

In Support of Strengthening Protections Against Fraudulent Communications While Ensuring Public Power Utilities Can Communicate with Customers for Service-Related Issues

1 Automatic telephone dialing systems (ATDS) are used by businesses and governments to communicate
2 with consumers. Public power utilities use these systems to communicate with their customers on service
3 interruptions, the status of restoration efforts, and other similar utility-specific information. They also use
4 them to contact customers on energy efficiency and other customer-support programs. The ability to use
5 autodialers or related technology to communicate with customers on these important issues is essential to
6 utility customer service operations.

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8 Unfortunately, automated calls and texts can be sent by scammers for fraudulent purposes. Among the
9 types of fraudulent calls made are those impersonating federal agencies, such as the Internal Revenue
10 Service, or local utility companies. Public power utilities have reported receiving complaints from
11 customers that aggressive callers claiming to represent the utility have requested payment for overdue
12 service or equipment bills. The callers often threaten to disconnect power for failure to pay immediately.

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14 In 1991, Congress enacted the Telephone Consumer Protection Act (TCPA) to address the growing
15 number of telemarketing calls received by consumers. The TCPA restricts the making of telemarketing
16 calls and the use of ATDS and artificial or prerecorded voice messages. In 1992, the Federal
17 Communications Commission (FCC or Commission) adopted rules to implement the TCPA, making it
18 unlawful for “any person[s]” to place autodialed or prerecorded or artificial voice calls to wireless
19 telephone numbers, except with the prior express consent of the called party or in an “emergency.”
20 However, the rules are ambiguous and have not kept pace with technology, leading to confusion around
21 what types of communications are prohibited, as well as a rise in the number of unwanted robocalls and
22 robotexts received by cell phone owners.

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24 In 2012, the FCC’s rules were amended to require telemarketers to: (1) “obtain the express written
25 consent of consumers before robocalling them”; (2) “no longer allow telemarketers to use an ‘established
26 business relationship’ to avoid getting consent from consumers when” calling their home phones; and (3)
27 “provide an automated, interactive ‘opt-out’ mechanism during each robocall so consumers can
28 immediately tell the telemarketer to stop calling.” Following the Commission’s rules changes, a petition
29 was filed with the FCC a few years later for a declaratory ruling that the TCPA does not apply to calls
30 “for official purposes” placed by, or on behalf of, federal, state and local governments. The provisions of
31 the TCPA apply to “persons,” a term that traditionally does not include governmental entities. The

32 American Public Power Association filed comments in support of this petition, asserting that public
33 power utilities do not qualify as “persons” under the law. In issuing its declaratory ruling, the FCC ruled
34 that the term “person” does not apply to “the federal government or agents acting within the scope of their
35 agency.” The declaratory ruling did not comment on whether the term “person” also does not include
36 state or local governments. It is still unclear whether the provisions of TCPA apply to public power
37 utilities, but public power utilities comply with the provisions of the act given this regulatory uncertainty.
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39 Congressional interest in addressing ever increasing unwanted calls and texts sent to consumers via
40 automated systems is strong. Several hearings have been held in the House and Senate on the issue, and
41 several bills have been introduced to make changes to the law. Public power agrees that consumer
42 protection measures are needed to protect customers from scams via robocalls and robotexts, especially
43 given fraudulent calls made by scammers pretending to collect money on behalf of electric utilities.
44 However, any legislation to update the TCPA or effort by the Commission to update the rules issued
45 pursuant to the act must ensure the ability of businesses and public power utilities to communicate with
46 their customers via ATDS without fear of federal penalty.

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48 **NOW, THEREFORE, BE IT RESOLVED:** That the American Public Power Association (APPA)
49 opposes legislation or regulations that would inhibit the ability of public power utilities to communicate
50 with their customers using automated dialers for legitimate, service-related issues; and
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52 **BE IT FURTHER RESOLVED:** That APPA urges the Federal Communications Commission and
53 Congress to improve protections for cell phone users against fraudulent communications.