

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

2008-AD-238

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 July 1, 2008, the Commission issued an Order Establishing Rule-Making Docket proposing amendments 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 July 1, 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 on or about July 2, 2008, and it was published in the Clarion Ledger on or about July 10, 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 July 9, 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 August 5, 2008, Sprint and its related company and Telepak, *et al.*, filed Motions to Intervene which were granted on the same date filed. On or about August 5, 2008, AT&T, Sprint and Telepak et al., filed public comments. On or about August 18, 2008, Verizon was allowed to intervene out of time and late-filed comments were accepted.

On September 9, 2008, the Commission held a public hearing in which the proposed rule changes were discussed. Since all interveners offered essentially the same comments, the affected rules were discussed with the following suggested changes: Rule 100.6(c) add language “that shall be used for telemarketing purposes” to the telephone numbers that must be displayed on caller identification devices; Rule 100.12 change the word “reassigned” to “disconnected by the telecommunications company during the previous quarter;” and Rule 100.15 remove the words “verbatim data” and replace with “detailed records of incoming calls.”

Because testimony at the hearing revealed that telecommunications companies are retaining call data for at least six months, the time period in the rule has been changed from ninety days to six months. All other proposed changes were not objectionable by any intervener.

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 Commission desires to increase the effectiveness of the No-Call law. The proposed changes to the No-Call Rules increase such effectiveness by assisting the Commission in obtaining data about telemarketers that will be useful in its investigations of complaints. The No-Call Rules, as amended, are hereby adopted and summarized as follows: 100.2 prohibits the selling or transferring of the No-Call List amongst telemarketers without registering; 100.4 allows a telemarketer two contracted companies to call on its behalf during the registered year for the annual fee and requires an additional five hundred dollars (\$500.00) for any subsequent contracted company; 100.5 requires telephone solicitors to identify the contracted companies making calls on their behalf; 100.6 Affidavits are required prohibiting the blocking of caller information; 100.10 sets forth the schedule whereby the time period is reduced for a consumer's telephone number to effective on the No-Call List; 100.11 requires telecommunications companies to provide disconnected telephone numbers from the previous quarter in order to update the No-Call List; 100.12 prohibits calls to a consumer on a legal holiday; 100.13 the Call Log must have the contracted company's name and for whom the call was placed; 100.14 requires retention of detailed records of incoming calls for a period of six months by the telecommunications company; 102.1 no longer requires that complaints

must be in writing and filed on a form accessible at the Commission's website thereby lessening the burden on the consumer to file a complaint.

Following the public hearing, the Commission took the matter under advisement. Based upon careful consideration of the entire record in this matter, the comments filed, and the testimony of the interveners, the Commission finds the suggested amendments to the proposed changes to be well taken. The Commission hereby adopts the attached Proposed No-Call Rules to govern the implementation of the Mississippi Telephone Solicitation Act with suggested changes from the public hearing incorporated.

IT IS, THEREFORE, ORDERED, that the attached Proposed Rules Implementing the Mississippi Telephone Solicitation Act are hereby adopted. These No-Call Rules reflect the amendments suggested by the interveners at the public comment period. The changes are within the scope of the original Notice of Proposed Rule adoption, and therefore, provide fair warning as to the contents. These No-Call Rules shall be included in the next bound publication of the Public Utilities Rules of Practice and Procedure. 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.

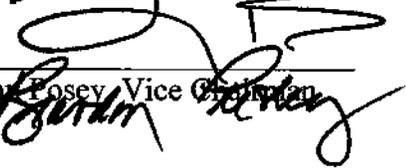
IT IS FURTHER ORDERED, that this Order shall become effective upon issuance and shall be deemed issued on the day it is served upon the intervening parties of record by the Executive Secretary of this Commission who shall note the service date in the file of this Docket.

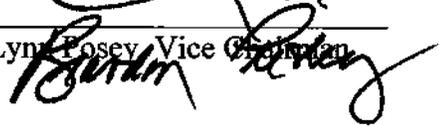
Chairman Leonard L. Bentz voted *Aye*; Vice Chairman Lynn Posey voted *Aye*; and Commissioner Brandon Presley voted *Aye*
Dated this the 18th day of September, 2008.



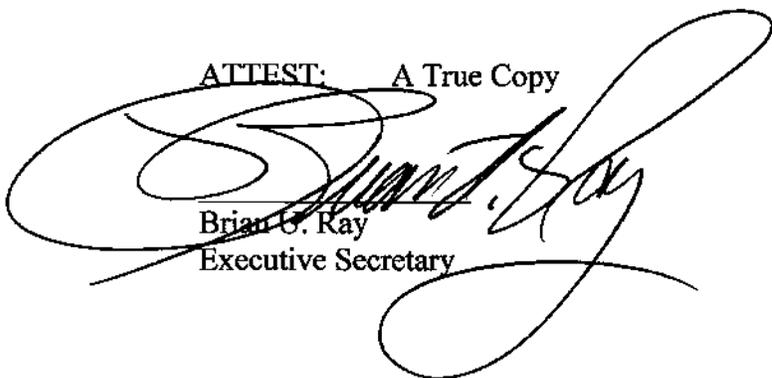
MISSISSIPPI PUBLIC SERVICE COMMISSION


Leonard L. Bentz, Chairman


Lynn Posey, Vice Chairman


Brandon Presley, Commissioner

ATTEST: A True Copy


Brian G. 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. Any person or entity who obtains the "No Call" List is prohibited from selling, sharing, leasing, donating or giving the "No Call" List to anyone not registered as a telephone solicitor with the Commission; provided that this rule shall not prohibit a telephone solicitor from providing the "No Call" List to its employees or contracted company making authorized telemarketing solicitations on behalf of the telephone solicitor provided that the contracted company is identified with the Commission and in compliance with these rules.

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 registered with the Commission and 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 CD-ROM. This fee entitles the telephone solicitor to allow two (2) contracted companies, for whom the Commission has received contact information, to engage in telemarketing activities on their behalf during the registered year. An additional five hundred dollars (\$500.00) fee per year will be assessed for each subsequent contracted company. 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. All telephone solicitors utilizing contracted companies for telemarketing activities

must also identify the contracted companies by providing the same information required of a registered telephone solicitor. 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. Submission of Originating Telemarketing Numbers

Any telemarketer or entity engaged in telemarketing to residential telephone customers in the State of Mississippi shall provide to the Mississippi Public Service Commission all telephone numbers that shall be used for telemarketing purposes to be displayed on a caller identification device by the company or telemarketer that shall be utilized for out-going calls to residential telephone customers in this State along with the physical and mailing addresses of the site from which the calls will be made, along with the names and appropriate telephone numbers of two individuals in a supervisory capacity to answer complaints and inquiries from the Commission. Should a telemarketer originate calls from a Private Branch Exchange (PBX) that does not pass identifying telephone number(s) to a Telecommunications Provider, (Provider) the Provider delivering the call will be required to transmit a PBX trunk number which would identify the telemarketer. Pursuant to Miss. Code Ann. §77-3-723(2), if a telemarketer has an established business relationship (EBR) with the consumer AND uses a recorded voice message to inform the consumer about a NEW product or service, the telemarketer would not have to comply with this rule.

The list of numbers to be utilized by the telemarketer or entity engaging in telemarketing shall be provided to the Commission within thirty (30) days from the final passage of this rule, and thereafter, on an annual basis by July 1st. The list of telephone numbers shall be provided to the Commission in a format prescribed and acceptable by the Commission.

In the event the telemarketer or entity engaging in telemarketing chooses to change telephone number(s) and/or add additional telephone numbers for telemarketing after the initial registration thirty (30) days from the final passage of this rule or between the dates of annual registration, the telemarketer shall provide the new telephone numbers to the Commission at least five (5) working days prior to utilizing the new telephone numbers for telemarketing purposes.

The entirety of this rule shall apply to all entities engaging in telemarketing, including, but not limited to, any contracted companies hired to perform telemarketing activities.

d. Affidavits

Each and every telemarketer shall by affidavit to be signed by a company representative who can bind the company, declare under oath and penalty of perjury to the Commission that the company shall not use any technique or take any step to intentionally block, stop or alter the display of the company name and telephone number(s) that may appear on a residential telephone or caller identification device. This rule shall apply to all entities engaging in telemarketing, including, but not limited to, any contracted companies hired to perform telemarketing activities.

e. 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,

f. 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 the last day of	List provided to solicitors on the 10 th of	List effective on the first day of
January	February	March
February	March	April
March	April	May
April	May	June
May	June	July
June	July	August
July	August	September
August	September	October
September	October	November
October	November	December
November	December	January
December	January	February

11. Updates

a. Consumer

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.

b. Telecommunications Providers

All telecommunications companies certificated to provide telecommunications service in the State of Mississippi must submit in digitized form, certified by affidavit, to the Commission on a quarterly basis in accordance with these rules all residential telephone numbers that have been disconnected by the telecommunications company during the previous quarter for the purpose of updating the Mississippi "No Call" List.

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 or any legal holiday.
- 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.
- e. All telemarketers, along with contracted companies providing telemarketing services, will be liable for any violations of these rules.

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

If the telephone solicitor is a contracted company, the contracted company's name as well as the company for whom the call was made must be included on the log.

14. Retention

All telecommunications companies certificated to provide telecommunications service in the State of Mississippi shall retain detailed records of incoming calls for a period of six months.

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.

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.