

**BEFORE THE
MISSISSIPPI PUBLIC SERVICE COMMISSION
JACKSON, MISSISSIPPI**

2008-AD-57

MISSISSIPPI PUBLIC SERVICE COMMISSION

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

FINAL ORDER ADOPTING RULE CHANGES

COMES NOW, the Mississippi Public Service Commission (“Commission”) and issues this Final Order in which it adopts rule changes to the Rules Implementing the Mississippi Telephone Solicitation Act (“No-Call Rules”).

I. PROCEDURAL BACKGROUND

The Commission adopted the original No-Call Rules on or about June 19, 2003, pursuant to the Mississippi Telephone Solicitation Act, Miss. Code Ann. §§77-3-1-701 *et seq.* (as revised). On or about February 19, 2008, the Commission issued an Order Establishing Rule-Making Docket proposing an amendment to the No-Call Rules. A notice establishing rule-making was issued along with a copy of the existing and proposed changes on or about February 22, 2008, and in accordance with Miss. Code Ann. §§25-43-1.101 *et seq.* (“Administrative Procedures Act” or “APA”).

The notice was mailed to interested persons or entities of record, and it was published in the Clarion Ledger on or about February 26, 2008. Also in accordance with the APA, the notice provided the date, time and place of the public hearing as well as the time for filing for public comment.

On or about March 6, 2008, AT&T Mississippi and its related companies filed a Motion to Intervene which was granted on the same date it was filed. On or about March 28, 2008, Sprint and its related company, filed a Motion to Intervene which was granted on the same date it was filed. On or about March 31, 2008, Bank of America filed public comments. On or about April 1, 2008, the collective AT&T filed public comments.

On May 6, 2008, the Commission held a public hearing in which the proposed rule changes were discussed. AT&T Mississippi's counsel offered comments objecting only to the fact that one of the proposed rule changes would require no update of the No-Call Consumer List. All other proposed changes were not objectionable to AT&T. Sprint's counsel failed to appear. Bank of America did not appear. The Commission took the matter under advisement and offers the following analysis.

II. COMMISSION JURISDICTION

Under Miss. Code Ann. §§77-3-701 *et seq.* (as revised) the Mississippi Telephone Solicitation Act, the Commission is given *in personam* jurisdiction over telephone solicitors for the purpose of administering the Act and the No-Call Rules passed pursuant to the Act. Additionally, pursuant to Miss. Code Ann. §77-3-5, the Commission has exclusive original jurisdiction over the intrastate business and properties of public utilities. The Commission is empowered to make investigations and determinations, prescribe rules and issue orders regarding the control and conduct of businesses coming within its jurisdiction, which includes telephone solicitation in Mississippi.

III. FINDINGS OF THE COMMISSION

The proposed changes to the No-Call Rules include the following:

- (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 numbers(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 no will occur.

There were no objections to the proposed rule change to A-4 increasing the registration fee from eight hundred dollars (\$800.00) per year to one thousand dollars (\$1,000.00) per year. Accordingly, the Commission finds that this proposed rule change should be adopted and offers further support of the same. Increasing the amount that telephone solicitors must pay to obtain the no-call list will defray the increasing costs of the Commission’s budget to investigate no-call complaints from the public. Indeed, as companies have become more aggressive in attempts to thwart this law, it is ever more important that the Commission have the funds to investigate allegations and enforce the statutes and rules against the violators.

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AT&T, as the only objecting party at the hearing, asserted that the No-Calls List should be periodically checked against the national "do-not-call" registry or other appropriate database in order to remove those numbers that have been disconnected or reassigned. Part of its logic for this requirement is that its customers want access to new and innovative offerings and packages, and telemarketing is the most effective way AT&T has to communicate this information. We find this argument specious and unpersuasive. Mississippi consumers have not communicated to the Commission that they desire to be solicited.

Furthermore, the burden that would be placed on Mississippi consumers to re-register would be great. When Mississippi consumers originally placed their telephone numbers to be included in the no-call list we believe they surely contemplated being fully registered. Hundreds of thousands of people in this State would have to take the time and effort to re-register; therefore, we find that the proposed change to A-9 should be adopted.

The final proposed rule change regarding removal of a check of telephone numbers against the U.S. Post Office's National Change of Address begs the question. Although objected by no one for obvious reasons, we find that since it is a factual impossibility to check against this database as it does not collect telephone numbers, Rule A-12 shall be eliminated.

Based upon careful consideration of the entire record in this matter, the comments filed, and the one presenter at the hearing, the Commission hereby adopts the attached Proposed No-Call Rules to govern the implementation of the Mississippi Telephone Solicitation Act.

IT IS, THEREFORE, ORDERED, that the attached Proposed Rules Implementing the Mississippi Telephone Solicitation Act is hereby adopted. These No-Call Rules shall be included in the next bound publication of the Public Utilities Rules of Practice and Procedure of the Mississippi Public Service Commission and Public Utilities Staff. These No-Call Rules shall be numbered sequentially in accordance with the requirements of the Administrative Procedures Act and shall appear as Chapter 28, 100-103.

IT IS FURTHER ORDERED, that this Order shall become effective upon issuance and shall be deemed issued on the day it is served upon the intervening parties of record by the Executive Secretary of this Commission who shall not the service date in the file of this Docket.

Chairman Leonard L. Bentz voted Aye; Vice Chairman Lynn Posey voted Aye; and Commissioner Brandon Presley voted Aye.

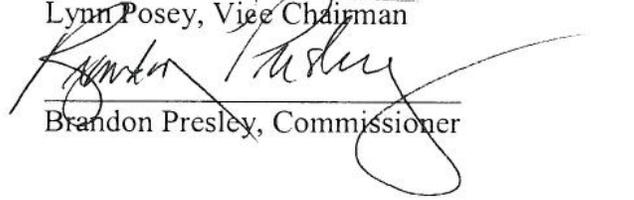
Dated this the 14th day of May, 2008.



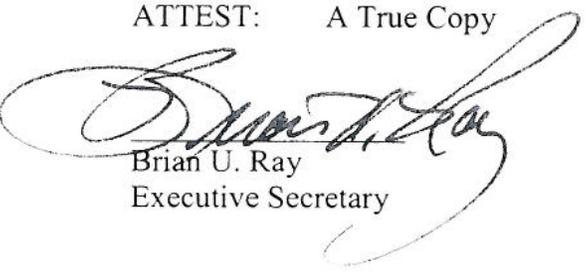
MISSISSIPPI PUBLIC SERVICE COMMISSION


Leonard L. Bentz, Chairman


Lynn Posey, Vice Chairman


Brandon Presley, Commissioner

ATTEST: A True Copy


Brian U. Ray
Executive Secretary

Chapter 28 Rules Implementing the Mississippi Telephone Solicitation Act

Rule 28

100. General Rules

1. No Calls Database

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. Use and Access

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. Availability

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

4. No Call List

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. Registration

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. Requirements

Telephone solicitors registering with the Commission shall provide:

a. Company

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. Designated Agent

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

c. Surety Bond

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. Form

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

7. Calls Not Allowed

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. Distribution

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. Consumer Registration

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. Schedule

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. Consumer Updates

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. Authorized Telephone Solicitation

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. Call Log

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

14. Retention

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

15. Definitions

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

101. 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.

102. Complaint Procedure

1. Form

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. Procedure

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.

3. Preliminary Determination

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.

103. VIOLATIONS

1. Penalty

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. Liable by Default

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. Surety Bond Assessment

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.