



August 10, 2015

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington DC 2055

Re: Late filed comments on the Petitions of Blackboard Inc. and Edison Electric Institute, CG Docket No. 02-278

Dear Ms. Dortch:

Please accept the comments on the pages following this letter regarding the Petitions for Expedited Ruling filed by Blackboard, Inc. and by Edison Electric Institute and American Gas Association. Because the comments are late, we are filing them as an ex parte.

The comments are filed by the National Consumer Law Center, on behalf of its low income clients, as well as the following national consumer advocacy organization: Consumer Action, Consumers Union, Consumer Federation of America, the National Association of Consumer Advocates, the National Association of State Utility Consumer Advocates, National Consumers League, and U.S. PIRG.

If there are any questions or concerns, please address them to me. Thank you very much.

Sincerely,

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
Rules and Regulations Implementing )  
the Telephone Consumer Protection )  
Act of 1991 )  
 )  
Regarding ) CG Docket No. 02-278  
 )  
Petitions for Declaratory Ruling by )  
**Blackboard Inc.** and )  
**Edison Electric Institute** and )  
**American Gas Association** )

**Comments of the**

**National Consumer Law Center**  
On behalf of its low-income clients and

**Consumer Action**  
**Consumers Union**  
**Consumer Federation of America**  
**National Association of Consumer Advocates**  
**National Association of State Utility Consumer Advocates**  
**National Consumers League**  
**Public Citizen**  
**U.S. PIRG**

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August 7, 2015

These comments are submitted by the **National Consumer Law Center**, on behalf of its low-income clients, **Consumer Action**, **Consumers Union**, **Consumer Federation of America**, the **National Association of Consumer Advocates**, the **National Association of State Utility Consumer Advocates (NASUCA)**, the **National Consumers League**, **Public Citizen**, and **U.S. PIRG**.<sup>1</sup> These comments are a late response to the Commission's requests for comments on the separate but related Petitions for a Declaratory Ruling of Blackboard, Inc.,<sup>2</sup> and Edison Electric Institute and American Gas Association (Edison).<sup>3</sup> As the two petitions raise nearly identical issues from our perspective, we are combining our responses.

Both petitions ask the Federal Communications Commission (Commission) to allow automated and prerecorded calls and texts to cell phones without prior express consent under the broad rubric of the emergency calls.<sup>4</sup> The petitions also raise the issue of the "scope of consent." As articulated in Edison's petition, its members are assuming the legality of autodialed calls and texts on any utility-related subject based only on the customer's provision of a telephone number. In other words, once the customer has provided the phone number, Edison argues, that is sufficient indication of the customer's consent to receive autodialed or prerecorded call on any utility-related topic.<sup>5</sup>

Our interest in these petitions focuses on two issues:

- Protecting consumers – particularly Lifeline and other low-income customers who have cell phone plans with limited minutes, from unwanted calls by restricting emergency calls to true emergencies and limiting their number and length.
- Interpreting "express consent" to require that a) callers obtain consent for calls containing specific types of content; and b) the simple act of providing a telephone number does not provide a generalized consent to receive autodialed or prerecorded calls relating to any conceivable subject from the caller.

## **1. Lifeline Customers and Other Low-Income Cell Phone Users Should be Protected from Too Many Calls**

Allowing the relief requested in the Edison and Blackboard petitions would legalize many more automated and prerecorded phone calls to cell phones. The extent to which this relief should

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<sup>1</sup> Descriptions of the national organizations on whose behalf these comments are filed are at the end of these comments.

<sup>2</sup> *See*, Petition for Expedited Ruling, Blackboard, Inc. <http://apps.fcc.gov/ecfs/comment/view?id=60001020430>.

<sup>3</sup> *See*, Petition for Expedited Ruling, Edison Electric Institute and American Gas Association. <http://apps.fcc.gov/ecfs/comment/view?id=60001016327>.

<sup>4</sup> As the Consumer and Governmental Affairs Bureau noted in its Request for Comments on Blackboard's Petition: Blackboard argues that Congress intended for the emergency purposes exception to be interpreted broadly, and that "all school-initiated informational messages should be considered sent for 'emergency purposes.'" <https://www.fcc.gov/document/cgb-seeks-comment-petition-filed-blackboard-inc>.

<sup>5</sup> *See* Edison's Petition at 10-11. Additionally, Blackboard raises the question of whether the Commission will grant a good faith exception to calls made to reassigned numbers when the calls were made after the consent provided by previous owners of the number. <sup>5</sup> *See* Blackboard's Petition at 4. The Commission's Declaratory Ruling issued July 10, 2015 has addressed the reassigned number issue.

be granted should be analyzed through a filter which examines the impact of so many more calls on the most vulnerable wireless cell phone customers who have limited minutes, especially those low-income customers who rely on the Lifeline program.

Many low-income households rely on low-end, pay-as-you-go, limited minute prepaid wireless products. These wireless consumers are billed for incoming calls in addition to outgoing calls. As a result, these consumers are extremely sensitive to incoming calls – especially calls that they do not want.

Wireless bill shock to consumers is caused by unexpected increases in their phone bills.<sup>6</sup> In a recent examination of the problem, the Commission found that one of the causes of bill shock is when the limits on their voice, text or data plans have been exceeded, which in turn causes higher charges at a per-minute rate. Lower-income wireless consumers are especially sensitive to bill shock – as one extra-large cell phone bill can wreck a family’s monthly budget. Exceeding the monthly budget once can cause negative repercussions for many subsequent months for a low-income household.

Prepaid wireless plans have been growing in use.<sup>7</sup> The wireless marketplace targets prepaid, low-end phone service products to low-income consumers and consumers with poor credit profiles.<sup>8</sup> These low-end prepaid wireless products provide a set number of minutes, and often texts, for a set price. Consumers must purchase a package of new minutes periodically to maintain their service.

Nearly 14 million low-income households maintain essential telephone service through the federal Lifeline Assistance program.<sup>9</sup> Most of these Lifeline participants – over three-quarters -- have a prepaid wireless Lifeline program, which most commonly consists of 250 minutes a month for the entire household.<sup>10</sup>

Consumer advocates have argued that 250 minutes a month is not sufficient to meet the basic monthly communication needs of a household. Any policy or practice that would open the door to depletion of these scarce subsidized minutes allowing the receipt of unwanted calls which were not consented to by the consumer will further deplete the scarce minutes available for the entire Lifeline household.<sup>11</sup> Lifeline households use their Lifeline phones to find work or a doctor or

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<sup>6</sup> See FCC Consumer and Governmental Affairs Bureau, White Paper on Bill Shock (Oct.13, 2013).

<sup>7</sup> See Sixteenth Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, WT Docket No. 11-186 (Rel. Mar.21, 2013), FCC 13-34 at para.98; See Fifteenth Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, WT Docket No. 11-186 (Rel. June 27, 2011), FCC 11-103 at para.167.

<sup>8</sup> See Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Seventeenth Report, WT Docket No. 13-135 (Rel. Dec.18, 2014), at ¶¶ 67, 154 – 157.

<sup>9</sup> See 2012 Annual Report, Universal Services Administrative Company at 9.

<sup>10</sup> See FCC Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, FCC 15-71 (Rel. June 22, 2015) at ¶ 16 (“the standard Lifeline market offering for prepaid wireless service has remained largely unchanged at 250 minutes . . . .”); see also *Low Income Support Mechanism Distribution of Low Income Disbursements Between Wireless and Other ETCs January 2009 through September 2014*, Universal Service Administrative Company (Oct. 27, 2014).

<sup>11</sup> Lifeline is limited to one-per-household. See 47 C.F.R. § 54.409(c).

to access necessary services. Loss of subsidized minutes will also jeopardize health and safety, for example the ability to talk to a nurse or doctor.

## **2. Provision of a Cell Phone Number Should Only Be Considered Consent to Receive Autodialed or Prerecorded Calls that Are Closely Related to the Purpose for Which the Number was Provided**

We are asking the Commission to clarify its position regarding what types of calls and texts are consented to when a consumer provides her phone number to a business. Given the TCPA's requirement that consent to receive robocalls be express, we urge the Commission to clarify that a consumer's provision of a cell phone number to a business is, at most, consent to receive autodialed or prerecorded calls regarding the specific (and often time-limited) matter for which the telephone number was requested.

The need for clarification of this issue is illustrated by the Commission's July 10, 2015 Omnibus Order on the TCPA. In one place in the Omnibus Order, the Commission said:

By "within the scope of consent given, and absent instructions to the contrary," we mean that the call must be closely related to the purpose for which the telephone number was originally provided. For example, if a patient provided his phone number upon admission to a hospital for scheduled surgery, then calls pertaining to that surgery or follow-up procedures for that surgery would be closely related to the purpose for which the telephone number was originally provided.<sup>12</sup>

This language properly limits the scope of consent to the context in which the consumer provided the phone number. To interpret providing a cell phone number in a particular context as consent to receive robocalls for a host of other purposes would be contrary to consumers' reasonable expectations and the TCPA's express consent requirement.

However, elsewhere in the same Order, the Commission stated:

For non-telemarketing and non-advertising calls, express consent can be demonstrated by the called party giving prior express oral or written consent, or in the absence of instructions to the contrary, by giving his or her wireless number to the person initiating the autodialed or prerecorded call.<sup>13</sup>

This second statement could be read to imply that whenever a consumer provides a cell phone number to any business, the consumer has consented to receive robocalls on any and all topics. Indeed, the petition from Edison highlights the issue here. Edison's petition argues "what is obvious in the real world: when a customer provides a utility with a phone number, the customer is

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<sup>12</sup> *Id.* at Note 474.

<sup>13</sup> *In re* Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, CG Docket No. 02-278, WC Docket No. 07-135, \_\_\_ F.C.C. \_\_\_ (July 10, 2015) ¶ 52, citing 1992 TCPA Order, 7 FCC Rcd at 8769, para. 31; ACA Declaratory Ruling, 23 FCC Rcd at 564, para. 9 ("the provision of a cell phone number to a creditor, e.g., 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.").

consenting to the utility using that number.”<sup>14</sup> However, that argument is a huge leap from the TCPA’s requirement for *express* consent for robocalls, and it certainly does not comport with the first statement made by the Commission referenced above in the July 10, 2015 Order.

The Commission’s first statement quoted above limits the consent created when a patient provides his or her number to a medical facility *to the specific circumstances for which the number was requested*. In the Commission’s example, the phone number is provided in relation to a specific surgery, so the consumer has consented to calls related to that specific surgery. A necessary corollary is that providing the phone number before a surgery is not consent to receive robocalls on issues which are not “closely related to the purpose for which the telephone number was originally provided.”

The Commission took this same position just last year in its letter to Clerk of the Second Circuit Court of Appeals in the case of *Albert A. Nigro v. Mercantile Adjustment Bureau, LLC*.<sup>15</sup> The Commission noted that, while Mr. Nigro had provided his cell phone number to the utility, the *transaction* about which the phone number was provided was to terminate utility service provided to another person, rather than to initiate service. This meant that no consent had been provided for autodialed calls to be made about a past-due debt related to the utility service.<sup>16</sup> However, according to Edison’s petition, it appears clear that the act of providing a phone number simply to establish service would provide consent for the consumer to receive dunning calls regarding the failure to pay for that service, even many years later.<sup>17</sup>

The best interpretation of the TCPA is that, while provision of a telephone number may be consent to receive calls on a particular topic, it is not express consent to receive *autodialed or prerecorded* calls. A company can easily request express consent to receive robocalls, but if it has not requested or obtained this specific consent it should not be allowed to infer consent. Allowing the statutorily required “express consent” to receive robocalls to be implied from the mere provision of a telephone number opens up a host of issues about the scope of that consent. These issues would be alleviated if the business is simply required to obtain true, specific, express consent.

Nevertheless, we recognize that the Commission is not writing on a clean slate. Assuming that the Commission retains the position that the simple provision of a cell phone number can constitute express consent to receive autodialed or prerecorded calls at that number, we urge it to clarify that that consent is limited to the specific purpose for which the telephone number was provided.

The clearest way for the Commission to provide direction to callers and to protect consumers from unwanted *non-emergency* calls, while ensuring that they receive emergency calls, is for the Commission to clearly articulate that callers should *ask* their customers (or parents, in the case of schools) which type of calls they consent to receive when the phone number is initially provided. When the context is obvious, this question need not be asked – such as when a medical facility is

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<sup>14</sup> See Edison’s Reply Comments at 11, <http://apps.fcc.gov/ecfs/document/view?id=60001042899>.

<sup>15</sup> Federal Communications Commission Letter to Ms. Catherine O’Hagan Wolfe, No. 13-1362, June 30, 2014, 2014 WL 2959062 (F.C.C.).

<sup>16</sup> *Id.*

<sup>17</sup> See Edison’s Petition at 12.

taking a phone number for a specific event, like an operation. However, when the patient provides the phone number in response to that question in the hospital admissions office, that should not be construed to be consent to be billed for that bill by the hospital's debt collector or to be called for unrelated services. In this context the primary transaction involved specific medical care; whereas in the context of creditor and debt collector the primary transaction is credit.

### **3. Provision of a Cell Phone Number to a Utility Should Not Be Treated as Express Consent Beyond the Specific Purpose for Which the Number Was Provided**

The concerns expressed in the preceding section are particularly compelling in the context of utility services. In many circumstances, a consumer's phone number is an alternative way of identifying the account, so the consumer is unable to refuse to provide his or her number. A consumer would not reasonably expect that simply providing one's phone number under these circumstances would constitute consent to receive robocalls. Indeed, in the case referred to by Edison illustrates this very point, as the plaintiff in the case did not believe that he had consented to receive texts to his cell phone.<sup>18</sup> Interpreting the act of providing a phone number when establishing utility service as express consent to be autodialed about best energy usage times, or meter reading times, goes far beyond the concept of *express consent*.

Allowing utility companies to make autodialed and prerecorded calls on any subject remotely related to the provision of utility service transforms the requirement for "express consent" to allowing consent to be implied from the action of providing the phone number. Yet the statute clearly says that the consent must be *express*, which is the opposite of implied.

Edison argues that there are numerous purposes for which a utility may want to contact its customers, including outages and restoration of service, service-related work and appointment reminders, natural disaster response information, billing information that can enable customers to avoid service interruptions, and information regarding utility consumption and conservation.<sup>19</sup>

Some of these contacts are clearly emergency notices, which we agree should be included in the emergency exception (natural disaster information, for example, or if there is a threatened disconnection in the middle of winter or during a heat wave). Others however, are clearly *not* emergencies, such as information related to appointments, billing, consumption and conservation, or calls for past due bills on a terminated account. The broad interpretation that Edison seeks would render meaningless any limitation on the concept of what types of communications were consented to, undermining the interpretation of the word "express" in the consent requirement in the statute.<sup>20</sup>

Many of the non-emergency calls utility companies make are debt collections calls. Failure to pay utility bills is usually a result of a lack of sufficient funds, or unforeseen financial hardship. It is almost never a matter of choice. It makes little sense to burden these consumers with robocalls, escalating other utility costs for the household, in an attempt to harass them into paying a bill they cannot afford.

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<sup>18</sup> See e.g. paragraph 23 of the Complaint in the Grant v. Commonwealth Edison case, available at [https://www.comedtextsettlement.com/documents/class\\_action\\_complaint.pdf](https://www.comedtextsettlement.com/documents/class_action_complaint.pdf).

<sup>19</sup> See Edison's Reply Comments at 13, <http://apps.fcc.gov/ecfs/document/view?id=60001042899>.

<sup>20</sup> 47 U.S.C. § 227(b)(1)(A).

When a person signs up for utility service and is required to provide his or her phone number as a condition of receiving that service, it is unreasonable to assume that there was express consent to receive debt collection robocalls after the service has been disconnected.<sup>21</sup> The transaction that the customer agreed to was for the provision of utility service. By providing a telephone number in order to receive that service, the customer did not necessarily agree to be autodialed dunned on his or her cell phone for the failure to pay a bill for that service. However, calls warning of termination of service are very different than debt collection calls. This is an especially important distinction for low-income consumers who may have trouble paying their utility bills, and for whom federal assistance may be available if the bill is unpaid.<sup>22</sup>

#### **4. Express Consent Should Be Required for All Non-Emergency School-Related Robocalls**

Moreover, the requirement of express consent should not be vitiated for school-related calls. It would be particularly inappropriate to treat the mere provision of a telephone number as express consent for non-emergency calls in the school context. Parents will always give a school a telephone number if they have one – because they want to receive emergency calls regarding their child’s health or safety. To construe that act as consent to receive non-emergency robocalls about band practice or PTA meetings would eviscerate both the exception for emergency calls and the requirement of express consent. Schools would always be able to robocall parents on all topics. It appears, from reading Blackboard’s position, that parents who want to avoid non-emergency robocalls would have to refuse to give their cell phone numbers to schools; and as result, would not receive the emergency calls that they would clearly want to receive.

The problem is compounded because parents always will provide every available telephone number to schools, because they want to be immediately notified in case their child is hurt or in danger. In households with more than one phone, or with more than one adult who has a phone, all of the household’s phones will receive the same robocall within seconds or minutes of each other – for example, once on the residence phone, and then on both parents’ cell phones.

When a child is in danger, these duplicate calls are appropriate warnings that parents want and need. However, when there are three phone calls simultaneously announcing a change in the band club benefit party or cancellation of a football game, these calls become invasive and offensive. More importantly, when those calls or texts come in to cell phones with strict limits on calls and texts, the costs of each repeated notice doubles or triples. The multiplicity of these calls can leave the family without access to their cell phone for other, important calls or texts, or cause an expensive spike in the family’s cell phone bill.

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<sup>21</sup> These debt collection calls may be considered to be within the scope of consent based on the analysis in the Commission’s 2008 ACA Declaratory Ruling; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, SoundBite Communications, Inc., Petition for Expedited Declaratory Ruling, CG Docket No. 02-278, Declaratory Ruling, 27 FCC Rcd 15391 (2012) (SoundBite Declaratory Ruling).

<sup>22</sup> LIHEAP Emergency Assistance is designed to help low-income households facing emergency situations that threaten the health and safety of the family, such as a threatened disconnection in the middle of winter. 42 USC §8623 (c).

## **5. The Commission Should Not Treat All Education-Related Calls As Emergency Calls**

Blackboard’s petition asks the Commission to treat “all education-related informational messages distributed by Blackboard’s educational customers as messages made for “emergency purposes.”<sup>23</sup> Blackboard uses the example of an overdue library book for which a parent “may be unable to pay the fine” as one example of many of the types of contacts which it claims should be included under the rubric of emergency, and not subject to any prior express consent requirement at all. We urge the Commission to reject this position.

First, the calls that Blackboard identifies include many types of calls that no reasonable consumer would consider to be school-related emergencies. To define an overdue library book as an emergency would completely undermine the true concept of an emergency. If parents want to receive autodialed or artificial voice calls about overdue library books (or band practice or PTA meetings), they can easily provide express consent for these calls.

Second, defining non-emergency calls as emergencies would leave consumers with no clear means to stop the calls. In contrast to calls for which express consent is required, there is no established method to withdraw consent to receive emergency calls in either the statute or the Commission’s regulations or rulings. A parent who provides a cell phone number in order to receive notices about personal emergencies affecting his or her child should not have to accept being bombarded with multiple automated notices about band practice. Providing consent to be called about non-emergency school matters must require a different method than simply providing one’s phone number. Otherwise, the statute would make no sense. If mere possession of a parent’s cell phone number meant that a school could make robocalls about PTA meetings and homework tips, the exception for emergency calls would be meaningless.

## **6. The Fact that Consent Can Be Revoked Does Not Undermine the Requirement for Express Consent**

In the recent Omnibus Order, the Commission clarified that once consent has been provided to receive autodialed or prerecorded calls, that consent can always, easily be revoked.<sup>24</sup> Callers may argue that because consent can be revoked so readily, this justifies an expansive view of what activity creates express consent. However, the right to revoke consent should have no effect on the full definition of “express consent” in the statute. Although the right to revoke consent is an important consumer right, the availability of the revocation tool does not justify an expansive interpretation of the meaning of the “express consent” required by the statute before these calls can be made. First, the statute itself does not hinge the definition of “express consent” on the easy availability of revocation. Second, consumers will not necessarily know about their rights to revoke consent, and they may – erroneously – believe that by revoking consent they are required to cancel the underlying transaction or relationship. Third, consumers may only want to revoke consent for some kinds of calls but not for others. Moreover, the burden of revoking consent is on consumers.

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<sup>23</sup> See paragraph 9 of Reply Comments of Blackboard, Inc. <http://apps.fcc.gov/ecfs/comment/view?id=60001031076>.

<sup>24</sup> *In re* Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, CG Docket No. 02-278, WC Docket No. 07-135, \_\_\_ F.C.C. \_\_\_ (July 10, 2015), ¶ 64.

Under the statute, the onus is on the caller to obtain *express* consent before placing automated or prerecorded calls. The statutory requirement for express consent before the call can be made is wholly different from allowing an open-ended interpretation of the meaning of express consent and requiring the consumer to carry the burden of withdrawing consent for certain purposes.

## 7. A Limited Exception Should be Permitted for Certain Mandated Calls

Both the Edison and the Blackboard petitions raise the question of how their providers should handle calls that they are mandated to make by state law or local regulation. Many of these calls could be deemed emergencies, however, other calls do not easily fall within the definition of emergency, and we have serious doubts that all of the calls that state law or local regulation requires schools or utilities to make qualify as emergency calls.

The fact that a state or local authority has mandated the call shows that it probably considers the call important. Yet an important call is not necessarily an emergency.

Nonetheless, we think that it would be reasonable for the Commission to give some weight to these legislative mandates in determining whether a type of call involves an emergency. For example, in determining whether a call to a parent about a child's unpermitted absence from school is an emergency, it is reasonable to give some weight to a state or local government mandate that the call be made.

If the Commission allows an exception for "mandated calls," it should be *limited to calls made by public entities or providers of essential services*. As it would be contrary to the TCPA and its goals of protecting consumers to treat all mandated calls as emergencies, the calls allowed should be limited to *certain very specific subject matters spelled out by the Commission*. The Commission should not provide *carte blanche* permission for these entities to robodial on any issue that a state or local government requires it to make. Instead, the Commission should specifically describe the types of calls that it approves as falling within this exception, and should permit only calls that fall within the described categories. Simply allowing all calls that are mandated by law or regulation would open too large an exception through which the Commission could unintentionally open the door to debt collection calls, telemarketing sales calls, unwanted reminder calls, and calls about non-essential matters such as pep rallies. In other words, calls which are important and mandated by law or regulation, which would not otherwise be considered an emergency, should only be permitted when the Commission has approved the subject matter of the calls.

At this juncture, we offer two types of calls which – when otherwise mandated by law or regulation to be made by public entities or providers of essential services – should be considered for this "mandated call" definition of emergency call. We note this list does *not* include calls that are quite obviously emergencies (such as utility outages or school schedule weather alerts or information about the health or safety of a student):

1. Calls during extreme weather months (cold winter or hot summer) that utility service will be terminated unless arrangements are made;
2. Calls regarding a student's unexplained absence.

To ensure that Lifeline and other low-income consumers are protected, the Commission should also closely limit both the *number and length of these calls*. For example, for "mandated calls"

that the Commission agrees are emergencies, Commission might allow one such autodialed or prerecorded call or text to be made without the prior express consent of the called party.

If the Commission takes this approach and denies the request for a *carte blanche* exemption from the TCPA, the petitioners' members can still comply with any legislative mandates simply by making these calls without using autodialing or prerecorded voices. Calls to cell phones from public entities or providers of essential services, relating to subject matters which have not been specifically identified as emergencies by the Commission, even if mandated by law or regulation, would be permitted if a) there was express consent for the calls, b) the calls were actually related to an emergency, or c) the calls were manually dialed.

## **Recommendations**

This analysis leads to the need for a clear set of guidelines interpreting these issues:

- 1. The requirement for callers to obtain “express consent” means that consent must have been provided for the type of information contained in the call or text.**
  - a. Express consent can be provided orally or in writing, however, it must be provided for calls or texts about certain, specific transactions, or certain, specific types of information or notices.
  - b. Consent can be implied from the circumstances of the specific transaction if the scope is limited in time and the content relates to the specific transaction.
  - c. Express consent to be called about a wide variety of issues tangentially related to the service or product, which was the subject of the transaction, must be specifically obtained by the caller relating to different subject matters.
  
- 2. Calls mandated by state or local law to be made by public entities or providers of essential services should be permitted as emergency calls as delineated by the Commission but only under these narrow circumstances:**
  - a. The Commission should specifically identify the types of calls that will be considered emergency calls under the TCPA if the calls are required by law.
  - b. Permission to treat these calls as emergency calls should apply only to public entities (i.e. public schools), or providers of essential services (i.e. utility providers).
  - c. The Commission should allow these calls only after approving the general subject matter of these calls.
  - d. The allowed types of calls should not include calls for telemarketing purposes or debt collection purposes.
  - e. Because of the potential cost of these calls to consumers with Lifeline or other limited minutes on their cell phone plans, the length and number of the calls included within this delineated emergency definition for mandated calls should be

closely restricted, such as by allowing only one autodialed or prerecorded call pursuant to this exception.

Respectfully submitted, August 7, 2015, by

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### **Descriptions of National Organizations On Behalf of Which These Comments Are Filed**

**Consumer Action** has been a champion of underrepresented consumers nationwide since 1971. Consumer Action focuses on financial education that empowers low to moderate income and limited-English-speaking consumers to financially prosper. It also advocates for consumers in the media and before lawmakers to advance consumer rights and promote industry-wide change.

The **Consumer Federation of America** is an association of nearly 300 nonprofit consumer groups that was established in 1968 to advance the consumer interest through research, advocacy and education.

**Consumers Union** is the public policy and advocacy division of Consumer Reports. Consumers Union works for telecommunications reform, health reform, food and product safety, financial reform, and other consumer issues. Consumer Reports is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

The **National Association of Consumer Advocates (NACA)** is a non-profit association of consumer advocates and attorney members who represent hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices. As an organization fully committed to promoting justice for consumers, NACA's members and their clients are actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means.

The **National Association of State Utility Consumer Advocates (NASUCA)** is an association of 44 consumer advocates in 40 states and the District of Columbia. NASUCA's members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts.

**National Consumer Law Center (NCLC)** is a non-profit corporation founded in 1969 to assist legal services, consumer law attorneys, consumer advocates and public policy makers in using the powerful and complex tools of consumer law for just and fair treatment for all in the economic marketplace. NCLC has expertise in protecting low-income customer access to telecommunications, energy and water services in proceedings at the FCC and state utility commissions and publishes

*Access to Utility Service* (5<sup>th</sup> edition, 2011) as well as NCLC's *Guide to the Rights of Utility Consumers* and *Guide to Surviving Debt*.

**National Consumers League** provides government, businesses, and other organizations with the consumer's perspective on concerns including child labor, privacy, food safety, and medication information. The mission of the National Consumers League is to protect and promote social and economic justice for consumers and workers in the United States and abroad.

**Public Citizen** is a national non-profit organization with more than 225,000 members and supporters. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues including consumer rights in the marketplace, product safety, financial regulation, safe and affordable health care, campaign finance reform and government ethics, fair trade, climate change, and corporate and government accountability.

**U.S. Public Interest Research Group (U.S. PIRG)** serves as the Federation of State PIRGs, which are non-profit, non-partisan public interest advocacy organizations that take on powerful interests on behalf of their members. For years, U.S. PIRG's consumer program has designated a