

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of the)
)
Rules and Regulations Implementing)
) **CG Docket No. 02-278**
the Telephone Consumer Protection)
)
Act of 1991)

Comments of Joe Shields to the OPower Inc. Written Ex Parte Presentation

I hereby respectfully submit these comments addressing the OPower Inc. Written Ex Parte Presentation on the Edison Electric Institute and American Gas Association Petition for Declaratory Ruling. The Ex Parte Written Presentation raises the issue of a “relationship” exemption which was not presented in the petition. The Commission did not request comments on a “relationship” exemption for automatically dialed or prerecorded message calls to cell phones by electricity providers. I hereby respectfully file these comments in light of the suggestion that the Commission consider a “relationship” exemption for automatically dialed or prerecorded message calls to cell phones by electricity providers.

The section of the TCPA that deals with automatically dialed or prerecorded message calls has never had a business relationship exemption. The only exemptions are prior express consent or an emergency purpose. These exemptions clearly apply to the “informational” calls that OPower Inc. refers to. The section of the TCPA that deals with automatically dialed or prerecorded message calls does not regulate the content of the calls it regulates the method.

Further, OPower Inc. misses the point of the TCPA entirely – that consumers can opt in to the “informational” messages OPower Inc. refers to. OPower Inc. openly admits

that very few consumers are opting in with their email addresses. Forcing such “informational” messages on consumers that have not opted in or forcing those that do not want them to opt out amounts to a tyrannical seizure of private property for a business’s greedy purposes. Consequently, the Commission cannot eliminate prior express consent for “informational” calls no matter what purpose such calls have. Only true emergency messages are exempted from the prior express consent requirement.

Obviously the TCPA is working as it was envisioned by Congress. Evidence of the success of TCPA lawsuits is that key players from every possible industry are lobbying the Commission to relax TCPA regulations so that those industries can carry on as usual with little fear of consumer lawsuits.

The Commission must deny the Edison Electric Institute and American Gas Association petition as the petitioner already has what it wants – consumers can opt in to informational message calls for electricity providers and an exemption exists for true emergency calls. A specific industry exemption has never been nor is it now warranted.

Respectfully submitted,

_____/s/_____

Joe Shields
Texas Government & Public Relations Spokesperson for Private Citizen Inc.
16822 Stardale Lane
Friendswood, Texas 77546