

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSISSIPPI



2008-AD-57

MISSISSIPPI PUBLIC SERVICE COMMISSION

IN RE: PROPOSAL OF THE MISSISSIPPI PUBLIC SERVICE COMMISSION
TO AMEND THEIR RULES IMPLEMENTING THE MISSISSIPPI
TELEPHONE SOLICITATION ACT

NOTICE ESTABLISHING RULE-MAKING

TAKE NOTICE that on the 6th day of May, 2008, at 10:00 am the Mississippi Public Service Commission will hold a hearing on the First Floor of the Woolfolk State Office Building, Suite 112, 501 N. West Street, Jackson, MS 39201 regarding its Order Establishing Rule-Making Docket, 2008-AD-57, pursuant to Miss. Code Ann. §77-3-45 (Revised 2000) and the Mississippi Administrative Procedures Act as found in Miss. Code Ann. §§25-43-1.101 *et seq.* (Revised 2006). The Order requires all persons and parties desiring to participate in the hearing to file written comments or testimony on or before April 1, 2008, at the above address.

A copy of the existing and proposed changes and this Notice has been mailed to all affected utilities by way of U.S. Mail, postage prepaid, along with the aforementioned Order. The Notice of Proposed Rule-Making will be published and a copy will be served on the Secretary of State as provided in Miss. Code Ann. §77-3-45. The adopted rule will follow the uniform numbering system prescribed by the Secretary of State. In compliance with Miss. Code Ann. §25-43-3.103 and §77-3-45, the Commission sets forth the following terms and substance of the rule changes with reference to the paragraphs being amended:

- (1) The Commission seeks to increase the annual fee for the “no call” database from its current amount of eight hundred dollars (\$800.00) per year to one thousand dollars (\$1,000.00) per year as delineated in Paragraph A-4 of the proposed rules.
- (2) Paragraph A-9 currently states that consumer registration of telephone number(s) on the “no call” list is effective for five (5) years. The list database will expire in August 2008. The proposed rule will remove the time period expiration, thereby maintaining the currently registered telephone numbers on the “no call” list without the necessity of re-registration by the consumer.
- (3) The current Paragraph A-12 requires the “no calls” database to be compared against the U.S. Post Office National Change of Address, or similar database, to purge the telephone numbers of those who have moved out of state. Under the proposed amendments, Paragraph A-12 will be removed as the U.S. Post Office does not track telephone numbers, and therefore, a comparison with the U.S. Post Office has never occurred nor will occur.

WITNESS MY HAND AND THE OFFICIAL SEAL of the Mississippi Public Service Commission, on this the 26th day of February, 2008.


Brian U. Ray, Executive Secretary



PROPOSED
RULES IMPLEMENTING THE MISSISSIPPI TELEPHONE
SOLICITATION ACT

A. GENERAL RULES

1. The Commission shall establish and operate a "no-calls" database composed of a list of residential telephone numbers of consumers who have given notice of their objection to receiving telephone solicitations. This database will be updated quarterly.
2. Information contained in the database may be used and accessed only for the purpose of compliance with the MTSA and shall not be otherwise subject to public inspection or disclosure.
3. The Commission shall make the "no-calls" database available to telephone solicitors on CD-Rom or via an Internet download.
4. Except as otherwise provided for by law or regulation, a telephone solicitor may not make or cause to be made any telephone solicitation to any consumer in this state unless the telephone solicitor has purchased the "no-calls" database from the Commission. The annual fee for the database shall be one thousand dollars (\$1,000.00) per year if obtained via an Internet download or on CD-ROM. The fees for access to the "no-calls" database may be revised by the Commission upon proper notice of such change. The fee shall be paid at the time of registration.
5. All telephone solicitors, not exempt from the MTSA, must register annually with the Commission before conducting any telephone solicitations in the State of Mississippi. Solicitors must register via United States mail. Registration information can be found at the Commission's website.
6. Telephone solicitors registering with the Commission shall provide:
 - a. Name, address, telephone number(s), facsimile number(s), e-mail address and federal tax ID number of the company, partnership, or individual planning to operate in the state;
 - b. Name and address of the registrant's designated agent for service located in this state;
 - c. A surety bond, to be approved by the Commission, shall be filed with the Commission and executed for the registrant by a surety authorized to do business in this state for the sum of fifty thousand dollars (\$50,000) to be maintained in full force and effect, in favor of the Commission to guarantee payment of any administrative penalties assessed pursuant to a violation of the MTSA, these rules, or any other applicable law or regulation. A local exchange carrier or competitive

local exchange carrier holding a Certificate of Public Convenience and Necessity from the Commission may petition the Commission for an exemption from this paragraph; and,

- d. Registration shall be done in the form and structure as provided by the Commission.
7. Except as otherwise provided by law or regulation, a telephone solicitor may not make or cause to be made any telephone solicitation to any consumer in this state who has given notice to the Commission of his or her objection to receiving telephone solicitations.
 8. With the exception of directory assistance and telephone directories sold or distributed by local exchange companies or their affiliates, or independent telecommunications directory publishers, no person or entity that sells, leases, or rents telephonic solicitation listings shall include in such listings any residential telephone number, if the number appears on the Commission's then current "no-calls" database.
 9. Consumers may give notice to the Commission of their objection to receiving telephone solicitations by calling a toll free number, United States mail, via the Commission's web site, or facsimile. Consumers may give notice to the Commission of their revocation of the notice by writing the Commission. Consumer registration is effective as long as the MTSA is re-enacted.
 10. A notice of objection becomes effective according to the following schedule:

Registration received by:	List provided to solicitors:	List effective and enforceable on:
November 30 th	December 10 th	January 1 st
February 28 th	March 10 th	April 1 st
May 31 st	June 10 th	July 1 st
August 31 st	September 10 th	October 1 st

11. Consumers whose telephone number is included in the "no-calls" database who move, but maintain their current telephone number will not need to take action to remain in the data base but they need to submit a change of address to the Commission. Consumers who are required to obtain a different telephone number must give notice to the Commission that they wish to have their new number included in the database.
12. Any person or entity who makes an authorized telephone solicitation to a consumer in this state shall comply with the following:
 - a. Announce clearly, at the beginning of each call, his or her name, the company he or she represents, the company's Commission assigned solicitor registration number, and the purpose of the call.
 - b. Calls may only be made between the hours of 8:00 a.m. and 8:00 p.m. Central Standard Time.

- c. No telephone calls can be made on a Sunday.
 - d. A person or entity who makes a telephone solicitation to a consumer in this state may not knowingly utilize any method that blocks or otherwise circumvents the consumer's use of a caller identification service, nor may the person or entity use an automated dialing system or any like system that uses a recorded voice message to communicate with the consumer unless the person or entity has an established business relationship with the consumer and uses the recorded message to inform the consumer about a new product or service.
13. A telephonic call log, with a minimum of six months data, shall be maintained by the telephone solicitor. The telephonic call log shall include:
 - a. Number called
 - b. Time called
 - c. Date called
 15. All ILECs and CLECs shall retain verbatim data for a period of ninety days.
 16. The definitions contained in MTSA, Section 3, are hereby incorporated by reference.

B. SEMIANNUAL NOTIFICATION TO CONSUMERS

Each local exchange company and each competing local exchange company shall provide written notification on at least a semiannual basis to each of its consumers of the opportunity to provide notification to the Commission that the consumer objects to receiving telephone solicitations. The notification may be disseminated in a manner chosen by the carrier. However, television, radio or newspaper advertisements, written correspondence, publication in the consumer information pages of the local telephone directory, bill message or any other method of consumer notice not expressly prohibited by the Commission is allowed.

C. COMPLAINT PROCEDURE

1. A complaint may be initiated by a consumer or by the Commission. All complaints shall be in writing and filed on a form which is accessible at the Commission's website or by contacting the Commission.
2. The Commission will evaluate the complaint and determine if it alleges a prima facie violation of the MTSA or the rules implemented pursuant thereto or any other applicable law or regulation. A copy of the complaint shall be served on the alleged telephone solicitor by the Executive Secretary of the Commission. The alleged telephone solicitor shall fully answer the complaint in detail and under oath within thirty (30) days of receipt of notice. An extension of the time in which to answer a complaint may be granted by the Commission for good cause shown. The answer shall raise every defense the alleged telephone solicitor relies on, including an MTSA, Section 6 exemption. The answer may be filed electronically with the Commission, but it must be signed under oath. Otherwise,

the answer may be filed with the Executive Secretary of the Commission. If multiple complaints are received, the Commission may notice the complaints in multiples. If the alleged telephone solicitor does not answer the complaint fully and in specific detail and under oath within the thirty (30) day period or within the period of such extension as the Commission may grant, the Commission may find the alleged telephone solicitor liable by default. In such event, or if the answer admits a violation of the MTSA, the Commission may assess an appropriate penalty pursuant to Section 13 of the MTSA or other applicable law or regulation. The penalty assessed shall be satisfied within 20 days from service of the Commission's Order finding the alleged telephone solicitor liable by default or by admission, unless a stay has been entered as provided by law.

2. The Commission may make a preliminary determination based on the complaint and the answer and assess a penalty pursuant to Section 13 of the MTSA or other applicable law or regulation. The alleged telephone solicitor shall accept or reject the preliminary determination within twenty (20) days from the service by the Commission. If accepted, the penalty imposed by the preliminary determination must be satisfied within twenty (20) days from the service of said preliminary determination. If rejected, the Commission will afford the alleged telephone solicitor an opportunity for a full hearing on the merits of the complaint. In any hearing, the complaint and the answer will be part of the record, along with all other complaints filed against the alleged telephone solicitor. At any point in the complaint resolution process, the Commission may agree to informally negotiate with the alleged telephone solicitor.

D. VIOLATIONS

1. Any telephone solicitor found to have violated the MTSA or other applicable law or regulation pursuant to a Commission finding, or by default, may be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000) for each violation to be assessed and collected by the Commission. Each telephonic solicitation shall constitute a separate violation.
2. Failure of any telephone solicitor on which a complaint is filed to provide any information requested by the Commission, or failure to answer a complaint in specific detail and under oath, or failure to appear before the Commission at the time prescribed, may result in the Commission finding the alleged violator liable by default.
3. The Commission may proceed against the surety bond for any penalty assessed by the Commission, either by Order of the Commission finding the alleged telephone solicitor liable by default, admission of violation by the alleged telephone solicitor, acceptance by the alleged telephone solicitor of the Commission's preliminary determination, or by an Order of the Commission rendered after a hearing on the merits of the notarized Complaint, or otherwise, which penalty is not fully satisfied within 30 days after service of the Commission's action.

RULES IMPLEMENTING THE MISSISSIPPI TELEPHONE
SOLICITATION ACT

A. GENERAL RULES

1. The Commission shall establish and operate a "no-calls" database composed of a list of residential telephone numbers of consumers who have given notice of their objection to receiving telephone solicitations. This database will be updated quarterly.

Formatted: Bullets and Numbering

2. Information contained in the database may be used and accessed only for the purpose of compliance with the MTSA and shall not be otherwise subject to public inspection or disclosure.

3. The Commission shall make the "no-calls" database available to telephone solicitors on CD-Rom or via an Internet download.

Deleted: , or as a paper copy

4. Except as otherwise provided for by law or regulation, a telephone solicitor may not make or cause to be made any telephone solicitation to any consumer in this state unless the telephone solicitor has purchased the "no-calls" database from the Commission. The annual fee for the database shall be one thousand dollars (\$1,000.00) per year if obtained via an Internet download or on CD-ROM. The fees for access to the "no-calls" database may be revised by the Commission upon proper notice of such change. The fee shall be paid at the time of registration.

Deleted: eight hun

Deleted: dred dollars

Deleted: 800

Deleted: The annual fee for a paper copy of the database shall be one thousand dollars (\$1,000.00) per year.

5. All telephone solicitors, not exempt from the MTSA, must register annually with the Commission before conducting any telephone solicitations in the State of Mississippi. Solicitors must register via United States mail. Registration information can be found at the Commission's website.

6. Telephone solicitors registering with the Commission shall provide:

Deleted: number

a. Name, address, telephone number(s), facsimile number(s), e-mail address and federal tax ID number of the company, partnership, or individual planning to operate in the state;

b. Name and address of the registrant's designated agent for service located in this state;

c. A surety bond, to be approved by the Commission, shall be filed with the Commission and executed for the registrant by a surety authorized to do business in this state for the sum of fifty thousand dollars (\$50,000) to be maintained in full force and effect, in favor of the Commission to guarantee payment of any administrative penalties assessed pursuant to a violation of the MTSA, these rules, or any other applicable law or regulation. A local exchange carrier or competitive local exchange carrier holding a Certificate of Public Convenience and Necessity from the Commission may petition the Commission for an exemption from this paragraph; and,

d. Registration shall be done in the form and structure as provided by the Commission.

7. Except as otherwise provided by law or regulation, a telephone solicitor may not make or cause to be made any telephone solicitation to any consumer in this state who has given notice to the Commission of his or her objection to receiving telephone solicitations.
8. With the exception of directory assistance and telephone directories sold or distributed by local exchange companies or their affiliates, or independent telecommunications directory publishers, no person or entity that sells, leases, or rents telephonic solicitation listings shall include in such listings any residential telephone number, if the number appears on the Commission's then current "no-calls" database.
9. Consumers may give notice to the Commission of their objection to receiving telephone solicitations by calling a toll free number, United States mail, via the Commission's web site, or facsimile. Consumers may give notice to the Commission of their revocation of the notice by writing the Commission. Consumer registration is effective as long as the MTSA is re-enacted.

Deleted: for a period of five (5) years.

10. A notice of objection becomes effective according to the following schedule:

Registration received by:	List provided to solicitors:	List effective and enforceable on:
November 30 th	December 10 th	January 1 st
February 28 th	March 10 th	April 1 st
May 31 st	June 10 th	July 1 st
August 31 st	September 10 th	October 1 st

11. Consumers whose telephone number is included in the "no-calls" database who move, but maintain their current telephone number will not need to take action to remain in the data base but they need to submit a change of address to the Commission. Consumers who are required to obtain a different telephone number must give notice to the Commission that they wish to have their new number included in the database.

Deleted: do

12. Any person or entity who makes an authorized telephone solicitation to a consumer in this state shall comply with the following:

Deleted: Section Title ????????

Formatted: Indent: Left: 0.14"

Formatted: Bullets and Numbering

Formatted: Indent: Left: 0.34"

- a. Announce clearly, at the beginning of each call, his or her name, the company he or she represents, the company's Commission assigned solicitor registration number, and the purpose of the call.

Deleted: The Commission will, on a quarterly basis, compare the "no-calls" database against the U.S. Post office National Change of Address, or similar database and purge the telephone numbers of those who have moved out of state. ¶

- b. Calls may only be made between the hours of 8:00 a.m. and 8:00 p.m. Central Standard Time.

Deleted: Any person or entity who makes an authorized telephone solicitation to a consumer in this state shall a

- c. No telephone calls can be made on a Sunday.

Deleted: Calls may only

Deleted: be made

- d. A person or entity who makes a telephone solicitation to a consumer in this state may not knowingly utilize any method that blocks or otherwise circumvents the consumer's use of a caller identification service, nor may the person or entity use an automated dialing system or any like system that uses a recorded voice message to communicate with the consumer unless the person or entity has an established business relationship with the consumer and uses the recorded message to inform the consumer about a new product or service.

Deleted: No telephone solicitations may be made on a Sunday.

Deleted: , not exempt from the MTSA.

13. A telephonic call log, with a minimum of six months data, shall be maintained by the telephone solicitor. The telephonic call log shall include:

Formatted: Bullets and Numbering

- a. Number called
- b. Time called
- c. Date called

15. All ILECs and CLECs shall retain verbatim data for a period of ninety days.

16. The definitions contained in MTSA, Section 3, are hereby incorporated by reference.

B. SEMIANNUAL NOTIFICATION TO CONSUMERS

Each local exchange company and each competing local exchange company shall provide written notification on at least a semiannual basis to each of its consumers of the opportunity to provide notification to the Commission that the consumer objects to receiving telephone solicitations. The notification may be disseminated in a manner chosen by the carrier. However, television, radio or newspaper advertisements, written correspondence, publication in the consumer information pages of the local telephone directory, bill message or any other method of consumer notice not expressly prohibited by the Commission is allowed.

C. COMPLAINT PROCEDURE

1. A complaint may be initiated by a consumer or by the Commission. All complaints shall be in writing and filed on a form which is accessible at the Commission's website or by contacting the Commission.

Formatted: Bullets and Numbering

2. The Commission will evaluate the complaint and determine if it alleges a prima facie violation of the MTSA or the rules implemented pursuant thereto or any other applicable law or regulation. A copy of the complaint shall be served on the alleged telephone solicitor by the Executive Secretary of the Commission. The alleged telephone solicitor shall fully answer the complaint in detail and under oath within thirty (30) days of receipt of notice. An extension of the time in which to answer a complaint may be granted by the Commission for good cause shown. The answer shall raise every defense the alleged telephone solicitor relies on, including an MTSA, Section 6 exemption. The answer may be filed electronically with the Commission, but it must be signed under oath. Otherwise, the answer may be filed with the Executive Secretary of the Commission. If multiple complaints are received, the Commission may notice the complaints in multiples. If the alleged telephone solicitor does not answer the complaint fully and in specific detail and under oath within the thirty (30) day period or within the period of such extension as the Commission may grant, the Commission may find the alleged telephone solicitor liable by default. In such event, or if the answer admits a violation of the MTSA, the Commission may assess an appropriate penalty pursuant to Section 13 of the MTSA or other applicable law or regulation. The penalty assessed shall be satisfied within 20 days from service of the Commission's Order finding the alleged telephone solicitor liable by default or by admission, unless a stay has been entered as provided by law.

Deleted: Executive Secretary of the

Deleted: A scanned copy may be transmitted electronically to the Commission. If the complaint is not filed electronically, the complainant may file the written complaint with the Executive Secretary of the Commission. ¶

Deleted: by the Executive Secretary of the Commission

2. The Commission may make a preliminary determination based on the complaint and the answer and assess a penalty pursuant to Section 13 of the MTSA or other applicable law or

Formatted: Bullets and Numbering

regulation. The alleged telephone solicitor shall accept or reject the preliminary determination within twenty (20) days from the service by the Commission. If accepted, the penalty imposed by the preliminary determination must be satisfied within twenty (20) days from the service of said preliminary determination. If rejected, the Commission will afford the alleged telephone solicitor an opportunity for a full hearing on the merits of the complaint. In any hearing, the complaint and the answer will be part of the record, along with all other complaints filed against the alleged telephone solicitor. At any point in the complaint resolution process, the Commission may agree to informally negotiate with the alleged telephone solicitor.

Deleted: Executive Secretary of the C
Deleted: of said preliminary determination
Deleted: c
Deleted: p

D. VIOLATIONS

1. Any telephone solicitor found to have violated the MTSA or other applicable law or regulation pursuant to a Commission finding, or by default, may be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000) for each violation to be assessed and collected by the Commission. Each telephonic solicitation shall constitute a separate violation.
2. Failure of any telephone solicitor on which a complaint is filed to provide any information requested by the Commission, or failure to answer a complaint in specific detail and under oath, or failure to appear before the Commission at the time prescribed, may result in the Commission finding the alleged violator liable by default.
3. The Commission may proceed against the surety bond for any penalty assessed by the Commission, either by Order of the Commission finding the alleged telephone solicitor liable by default, admission of violation by the alleged telephone solicitor, acceptance by the alleged telephone solicitor of the Commission's preliminary determination, or by an Order of the Commission rendered after a hearing on the merits of the notarized Complaint, or otherwise, which penalty is not fully satisfied within 30 days after service of the Commission's action.

RULES IMPLEMENTING THE MISSISSIPPI TELEPHONE SOLICITATION ACT

A. GENERAL RULES

1. The Commission shall establish and operate a “no-calls” database composed of a list of residential telephone numbers of consumers who have given notice of their objection to receiving telephone solicitations. This database will be updated quarterly.
2. Information contained in the database may be used and accessed only for the purpose of compliance with the MTSA and shall not be otherwise subject to public inspection or disclosure.
3. The Commission shall make the “no-calls” database available to telephone solicitors on CD-Rom, via an Internet download, or as a paper copy.
4. Except as otherwise provided for by law or regulation, a telephone solicitor may not make or cause to be made any telephone solicitation to any consumer in this state unless the telephone solicitor has purchased the “no-calls” database from the Commission. The annual fee for the database shall be eight hundred dollars (\$800.00) per year if obtained via an Internet download or on CD-ROM. The annual fee for a paper copy of the database shall be one thousand dollars (\$1,000.00) per year. The fees for access to the “no-calls” database may be revised by the Commission upon proper notice of such change. The fee shall be paid at the time of registration.
5. All telephone solicitors, not exempt from the MTSA, must register annually with the Commission before conducting any telephone solicitations in the State of Mississippi. Solicitors must register via United States mail. Registration information can be found at the Commission’s website.
6. Telephone solicitors registering with the Commission shall provide:
 - a. Name, address, telephone number(s), facsimile number(s), e-mail address and federal tax ID number of the company, partnership, or individual planning to operate in the state;
 - b. Name and address of the registrant’s designated agent for service located in this state;
 - c. A surety bond, to be approved by the Commission, shall be filed with the Commission and executed for the registrant by a surety