

**Federal Communication Commission
Washington, D.C. 20544**

In the Matter of Rules and Regulations)	
Implementing the)	CG Docket No. 18-152
Telephone Consumer Protection Act and)	CG Docket No. 02-278
Interpretations in Light of the D.C. Circuit's)	
ACA International Decision)	

**Reply Comments of the
National Association of State Utility Consumer Advocates (NASUCA)**

The National Association of State Utility Consumer Advocates (NASUCA)¹ respectfully submits the following comments to the Federal Communications Commission (FCC) on behalf of its Members and the hundreds of millions of consumers whose interests are represented by said Members in response to FCC's request for comments on the interpretation and implementation of the Telephone Consumer Protection Act. NASUCA has reviewed the June 13, 2018 comments filed in these dockets by the National Consumer Law Center and supports them. NASUCA also notes that it has consistently opposed the use of robocalls made without either the affirmative consent of the party being called or an emergency reason for the communication.

Such unsolicited communications impose costs, inconvenience and annoyance on ratepayers, their telecommunications equipment, and their privacy. As Congress found in 1991 when it enacted the Telephone Consumer Protection Act of 1991: "unwanted automated calls [are] a "nuisance and an invasion of privacy, regardless of the type of call" ... consequently, banning such calls was "the only effective means of protecting telephone consumers from this nuisance and privacy invasion."²

¹ NASUCA is a voluntary association of 56 consumer advocate offices. NASUCA members represent the interests of utility consumers in 42 states, the District of Columbia, Puerto Rico, Barbados and Jamaica. NASUCA is incorporated in Florida as a non-profit corporation. NASUCA's full 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. Members operate independently from state utility commissions. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). NASUCA's associate and affiliate members also represent the interests of utility consumers but are not created by state law or do not have statewide authority. Some NASUCA member offices advocate in states whose respective state commissions do not have jurisdiction over certain telecommunications issues.

² See, Pub. L. No. 102-243, §§ 2(10-13), (Dec. 20, 1991), *codified at* 47 U.S.C. § 227.

Although Congress addressed these concerns by enacting 47 U.S.C. § 227(b)(1)(A)(iii), in the twenty-seven years since Congress acted, technology has changed and robocalls have been escalating, to the point where more than 3.4 billion robocalls were made in April of 2018.

The specific technology used for these unsolicited communications does not change the adverse effects they impose on the recipients. Allowing any technology to do so would undermine the express intent of Congress to protect the public from any unsolicited call using an automated telephone dialing system. Consequently, NASUCA believes the term “Automated Telephone Dialing System” (ATDS) should not be reinterpreted in this proceeding so as to narrow the consumer protections historically provided for in the Telephone Consumer Protection Act. Many ratepayer and consumer protection groups have publicly expressed their agreement with this position, including through NASUCA's Resolution 2011-07, adopted in November 2011,³ and the New Jersey Division of Rate Counsel's Reply Comments in CG Docket No. 02-278, in April 2015.⁴ NASUCA urges the FCC to adopt an inclusive definition of “Automated Telephone Dialing System” while carving out the ordinary use of smartphones, which would continue to provide consumer protections from unsolicited calls while conforming to the requirements of *ACA International v. F.C.C.*, 885 F.3d 687, 700 (D.C. Cir. 2018).

³ See, <http://nasuca.org/robo-call-resolution-2011-07/>.

⁴ See <https://ecfsapi.fcc.gov/file/60001042717.pdf>.

In conclusion, as noted above, NASUCA supports FCC regulations that protect the public from unsolicited calls, including prohibitions on the use of any technology, without the affirmative prior consent of the party being called, including for the purpose of making telemarketing or informational calls, except calls for the purpose of public safety.⁵

Respectfully submitted,

David Springe, Executive Director
NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380

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⁵ See, In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act, CG Docket No. 02-278, Petitions of Blackboard, Inc., and Edison Electric Institute, et al., Declaratory Ruling, 31 FCC Rcd 9054, 9066-67 (rel. August 4, 2016). FCC clarified that consent by public utility consumers to contact by the public utility reasonably includes consent to receive “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 information about potential brown-outs due to heavy energy usage.”