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**Memorandum**

TO: NREA Managers, Troy Bredenkamp, and Rachael Black  
FROM: Dave Jarecke   
DATE: August 18, 2016  
RE: Robocalls & Express Consent

The Federal Communications Commission (FCC) issued a Declaratory Ruling on August 4, 2016, clarifying the Telephone Consumer Protection Act's (TCPA) applicability to communications from schools and utilities.

As previously communicated and presented to the membership, except for emergency communications, the TCPA prohibits all robocalls and text messages to cell phones unless the recipient has given express prior consent.

The Ruling clarifies that customers who provide wireless numbers when they initially sign up to receive service or if they update their contact information constitutes prior express consent to receive messages "**closely related to the utility service.**" Messages that are "closely related to the utility industry" include messages about: planned or unplanned service outages, service restoration, requests for confirmation of outages or restoration, notices for meter upgrades or tree trimming, and warnings about potential brown-outs due to heavy energy usage—collectively referred to as the "prior-consent exception".

The Ruling further states that communications about voluntary participation in energy saving programs and communications after utility service has been terminated, even when terminated for non-payment, are not within the prior-consent exception.

The Ruling makes clear that consumers may withdraw consent in any reasonable manner and that companies may not designate an exclusive means for revoking consent.

Because each District and Cooperative uses robocalling technology in a different manner, it is ultimately up to management to determine if their use of the technology falls within the new prior-consent exception. The Ruling is clear that failure to properly classify may result in

August 18, 2016

imposing fines, which range from \$500-\$1500 per violation. Failure could include improperly classifying a message or even texting/robocalling a former customer number that has been reassigned. **“In this regard, we strongly encourage utility companies, and all robocallers, to inform customers during the service initiation process or when updating contact information on the account as an additional safeguard that, by providing a wireless telephone number to them, the customer consents to receiving autodialed and prerecorded message calls at that number, to the extent such calls are closely related to the service purchased by the customer”** (paragraph 31, Page 14 of the Ruling).

Ultimately, my recommendations are to 1) obtain written consent from all new customers regardless of contact method, which eliminates any inquiry as to the message content and 2) consider a requirement that all customers update their information periodically and 3) require customers to provide notice if they no longer use a phone number on record or wish to opt out of robocalls.