

Written Testimony of

Shaun Mock, CFO

Snapping Shoals Electric Membership Corporation

Before the Subcommittee on Communications and Technology

Modernizing the Telephone Consumer Protection Act

**Electric Cooperatives and the Telephone Consumer Protection Act**

Thank you for the opportunity to address this committee regarding the impacts of the Telephone Consumer Protection Act (TCPA) on Electric Cooperatives, and more importantly our 42 million consumer-members nationwide. Electric Cooperatives share a unique and proud history of bringing electricity to rural America during a time in which it was simply not financially profitable for traditional investor owned utilities to provide service. Since our inception, electric cooperatives have remained consumer-member driven organizations that strive to deliver best in class service at affordable prices. Through each generation and with each decade's passing electric cooperatives have been on the forefront of new technology. We constantly strive to improve our services, not because of earnings targets, but rather to improve the lives of the members that we serve.

Electric cooperatives are private, not-for-profit businesses owned and governed by their consumers (known as consumer-members). Two principles under which all co-ops, including electric co-ops, operate are democratic governance and operation at cost. Specifically, every consumer-member can vote to select local board members that oversee the co-op, and the co-op must return to consumer-members revenue above what is needed for operation. Under this structure, electric co-ops provide economic benefits to their local communities rather than distant stockholders. Nationwide, over 900 electric cooperatives provide power to 42 million Americans in 47 states covering three quarters of the nation's land mass<sup>1</sup>.

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<sup>1</sup> <http://www.nreca.coop/about-electric-cooperatives/co-op-facts-figures/electric-co-op-fact-sheet-2016-03/>

To say that new technology has changed the utility landscape, would be an understatement. Our consumer-members of the 21<sup>st</sup> century expect, and often times demand nearly uninterrupted electric service along with a host of modern tools that we all seem to expect in modern life. In recent years, our ability to communicate with our consumer-members has been stymied by the uncertainty surrounding the existing TCPA regulations. Like most complicated matters, the existing TCPA regulations are neither all good, nor all bad. We are absolutely in favor of protecting consumer-members from unwanted communications. We are in favor of providing choices in how we interact with our consumer-members. However, we are also in favor of removing undue liability and the ambiguity found within the confines of the existing TCPA regulations. Our industry welcomed the news of recent FCC Declaratory Orders<sup>2</sup> as one of our primary concerns was addressed when the commission recognized the importance of utility notifications. However, these orders do not go far enough in patching up the increasingly archaic regulations found in the TCPA.

### **Who is Snapping Shoals Electric Membership Corporation?**

Snapping Shoals Electric Membership Corporation (SSEMC) is a non-profit, consumer-owned electric cooperative headquartered in Covington, Georgia. We provide electric service to about 97,000 consumer-members along 6,200 miles of energized line in an eight-county area southeast of Atlanta. Snapping Shoals EMC's roots go back to the 1930s and the early days of America's rural electrification movement. Since that time, Snapping Shoals EMC has built a strong reputation for providing reliable power and excellent customer service. Through the efforts of our nearly 230 dedicated employees, many of whom are cooperative members themselves, SSEMC members boast some of the lowest electric rates in Georgia<sup>3</sup>.

Snapping Shoals EMC membership base is primarily residential. Approximately 94% or 91,000 residential accounts comprise the system. The remaining non-residential accounts consist of 4,000 small commercial

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<sup>2</sup> FCC Declaratory Ruling and Order 15-72 (July 10, 2015)

FCC Declaratory Ruling 16-88 (August 4, 2016)

<sup>3</sup> GA Public Service Commission 2016 Residential Rate Survey (All Providers Summer)

<http://www.psc.state.ga.us/electric/surveys/residentialrs.asp>

businesses, 1,800 Public Street and Highway lighting accounts, and 43 Large Commercial and Industrial accounts. Providing our consumer-members with reliable, affordable electric service is not just our goal; it is our only reason for existence. Through 78 years of service, SSEMC has provided affordable energy solutions to power our consumer-members through life's every day challenges. One such solution, known as prepaid metering, has become so successful that its impact to our consumer-members and Snapping Shoals EMC operations cannot be understated.

### **The Growth of Prepaid Metering**

Prepaid metering was originally launched on a trial basis during the fall of 2010. Initially offered to new consumer-members only, the SSEMC prepaid program has grown to include over 11,000 residential consumer-members, which represents 12% of our total residential membership. Highlights of the prepaid program are as follows:

- No Deposit Required: Consumer-members are able to forego normal deposit requirements in exchange for paying for their electric service in advance.
- Daily Bill Calculation: Once a prepaid balance is established future energy consumption is calculated daily and deducted from the member's prepaid balance daily.
- No Minimum Balance Required: Consumer-Members can elect to receive automated notifications from SSEMC once their balance falls below a predetermined amount.
- Meter automatically disconnects once balance falls below zero-\$.
- Meter automatically reconnects once payment is received and prepaid balance is above zero-\$.
- Automated Low Balance Notifications Require Verbal Consent from the consumer-member.
- Originally, notification options included automated phone call, text, or email.
- Consumer-Members can verify prepaid balance twenty four hours a day via website, smartphone app, or manual inquiry via automated phone system.

We have learned in the six years since the program's inception that our prepaid membership's needs and expectations are very different than traditional residential members. Instinctively, the prepaid member tends to monitor electricity usage and balance information daily. To this end, we have found that not only does the typical prepaid member use less electricity; the average prepaid member will also pay towards their electric balance at least five times each month. In short, prepaid members are more engaged with our cooperative on a daily basis and require more up-to-date information than traditional consumer members. It is also noteworthy that although SSEMC does not collect any income based demographic information of our membership, it is generally accepted that our low-income populations are more likely to choose our prepaid billing option. This fact is especially relevant when we consider that liability concerns over current TCPA regulations prompted SSEMC to discontinue all telephone disconnect and low balance notifications in June 2014. Email notifications are still available, but many low-income and elderly consumer-members are less likely to own a smart phone or have daily access to email notifications.

### **An Introduction to the Telephone Consumer Protection Act**

In late 2013, SSEMC was the target of legal action alleging improper, unsolicited phone calls under the strict liability portion of the TCPA statute. Prior to this action, our industry viewed prepaid low balance phone calls as a member friendly service. We have no motivation to contact our membership except in the manner in which they request. Our automated systems were never used to sell any products, services, or debt collection. Although the case has since been resolved, SSEMC made substantial negative changes to our member notification offerings as a result of this complaint. A summary of the facts and circumstances around this case is provided below:

- The mobile number at issue was provided to SSEMC by a prepaid member upon establishing service in April 2011. The member also provided an email address for future communications.
- Member provided consent and verified phone number at least seven times through a series of consumer initiated phone calls to SSEMC, the last of which occurred in September 2011.

- Unbeknownst to SSEMC, sometime in late 2011 our member changed phone numbers, but continued to receive electric service at the original service address. The member did not provide a new phone number, but continued to receive almost daily email prepaid low balance notifications until disconnecting service in April 2013.
- SSEMC continued to send almost daily automated prepaid low balance and/or disconnect notifications to the phone number at issue, unaware that the phone number had been reassigned to another individual, who was not a member of SSEMC.
- Daily notifications sound excessive, but reflects the member's practice of paying small amounts, often daily to maintain the lowest possible balance to maintain electric service.

Unfortunately, the original prepaid low balance phone notification system did not allow for the consumer-member to simply opt-out of future calls from a prompt within the phone call. However, additions or modifications to consumer notification preferences are available 24 hours a day through a live customer service agent. Even a non-member such as the plaintiff could have reached a live customer service agent to request the phone number be added to the do not call list. Our automated dialing system was also in its infancy and did not include a provision for opt-out or identifying reassigned phone numbers. We acknowledge that these systems should be improved and have continued to work with our service providers to develop a more robust member solution.

The prepaid billing program at SSEMC was certainly not the first within our industry, but the rapid growth of our program meant that SSEMC would be one of the first to experience such growing pains as associated with reassigned phone numbers. Larger utility providers, with much larger budgets, have no doubt struggled to find fool-proof means to avoid calling reassigned numbers. Third-party database "scrubbers" are just making their way into our industry, but remain expensive and less than perfect solution for matching names and phone numbers. At best, the FCC has offered a patch-work of best practices<sup>4</sup> that *should* protect

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<sup>4</sup> FCC Declaratory Ruling and Order 15-72, para. 86

consumer-members and reduce TCPA liability concerns associated with timely identification of reassigned phone numbers. However, the strict liability tenets found within the statute leave no room for reasonable application of the law that would reflect the modernization of telecommunications and balance the member-benefit of phone notifications with cooperative best practices. In our case, the plaintiff received over 500 unsolicited phone calls. The only reason these phone calls stopped is that our member, who originally provided and consented to receive notifications, eventually disconnected service more than a year after changing phone numbers. After 500 phone calls and 13 months; would it be reasonable to assume that anyone acting in good faith would find a way to file a complaint with a nuisance caller at least once? Existing TCPA regulations do not allow for such common-sense questions and subsequent reasonable application of the law.

### **Impact to Consumer-Members**

By June 2014 Snapping Shoals EMC management reluctantly made the unpopular decision to discontinue all automated phone calls, which includes prepaid low balance notifications and automated disconnect notices. The only remaining channel to safely and efficiently communicate with our members is through email. Unfortunately, email only options can exclude a large portion of our membership as access is simply not available for some of our low-income and elderly populations that are less likely to have access to computers, smartphones, and especially reliable internet access.

Every attempt was made to notify our members over multiple communication channels in hopes of avoiding any unnecessary service interruptions. Despite our best efforts to reach these vulnerable populations, our call center provided reports of numerous angry members that had grown to depend on the low balance and disconnect notifications. Our offer to update or add an email address for notifications was often met with more frustration as almost ten percent of our prepaid membership still do not have an email address on file, that is to say nothing of the member's desire to even access email on a daily basis. Our elderly and low-income members without a smartphone and/or computer with internet access are limited to traditional, less consumer friendly options. These traditional options can be cumbersome when managing a bare minimum

prepaid balance on a daily basis. To many people a daily phone call from their electric cooperative may sound ludicrous, but to our low-income and elderly populations these services were literally vital to keeping their homes warm in the winter and cool during the summer.

The lack of phone notifications impacted more than just our prepaid members. Again, because of the uncertainty surrounding automated phone calls and the particularly high standard pertaining to reassigned phone numbers; Snapping Shoals terminated all automated disconnect notices as well. Less than seventy percent of all SSEMC residential members have an email address on file. Discontinuing this service has also been met with numerous complaints. In one instance, a consumer-member of almost twenty years returned after an extended time away from home to find power disconnected, freezers thawed, and floors ruined. The gentlemen had left home in late May before receiving the May electricity bill. Before leaving the member had instead “paid a little extra” to cover the anticipated May and June power bill. Unfortunately, the member underestimated his electric usage and service was disconnected around the first of July. He returned home a few days later to find that the hot Georgia sun had not only spoiled groceries, but also thawed liquids from the freezers had leaked onto the surrounding floor. Ultimately, the price to replace groceries, freezers, and floor covering was in the thousands of dollars. Snapping Shoals would not have disconnected service had we have known the circumstances. Before June 2014, this member would have received a courtesy phone call a few days before the pending disconnection. Snapping Shoals EMC offers numerous electronic options that allow our consumer-members to pay bills, monitor usage, and report outages from anywhere in the world and around the clock. In the end, each member is unique in how they prefer to handle their own affairs. We hope to one day be able to again offer a simple phone call to conduct business, as the member referenced above would have preferred.

### **Future Development on Hold**

Exciting times are ahead in the electric cooperative industry. For the first time in history we will have the ability to offer our consumer-members real-time usage information, pro-active outage updates with estimated restoration times, along with a host of communication preferences tailored to meet the

consumer-members needs across a multitude of channels. However, the FCC and Congress has not gone far enough in helping businesses like Snapping Shoals EMC mitigate concerns over costly and burdensome TCPA litigation. Given that we are owned by our members, we agree that consumer rights are of the utmost importance and every effort should be made to prevent excessive and bothersome phone calls from unsolicited vendors. However, legitimate business communication should not be hindered in the process. Some reasonable legislative changes, perhaps even new legislation, should be considered as we learn how to manage and adapt to ever-changing consumer communication preferences in the 21<sup>st</sup> century. This hearing is a great first step and I look forward to taking your questions today and working with you to improve the TCPA moving forward.

Thank you for allowing me to share our experiences.