

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

In the Matter of)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	
)	
Petition for Expedited Declaratory Ruling and/or)	
Waiver Filed by National Grid USA, Inc.)	

ORDER

Adopted: November 16, 2015

Released: November 16, 2015

By the Acting Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Order, we grant a petition filed by National Grid USA, Inc. (National Grid) on behalf of itself and its subsidiaries,¹ requesting a limited waiver of section 64.1200(b)(1) of the Commission’s rules to allow it to satisfy the identification requirements of that rule by providing a “doing business as” (DBA) name registered with the state corporation commission (or comparable regulatory authority) when placing prerecorded voice calls.² We conclude that granting this limited waiver will better serve the public interest by ensuring that National Grid’s customers understand the identity of the calling party and are not confused by the use in prerecorded messages of unfamiliar legacy utility names. We find that limiting this waiver to the use of the DBA name “National Grid” is in the public interest. Doing so affords its customers a reasonable opportunity to search for and find the contact information for the calling party.³

II. BACKGROUND

A. Artificial and Prerecorded Messages – Identification Requirements

2. Section 227(d)(3)(A) of the Communications Act requires that “all artificial or prerecorded telephone messages (i) shall, at the beginning of the message, state clearly the identity of the

¹ See *Petition of National Grid USA, Inc. for Expedited Declaratory Ruling and/or Waiver*, CG Docket No. 02-278, filed on Feb. 18, 2014 (Petition).

² See 47 C.F.R. § 64.1200(b)(1). Specifically, this rule requires that all artificial or prerecorded calls from a business must include “the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority).”

³ See, e.g., Petition at 6 (noting that “National Grid has registered the name ‘National Grid’ in the appropriate regulatory authority in each state that it operates”).

business, individual, or other entity initiating the call.”⁴

3. Consistent with the TCPA’s mandate, section 64.1200(b)(1) of the Commission’s rules requires that all artificial or prerecorded voice telephone messages shall “[a]t the beginning of the message, state clearly the identity of the business, individual, or other entity that is responsible for initiating the call. If a business is responsible for initiating the call, *the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be stated.*”⁵ In adopting this requirement, the Commission clarified that “[w]ith respect to the caller’s name, the prerecorded message must contain, at a minimum, the *legal name* under which the business, individual or entity calling is registered to operate.”⁶ The Commission recognized that some businesses use a DBA name in prerecorded messages.⁷ In that regard, the Commission clarified that the rule “does not prohibit the use of such [DBA names], provided the legal name of the business is also stated.”⁸ The Commission noted that “adequate identification information is vital so that consumers can determine the purpose of the call, possibly make a do-not-call request, and monitor compliance with TCPA rules.”⁹

4. In 2005, the Commission declined to reconsider the requirement for businesses to use their registered legal names to identify themselves when they use prerecorded messages concluding that the “use of [DBA names] alone in many instances may make it difficult to identify the company calling.”¹⁰

B. National Grid Petition

5. On February 18, 2014, National Grid filed a petition for declaratory ruling and/or waiver requesting that the Commission confirm that a DBA name registered with the State Corporation Commission (or comparable regulatory authority) satisfies the caller identification requirements for artificial or prerecorded voice calls under section 64.1200(b)(1) of the Commission’s rules.¹¹ Although National Grid acknowledges that the Commission has previously concluded that a DBA name alone is not sufficient to comply with this rule, it argues that the Commission has not ruled on whether a DBA name *registered* with the State Corporation Commission or comparable regulatory agency satisfies this rule.¹² National Grid notes that it has registered the name “National Grid” with the appropriate regulatory authority in each state where it operates and avers that this registered DBA name satisfies the intent of the

⁴ See 47 U.S.C. § 227(d)(3)(A).

⁵ See 47 C.F.R. § 64.1200(b)(1) (emphasis added).

⁶ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14099-100, para. 144 (2003) (emphasis added).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Second Order on Reconsideration, 20 FCC Rcd 3788, 3805, para. 41 (2005) (*Second Reconsideration Order*) (reiterating that the “rule does not prohibit the use of ‘d/b/a’ information, provided that the legal name of the business is also provided”).

¹¹ See generally Petition.

¹² Petition at 5; see also Letter from Marianne R. Casserly, Counsel for National Grid, to Marlene H. Dortch, FCC filed in CG Docket No. 02-278 (dated June 25, 2014) at 1 (explaining that “[u]nder the National Grid umbrella are various operating companies with historical legacy names that are retained for background utility regulation purposes and cost allocation purposes, but are not used for any customer-facing purpose”) (National Grid *ex parte*).

Commission's rules.¹³ Specifically, National Grid argues that a DBA name that is registered with the appropriate regulatory authority allows called parties the same ability to search for and identify the caller in the same way that a registered legal or official business name does.¹⁴

6. National Grid explains that its operating subsidiaries provide gas and electric service in several northeastern states. These subsidiaries are subject to specific regulatory obligations based on the type of utility service provided and the location of the subsidiary.¹⁵ For both internal tracking and regulatory compliance, these operating subsidiaries retain their specific historic names, e.g., Niagara Mohawk Power Corporation, Nantucket Electric Company, et al.¹⁶ National Grid notes, however, that its operating subsidiaries use the National Grid name for all public-facing purposes, such as marketing, billing, and customer service, and that its customers identify "National Grid" as the provider of their utility services.¹⁷ National Grid asserts that its customers will be able to identify the caller more easily if the caller is identified by its registered DBA name because that is the name used for customer service purposes.¹⁸ National Grid indicates that it uses prerecorded calls for various customer service purposes, including alerting customers who require medical care equipment of anticipated bad weather and possible power outages, so that they can make preparations for their medical care.¹⁹

7. In the alternative to a declaratory ruling, National Grid requests a waiver that would allow it to use only the registered DBA name when placing prerecorded calls to customers.²⁰ National Grid suggests "good cause" exists because its DBA name is registered with the State Corporation Commission (or comparable regulatory authority) allowing customers receiving calls to search for corporation contact information in the same way they would for a "legal" or "official" name.²¹ In addition, National Grid contends that good cause exists because its customers are only familiar with the registered DBA name of "National Grid," and likely have never heard of the official legacy utility names.²² Lastly, National Grid contends that use of both the official and DBA names unnecessarily prolong the prerecorded calls.²³

8. On February 28, 2014, the Commission released a Public Notice seeking comment on the issues raised in the Petition.²⁴ No comments were filed in response to this Public Notice.

¹³ Petition at 6.

¹⁴ *Id.*

¹⁵ *Id.* at 3.

¹⁶ *Id.* at 2-3.

¹⁷ *Id.*

¹⁸ *Id.* at 6-7; *see also* National Grid *ex parte* (providing examples of customer bills, bill inserts, and service equipment in which the National Grid name is prominently displayed).

¹⁹ *See* National Grid *ex parte* at 2.

²⁰ Petition at 7-8.

²¹ *Id.* at 7.

²² *Id.* at 7.

²³ *Id.* at 8.

²⁴ *See Consumer and Governmental Affairs Bureau Seeks Comment on Petition for Expedited Declaratory Ruling and/or Waiver filed by National Grid USA, Inc.*, CG Docket No. 02-278, 29 FCC Rcd 2011 (2014).

C. Waiver Standard

9. The Commission may waive its rules for good cause shown.²⁵ A waiver may be granted if: (1) the waiver would better serve the public interest than would application of the rule; and (2) special circumstances warrant a deviation from the general rule.²⁶ Generally, the Commission may grant a waiver of its own rules if the relief requested would not undermine the policy objectives of the rule in question, and would otherwise serve the public interest.²⁷

III. DISCUSSION

10. We conclude that National Grid's petition meets the standard for granting a limited waiver of section 64.1200(b)(1), and that such waiver would not undermine the policy objectives of that rule. Specifically, we find that National Grid has demonstrated that good cause exists to waive the requirement to provide the name under which the entity is registered to conduct business with the State Corporation Commission when making prerecorded voice calls and allow it to use the name "National Grid" when making artificial or prerecorded voice message calls. As discussed below, we believe the relief granted in this instance does not undermine the policy objectives of the rule because consumers will continue to have the ability to search for the identity and contact information of the calling party via the appropriate state or local databases for registered DBA names.

11. First, we conclude that National Grid's request for waiver to use only its registered DBA name rather than the legal or official name in prerecorded messages serves the public interest in this instance because National Grid has demonstrated that its customers are unfamiliar with the legacy names that constitute its subsidiaries' legal or official business names in the states in which they conduct business.²⁸ For example, National Grid notes that its operating subsidiaries use the "National Grid" name for all public-facing purposes including its service trucks.²⁹ As a result, the use of such legacy names in its prerecorded messages may confuse some customers as to the identity of the calling party. In addition, National Grid has demonstrated that the use of a more familiar DBA name will reduce the risk of potential confusion regarding the identity of the calling party because it uses only the "National Grid" registered DBA name on billing, websites, and service equipment.³⁰ Any such confusion regarding the identity of the caller would be particularly detrimental to those consumers with medical or life support needs who rely upon National Grid for prerecorded notifications of potential power outages so that they may take appropriate measures. There is no record evidence to dispute National Grid's assertions.

12. Second, to the extent that the rule would otherwise require using the names of its operating subsidiaries, we find that special circumstances warrant a deviation from the general rule. Specifically, National Grid has demonstrated that: 1) its customers are familiar with its registered DBA name because all customer services are provided in that name;³¹ 2) its customers are unfamiliar with the

²⁵ 47 C.F.R. § 1.3; *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990).

²⁶ *Northeast Cellular*, 897 F.2d at 1166.

²⁷ *Id.* at 1157.

²⁸ See Petition at 3 (explaining that it "has retained certain historical legacy corporate names that are specific to those utility services and geographic regions they serve. Retaining these names is important as it facilitates the company's compliance with regulatory obligations specific to gas and electric utilities regulated by different state and federal governmental authorities").

²⁹ *Id.* at 2-3, 7.

³⁰ *Id.* at 7.

³¹ *Id.* at 3.

official or legal names, which can cause confusion regarding the identity of the calling party when using prerecorded messages;³² 3) it has registered the “National Grid” DBA name with the appropriate regulatory body in each state in which it conducts business;³³ 4) it uses prerecorded calls for emergency-related purposes to notify customers who require medical care or life support equipment of possible power outages;³⁴ and 5) customers can access the relevant corporate contact information via the state or local databases for registered DBAs in a way similar to researching registered legal or official names.³⁵ No party disputes these points in the record before us.

13. Although the Commission has previously rejected requests to allow the use of a DBA name in lieu of an official or legal name to satisfy the requirements of section 64.1200(b)(1) of our rules because of concerns regarding the adequacy of such names in identifying the calling party, we believe that the totality of special circumstances presented in this case alleviates these concerns. In particular, we note that the basic policy objective of the rule is maintained by limiting the waiver to the use of a registered DBA name. National Grid has demonstrated that its DBA name is commonly known to its customers. In addition, because National Grid has registered the DBA names covered by this waiver, the recipients of prerecorded calls from National Grid can obtain the relevant corporate contact information from the state or local government regulatory body responsible for registering DBA names in a way that is similar to that of registered “legal” or “official” names. As a result, consumers will incur little or no additional difficulty in gaining access to this contact information due to the granting of this limited waiver. Because we grant National Grid’s waiver request, we dismiss its request for declaratory ruling which would yield a similar practical result for National Grid.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 227 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 227, and section 1.3 of the Commission’s rules, 47 C.F.R. § 1.3, and the authority delegated in sections 0.141 and 0.361 of the rules, 47 C.F.R. §§ 0.141, 0.361, that the petition for waiver of section 64.1200(b)(1) of the Commission’s rules, 47 C.F.R. § 64.1200(b)(1), filed by National Grid USA, Inc., in CG Docket No. 02-278 IS GRANTED to the extent set forth herein.

15. IT IS FURTHER ORDERED that the request for declaratory ruling filed by National Grid USA, Inc., in CG Docket No. 02-278 IS DISMISSED WITHOUT PREJUDICE.

FEDERAL COMMUNICATIONS COMMISSION

Alison Kutler
Acting Chief
Consumer and Governmental Affairs Bureau

³² *Id.* at 7.

³³ *Id.* at 3-4.

³⁴ *Id.* at 4.

³⁵ *Id.* at 4.