enrollment in, those programs).

[10] *See 2016 Declaratory Ruling*, 31 FCC Rcd at 9065-68, paras. 27-34. In 2022, the Commission clarified that the *2016 Declaratory Ruling* regarding prior express consent for calls made by utility companies to wireless phone numbers applies also to calls made to residential telephone lines. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et al.*, CG Docket No. 02-278, Order on Reconsideration and Declaratory Ruling, 37 FCC Rcd 15472, 15493-94, para. 52 (2022) (*2022 TCPA Order*).

information about potential brown-outs due to heavy energy usage."[11] EEI sought the 2016 ruling, initially including "reminders about time-of-use pricing and other demand-response events" and several other types of communications in its request.[12] EEI later removed them from its requested relief, in part because of objections of some commenters, including NARUC.[13] As a result, the Commission did not address whether demand response communications were closely related to utility service.

B. EEI Petition

6. On March 10, 2025, EEI filed a petition for declaratory ruling requesting that the Commission "clarify that utilities have 'prior express consent' under the [TCPA] to send non-telemarketing, demand response calls and texts based on the utility customer's provision of their telephone number to the utility."[14] EEI states that Commission confirmation that such communications are closely related to a customer's utility service will benefit the public interest, including by helping to "ensure that utilities can continue to provide safe, reliable, and efficient service to customers" and will "help customers to lower their cost of living."[15]

7. EEI indicates that demand response communications are effective at influencing customer behavior during times of peak demand and lower costs by enabling the utility to alert its customers in advance of peak demand on the utility's grid, and in the same communication, advise its customers on the ways they can shift energy consumption during peak hours.[16] As a result, utilities wish to implement demand response programs that provide their customers with timely, personalized communications to motivate them to reduce or shift energy demand during the most critical periods.[17] EEI argues that such communications are a preventative measure intended to manage an increasingly stressed grid more effectively and affordably to avoid brownouts and excessive spending on new capital investments.[18] EEI notes that available data demonstrate that customers enrolled in demand response communications with texts and/or calls have high satisfaction scores and low opt-out rates.[19]

8. EEI observes that the *2016 Declaratory Ruling* did not explicitly address whether the mere provision of a phone number is a customer's consent to receive robocalls and robotexts informing customers about, and encouraging participation in, demand response programs.[20] EEI states that demand response messages are different than messages about subsidized or low-cost services and "energy saving programs to reduce monthly energy bills or donations to subsidize other energy consumers" that the Commission said are not within the scope of consent.[21] That is because, according to EEI, utilities send demand response communications to address capacity issues during times of peak usage rather than to

[11] *See 2016 Declaratory Ruling*, 31 FCC Rcd at 9066-67, para. 30 (citations omitted).

[12] *See id*. at 9058, para. 10.

[13] Letter from Scott Blake Harris, Counsel for EEI, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278 at 3 (filed Jun. 9, 2015) (2015 EEI *ex parte*). By contrast, NARUC supports this EEI request. *See* NARUC Comments at 7.

[14] EEI Petition at iii.

[15] *Id.* at 2.

[16] *Id.* at 9-10.

[17] *Id*. at 5.

[18] *Id.* at 10.

[19] *Id*. at 10-11 (citing surveys that indicate demand response programs with calls and texts have a positive or neutral impact on customer satisfaction for more than 80% of enrolled customers and opt-out rates of below 2% for most demand response programs).

[20] *Id*. at 14.

[21] *Id*. at 15.

promote "energy savings."[22]

9. On March 11, 2025, the Commission sought comment on EEI's Petition.[23] In response, a variety of utility and consumer commenters confirm that demand response programs promote efficient use of energy grids during times of peak usage and lower costs for consumers.[24] Many utility companies say calls and texts are essential to communicate time-sensitive information to their customers during periods of critical peak demand, citing specific examples.[25] Of the fifteen commenters, only one objects to any portion of the Petition. While they agree with EEI that demand response programs benefit consumers and utilities, a group of public interest groups including the National Consumer Law Center (collectively referred to hereafter as "NCLC") argue that calls soliciting enrollment in these programs are not sufficiently integral to the provision of energy service to be deemed closely related to that service.[26] Rather, NCLC suggests two alternatives to enable calls soliciting enrollment in demand response programs: (1) utilities can obtain prior express consent by explicitly informing customers, when they are asked to provide their phone number, that they are agreeing to receive artificial or prerecorded voice calls soliciting them to participate in demand response programs; or (2) the Commission should enable such enrollment solicitation messages with an exemption pursuant to the Commission's section 227(b)(2)(C) authority subject to conditions, such as limiting these calls and messages to no more than two messages for every six-month period.[27] Notably, however, NCLC agrees that once a customer has enrolled in a demand response program, that consumer has given prior express consent to receive demand response communications sent under that program.[28]

III. DISCUSSION

10. In this declaratory ruling, we confirm that demand response communications[29] are closely related to utility service and thus within the scope of consent customers give when they provide their phone number to their utility. We thus make clear that a utility can make critical, time-sensitive demand response communications to its customers rather than having to solicit additional consent from each customer,[30] a burdensome and often costly undertaking.[31] Our clarification improves the overall effectiveness and impact of demand response communications by expanding the number of customers who will receive such communications. And it promotes efficient management of the nation's utility

[22] *Id*.

[23] *See Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Declaratory Ruling filed by Edison Electric Institute*, CG Docket No. 02-278, Public Notice (DA 25-218) (Mar. 11, 2025).

[24] *See, e.g.*, AEP Comments at 2; Exelon Comments at 3; NARUC Comments at 5-6; National Grid Comments at 5-7; NCLC et al. Comments at 3; SCE Comments at 2; PG&E Comments at 1-3; Voxology Comments at 5.

[25] *See, e.g.*, AEP Comments at 3; APPA Comments at 5-6; APS Comments at 1-2; LPPC Comments at 3; National Grid Comments at 3, 5-7; Oracle Comments at 5 (resulting in a 50% drop in peak demand usage); PG&E Comments at 3; UTC Comments at 2.

[26] NCLC et al. Comments at 4; *see also* Letter from Margot Saunders, Senior Counsel, National Consumer Law Center, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278 (filed Apr. 18, 2025) (reiterating arguments made in its comments); Letter from Patrick Crotty, Senior Counsel, NCLC to Marlene Dortch, Secretary, FCC, CG Docket No. 02-278 (filed May 19, 2025) (indicating that the Commission should issue a "waiver" for communications seeking enrollment in a demand response programs but cross referencing to its comments which proposed creating only an exemption).

[27] NCLC et al. Comments at 5-6.

[28] *Id*. at 6.

[29] As we define them *supra* at n.3.

[30] *See, e.g.*, AEP Comments at 3; ASE Comments at 3; Voxology Comments at 1; EEI Reply Comments at 3-4, 8.

[31] *See* Letter from Mark W. Brennan, Counsel to Electric Edison Institute, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278 (filed May 27, 2025); AEP Comments at 4.

infrastructure so that critical energy resources remain available to Americans during times of peak usage[32] without infringing on consumers' right to stop robocalls and robotexts they do not want to receive.

11. We agree with the vast majority of commenters that demand response communications naturally fall within the range of communications the Commission found closely related to utility service in 2016. The Commission found, for example, calls "that provide information about potential brown-outs due to heavy energy usage" to be closely related.[33] Brown-outs represent a potential loss of service, and one can scarcely imagine a message more closely related to a service than one involving the loss of that service, even for a short period of time. Demand response messages are similar – they inform customers of actions that they can take to help avoid potential service disruptions during times of peak demand.[34]

12. As NARUC states, "[t]here is [] no question that demand response programs play an increasingly important role in keeping the electric grid stable and efficient, reducing the risk of blackouts; reducing the need for investment in generation, transmission and distribution systems; and delivering real economic benefits to ratepayers."[35] Indeed, as Edison notes, in 2021, Congress directed utilities to promote demand response "to reduce electricity consumption during periods of unusually high demand."[36] And, even where demand response communications do not communicate an immediate peak usage event with risks of service reduction, they nevertheless are closely related to the service in the same way as the tree trimming notices the Commission included within the scope of prior express consent in 2016 – both provide customers with important information to promote the longer-term stability of utility services. As the petitioner and commenters state, customers welcome demand response programs because they play an important role in keeping the electric grid stable and efficient by reducing the risks of blackouts, reducing the need for costly investment in new systems, and delivering benefits to consumers in the form of potential cost savings.[37]

13. For reasons similar to those the Commission articulated in 2016, we find that consumers welcome information to avoid potential loss of service,[38] perhaps even more so because demand response communications give the consumer an active opportunity to help prevent them before they occur.[39] The record indicates that such programs have already proven popular with enrolled customers.[40] That consumers can in many cases also realize cost savings likely makes them even more welcome, and, as incident-specific and short-term savings, distinguishes them from the voluntary program solicitation

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[32] *See, e.g.*, ASE Comments at 2; APPA Comments at 4; LPPC Comments at 1; NARUC Comments at 5-6; NAEM Comments at 1; UTC Comments at 2.

[33] *See 2016 Declaratory Ruling*, 31 FCC Rcd at 9066-67, para. 30.

[34] *See, e.g.*, ASE Comments at 3; NARUC Comments at 6; National Grid Comments at 3-5; SCE Comments at 2.

[35] NARUC Comments at 6.

[36] EEI Petition at 7; Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 40104(a)(1), 135 Stat. 429, 930-31 (2021).

[37] *See* EEI Petition at 4; AEP Comments at 5-6; APPA Comments at 6; NARUC Comments at 1; Oracle Comments at 9; PG&E Comments at 2; *see also* Letter from Matthew O'Keefe, Group Vice President, Oracle America, Inc., to Marelene H. Dortch, Secretary, FCC, CG Docket No. 02-278 (filed May 21, 2025) (providing updated 2023-24 data to support the conclusion that demand response programs have a positive impact on customer satisfaction); NCLC et al. Comments at 3 (stating that demand response programs "are extremely valuable for consumers, utilities, other customers, and the environment").

[38] *See id*.

[39] The Commission has long recognized that "[s]ervice 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 prerecorded message calls could speed the dissemination of information regarding service interruptions or other potentially hazardous conditions to the public." *See 1992 TCPA Order*, 7 FCC Rcd 8778 at para. 51.

[40] *See* n.19 *supra*; 2025 NARUC Resolution, at 4, https://pubs.naruc.org/pub/A37E3860-ECFF-DBA3-13A7-BA3B120910C2.

communications the Commission found not closely related in 2016.[41]

14. We thus disagree with NCLC that the Commission's *2016 Declaratory Ruling* should be construed to find that some of the calls and messages that are arguably encompassed by EEI's petition are not closely related to utility service.[42] While it supports demand response programs and communications to participants in such programs,[43] NCLC notes that the Commission has already found that messages about "enrollment in energy savings programs" are not closely related to the service in 2016.[44] For this proposition, NCLC points to footnote 103 of the *2016 Declaratory Ruling*, which states that calls "soliciting voluntary participation in programs such as, for example, energy saving programs to reduce monthly energy bills or donations to subsidize other energy consumers" are not closely related to utility service.[45]

15. But demand response communications, as described in EEI's petition and as defined in this declaratory ruling, are not messages about enrolling in energy savings programs or any other program. Demand response communications are instead short-term, targeted communications during critical times of peak demand to provide customers with information to avoid service disruptions.[46] As a result, they are not incentives to purchase and install equipment and appliances that exceed federal or state minimum efficiency standards.[47] The mere fact demand response communications *could* lead to savings for consumers does not, as EEI and other commenters argue, change their primary purpose to reduce usage and preserve capacity during periods of peak demand.[48] In addition, our ruling that demand response communications are closely related to the utility service means that the utility provider has consent to make such communications to consumers who have provided their telephone numbers to the utility. As a result, this obviates the need for utility providers to call or text individual customers to solicit participation in demand response programs.

16. Finally, our action preserves consumer choice and privacy. While we believe consumers will welcome demand response communications, they retain the option to revoke consent at any time.[49] Additionally, this declaratory ruling is limited to the robocalls and robotexts described in this declaratory

[41] *See 2016 Declaratory Ruling*, 31 FCC Rcd at 9066, n.103; EEI Reply Comments at 4, 7 (stating that one program has saved consumers $42 million since 2008).

[42] *See* NCLC et al. Comments at 3, 4-5 (construing the petition to include "calls and texts soliciting consumers to enroll in these programs," and then arguing that such communications are not closely related to utility service).

[43] *See id*. at 3, 6.

[44] *Id.* at 4.

[45] *See* NCLC et al. Comments at 4; *2016 Declaratory Ruling*, 31 FCC Rcd at 9066, n.103.

[46] EEI notes that "[t]hese [demand response] programs do not seek any program enrollment, device purchase, or payment from customers. In fact, they ask utility customers to purchase *less* of the service provided by the utility." EEI Petition at 10. We thus do not construe EEI's petition as including communications regarding enrollment in demand response programs.

[47] *See* EEI Petition at 14 n.36; EEI Reply Comments at 6-7.

[48] EEI Petition at 15; APS Comments at 3; LPPC Comments at 3; SCE Comments at 2. Because we confirm utilities have consent to send demand response communications, absent customers' instructions to the contrary, we need not address NCLC's suggestions that utilities seek separate consent or that the Commission exempt them from the consent requirement. *See* NCLC et al Comments at 4, 5.

[49] *See* 47 CFR § 64.1200(a)(10); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 02-278, Report and Order and Further Notice of Proposed Rulemaking, 39 FCC Rcd 1988, 1991-94, paras. 10-18 (2024); *2015 TCPA Declaratory Ruling*, 30 FCC Rcd at 7996, para. 64; *see also 2016 Declaratory Ruling*, 31 FCC Rcd at 9066, para. 29 (limiting the scope of consent for such calls when the consumer has provided "instructions to the contrary"). Utilities recognize consumers' choice in this regard. *See, e.g.*, APPA Comments 5-6; APS Comments at 5; Oracle Comments at 5-6; PG&E Comments at 2; Voxology Comments at 2; EEI Reply Comments at 7-8.

ruling; namely, non-telemarketing demand response calls and texts, and does not extend to calls or texts that include or introduce an advertisement or constitute telemarketing.

IV. ORDERING CLAUSES

17. For the reasons stated above, **IT IS ORDERED**, pursuant to sections 1-4 and 227 of the Communications Act of 1934, as amended, 47 U.S.C. § 151-154 and 227, and sections 1.2 and 64.1200 of the Commission's rules, 47 CFR §§ 1.2, 64.1200, and the authority delegated in sections 0.141 and 0.361 of the Commission's rules, 47 CFR §§ 0.141, 0.361, that this Declaratory Ruling is hereby **ADOPTED**.

18. **IT IS FURTHER ORDERED** that the petition for declaratory ruling filed by the Edison Electric Institute on March 10, 2025, **IS GRANTED** to the extent provided in this Declaratory Ruling.

19. **IT IS FURTHER ORDERED** that, pursuant to section 1.102(b) of the Commission's rules, 47 CFR § 1.102(b), this Declaratory Ruling shall be effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Eduard Bartholme III
Acting Chief
Consumer and Governmental Affairs Bureau

APPENDIX

List of Commenters

Commenter	Abbreviation
Alliance to Save Energy	ASE
American Electric Power Company, Inc. and Dominion Energy, Inc.	AEP
American Public Power Association et al.	APPA
Arizona Public Service	APC
Edison Electric Institute	**EEI**
Exelon Corporation	Exelon
Large Public Power Council	LPPC
National Association of Electrical Manufacturers	NAEM
National Association of Regulatory Utility Commissioners	NARUC
National Consumer Law Center, Consumer Action, Consumer Federation of America, Electronic Privacy Information Center, National Association of Consumer Advocates, National Consumers League, Public Knowledge, and U.S. PIRG `	NCLC et al.
National Grid USA, Inc.	National Grid
Oracle Utilities	Oracle
Pacific Gas and Electric Company	PG&E
Southern California Edison	SCE
Utilities Technology Council	UTC
Voxology Integrations	Voxology

* Filing both comments and reply comments. Bold – reply comment.