

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of
Rules and Regulations Implementing the
Telephone Consumer Protection Act of 1991

CG Docket No. 02-278

COMMENTS OF ONCOR ELECTRIC DELIVERY COMPANY LLC

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I. INTRODUCTION

Oncor is the largest electric transmission and distribution utility in Texas, delivering electricity to some 10 million residents via more than 3.3 million meters. Oncor's service area includes 402 cities spread across 91 counties – nearly one-third of the state's geographic area which includes North Central Texas (Dallas/Fort Worth), Eastern Texas (Tyler), Central Texas (Waco) and West Texas (Midland/Odessa).

In the Texas competitive market, the transmission and distribution utility is the regulated entity that delivers electricity to the end-use customer, but it does not sell electricity to the end-use-customer or generate power. We thus have a unique relationship with end-use customers in that they purchase their electricity from others, but we have the responsibility to provide safe, reliable transmission and distribution service to over 10 million Texans. Part of that responsibility includes providing customers with important information concerning their service, especially related to planned and unplanned outages.

II. COMMENTS

Today's customers expect, and in many cases demand, to receive information early and often. In order to provide our customers the level of service they want and need, Oncor is in the process of developing pro-active messaging plans to provide our customers the information they need, when they need it, and in the manner that they want it delivered. The best, most efficient, and timely method of delivery is via phone. However, for the reasons described in the Expedited Petition for Declaratory Ruling, we have put our plans on hold due to the significant legal and financial risks.

Oncor's primary focus is to provide messaging around both planned and unplanned outages. For example, when planned work needs to be performed on a line that will require us to take customers out of service, it is critical that we provide them notice and an opportunity to make plans during the outage time. Currently we either have the option of going door to door and hoping we find them home, to leave door hangers (that can get lost or remain unseen), or make phone calls. Phone calls are the most effective and efficient way to communicate, especially when hundreds of customers are impacted. With many people using cell phones – often to the exclusion of land-line telephones – we need to be able to provide our end-use customers with this important outage information without worrying that we are violating a law

that, when put in place, was intended to help protect telephone users, not punish them or restrict their ability to obtain needed and critical utility information.

One example of the type of messaging Oncor is developing for use in planned outages is:

“This is Oncor with an important message about an upcoming planned temporary power outage that will affect your home or business in the [city] area during the [morning/afternoon/evening] hours of [Date]. This temporary outage is expected to last no more than [number of hours] hours, from [time frame]. We will provide you with an update [date / time frame] after the event to confirm your power has been restored. This planned outage is necessary to allow our employees to safely make repairs that improve the reliability of the electrical system. We greatly appreciate your patience. If you have any questions, please call us at x-xxx-xxx-xxxx.”

Oncor would then call back after the outage was over to inform the customer that their power should be on, and to contact Oncor if it was not:

“This is Oncor with an important message. The planned temporary power outage occurred this [time frame] and we show your power was restored. If you are currently without power, please check your breakers and if you are still without power, call Oncor at x-xxx-xxx-xxxx. Thank you for your cooperation.”

Similar to planned outages, an unplanned outage due to a storm or other event can be highly disruptive to the end use customer and, due to its unpredictable nature, it is often even more critical for the utility to be able to provide timely and updated information to impacted customers. Particularly with major storm events, Oncor’s experience has been that our customers greatly desire to have information that will enable them to make plans as to whether they might need to make hotel reservations (and for how many nights) and whether they will need to eat meals out. While the initial notification should be considered an emergency communication under the Telephone Consumer Protection Act (“TCPA”), and therefore exempt from any restrictions, phone calls in the case of delays or to confirm that power is back on – while equally important – may not be considered an “emergency”.

With respect to unplanned outages, our customers currently have the option to report outages via various channels including online, IVR, live agent, and text. The vast majority of our outage reports are made via IVR, and impacted customers have expressed a desire for proactive updates on the status of their outage and Oncor’s restoration efforts. In moderate to large scale outage events, it is simply not practical nor physically possible to make live agent calls to customers in any type of efficient and timely process, which is precisely the reason

Oncor wishes to utilize automated outbound calls. Following is an example of a type of message we would like to send during a major storm event affecting thousands of customers:

“This is Oncor with an important update regarding your power outage. Due to the significant ice storm impacting much of our service territory, the estimated time of restoration previously provided is no longer valid. Please know that Oncor is working around the clock to restore power to all affected customers as quickly and safely as possible. While service may be restored [today], depending on the extent of damages to facilities serving your area, we are advising all impacted customers to be prepared for a multi-day outage. You can visit Oncor.com for the most up to date information. Thank you for your patience.

As noted above, some of these calls should be considered an emergency communication under the TCPA and exempt from the requirements, but without these issues being specifically and explicitly addressed by the FCC, we cannot risk expensive and time consuming litigation that could result in significant monetary fines.

In order for Oncor and other utilities to continue to provide important information to our customers in a timely and efficient manner, it is imperative that the FCC clarify that a customer has provided “prior express consent” to receive non-telemarketing, informational communications such as these examples above, related to their utility service when it provides a phone number to their utility. In the ERCOT Texas market that would be primarily the retail electric provider (“REP”), who, as required by Public Utility Commission of Texas rule, provides that information to the transmission and distribution company responsible for delivery service to the customer, and the Commission should also explicitly state that by giving the REP such consent, the customer has also given consent to receive phone calls from the transmission and distribution company that serves the customer. Texas has strong consumer protection rules established and monitored by the Public Utility Commission of Texas, and Oncor feels quite confident that should any utility company or REP abuse the process by sending too many or unwanted messages, the Public Utility Commission of Texas would address the issue swiftly.¹

III. CONCLUSION

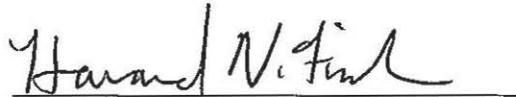
As detailed in the comments and examples provided above, Oncor submits that the information we need to provide to our customers is clearly not what the TCPA was intended to address or restrict. However, without clear guidance from the Commission, Oncor and other

¹ Oncor would note that the Public Utility Commission of Texas also regulates telecommunications utilities, and has adopted rules regulating the use of ADAD devices, including the imposition of administrative penalties for violations thereof

utilities will either remain subject to the whims of trial lawyers as to whom they bring a class action against – with all the costs and risks that such a lawsuit entails – or will take the legally conservative path and not provide our end-use customers with the information that they both want and need. The Commission can prevent Oncor and other utilities from having to make this unwanted choice by providing the utility industry with the needed clarity and protection requested in the Petition, and thereby allow us to better serve our customers. Oncor appreciates your timely consideration and action to address this very important matter.

Respectfully submitted,

Oncor Electric Delivery Company LLC

A handwritten signature in black ink, reading "Howard V. Fisher", written over a horizontal line.

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