
**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSISSIPPI**

DOCKET NO. 2018-AD-170

**IN RE: PROPOSAL OF THE MISSISSIPPI PUBLIC SERVICE
COMMISSION TO AMEND CHAPTER 28 OF THE PUBLIC
UTILITIES RULES OF PRACTICE AND PROCEDURE**

**ORDER ADOPTING PROPOSED AMENDMENT TO
PRACTICE RULE 28: RULES IMPLEMENTING
THE MISSISSIPPI TELEPHONE SOLICITATION ACT**

COMES NOW, the Mississippi Public Service Commission ("Commission"), pursuant to its authority under the Mississippi Public Utility Act and applicable regulations, and hereby finds as follows:

1. In accordance with the procedures of Mississippi Code Annotated § 77-3-45 and the Mississippi Administrative Procedures Act, Miss. Code Ann. §§ 25-43-1.101 *et seq.*, the Commission issued an Order Enacting Temporary Rule Amendments and Seeking Comments Regarding Proposed Amendments to Practice Rule 28: Rules Implementing the Mississippi Telephone Solicitation Act on June 11, 2019. As stated in that Order, "revision of Rule 28 is necessary to comply with recent changes in the Mississippi Telephone Solicitation Act and the Mississippi Caller ID Anti-Spoofing Act arising from the 2019 legislative session."¹

¹ See SB 2821 and SB2744, 2019 Regular Session

2. Notice of this proposed change was published according to applicable law and the proposed rule modification was filed with the Secretary of State in accordance with the Administrative Procedures Act.²

3. In its June 11, 2019 Order, the Commission directed any interested parties to submit comments on the proposed rule modifications within forty-five (45) days, or by October 19, 2018. Several interested parties moved to intervene in this docket or otherwise filed responsive comments. The Commission took all comments into consideration. Many of the comments were concerned with proposed rule 28.102.1 and its alleged burden on voice providers. However, the Commission would be remiss not to remind commenters that the FCC is in the process of promulgating rules to comply with the requirements of the Pallone-Thune TRACED Act which, among other things, requires providers to implement the anti-spoofing and anti-robocall technology SHAKEN/STIR by June 30 2021.³ Accordingly, the Commission hereby adopts as final the revised Rule 28 attached as Exhibit A.

IT IS THEREFORE ORDERED that the attached Rule is hereby adopted as modified. The revisions to Rule 28 shall be included in the next bound publication of the Public Utility Rules of Practice and Procedure. The Executive Secretary is directed to transmit a copy of this Final Order to the Secretary of State's Office in accordance with the Mississippi Administrative Procedures Act. The Executive

² See Miss. Code Ann. § 25-43-3.103.

³ Public Law No: 116-105 (12/30/2019), See <https://www.congress.gov/bill/116th-congress/senate-bill/151/text>

Secretary is also directed to transmit a copy of this Final Order to any known parties of interest and shall publish notice of same according to applicable law.

IT IS FURTHER ORDERED that this Order and the attached Rule shall become effective thirty (30) days after filing with the Secretary of State's Office 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.

VOTE: Chairman Dane Maxwell voted: AYE X , NAY ;
 Commissioner Brent Bailey voted: AYE X , NAY ; and
 Commissioner Brandon Presley voted: AYE X , NAY .

SO ORDERED, this the 12th day of May, 2020.

MISSISSIPPI PUBLIC SERVICE COMMISSION

 /s/ Dane Maxwell
 Dane Maxwell, Chairman

 /s/ Brent Bailey
 Brent Bailey, Commissioner

 /s/ Brandon Presley
 Brandon Presley, Commissioner

ATTEST: A True Copy

 /s/ Katherine Collier
 Katherine Collier
 Executive Secretary

Effective this the 12th day of May, 2020.

Chapter 28 Rules Implementing the Mississippi Telephone Solicitation Act and the Caller ID
Anti-Spoofing Act
Rule 28 Rule 28

100 General Rules for the Mississippi Telephone Solicitation Act

1. No Calls Database

The Commission shall establish and operate a No Calls database composed of a list of residential, business, and cellular telephone numbers of consumers who have given notice of their objection to receiving telephone solicitations. This database will be updated monthly.

2. Use and Access

Information contained in the database may be used and accessed only for the purpose of compliance with the Mississippi Telephone Solicitation Act hereinafter referred to as 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 via monthly Internet download.

4. No Call List

- a. 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.
- b. The annual fee for the database shall be one thousand dollars (\$1,000.00) per year. 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. The contracted companies must also register with the Commission. 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.
- c. If the telephone solicitor is a charitable organization as defined by Chapter 11, Title 79, Mississippi Code of 1972, then the annual registration fee

to register as a telephone solicitor and receive the No Calls database shall be adjusted as follows:

- i. If a charitable organization is exempt from filing an annual report with the Mississippi Secretary of State as provided by Miss. Code Ann. § 77-11-505(1)(d), then the annual registration fee is waived.
- ii. If a charitable organization files an annual report with the Mississippi Secretary of State as contemplated by Miss. Code Ann. § 77-11-503, and its most recently filed annual report shows its most recent fiscal year contributions are in excess of twenty-five thousand dollars (\$25,000.00) and up to fifty thousand dollars (\$50,000.00), then the annual registration fee shall be five hundred dollars (\$500.00).
- iii. If a charitable organization files an annual report with the Mississippi Secretary of State as contemplated by Miss. Code Ann. § 77-11-503, and its most recently filed annual report shows its most recent fiscal year contributions are in excess of fifty thousand dollars (\$50,000.00) and up to one hundred thousand dollars (\$100,000.00), then the annual registration fee shall be seven hundred and fifty dollars (\$750.00).
- iv. If a charitable organization files an annual report with the Mississippi Secretary of State as contemplated by Miss. Code Ann. § 77-11-503, and its most recently filed annual report shows its most recent fiscal year contributions are in excess of one hundred thousand dollars (\$100,000.00), then the annual registration fee shall be as provided in RP 28.100.4.b.

5. Mandatory Registration

- a. All telephone solicitors not exempt from the MTSA must register annually with the Commission before conducting any telephone solicitations in the State of Mississippi. Registration renews must be processed before July 1, annually.
- b. 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.
- c. Solicitors must register via United States mail or via email to no.call@psc.ms.gov. Registration information can be found at the Commission's website.

6. Registration 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. Affidavit
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 applies to all entities engaging in telemarketing, including but not limited to, any contracted companies hired to perform telemarketing activities.
- d. Surety Bond
A surety bond, to be approved by the Commission, must 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.

7. Form of Registration

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

8. Submission of Originating Telemarketing Numbers By Telemarketers

- a. Any telemarketer or entity engaged in telemarketing to residential, business, or cellular 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 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.

- b. Pursuant to Miss. Code Ann. § 77-3-723(2), if a telemarketer has an established business relationship 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 provide 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.
- c. In the event the telemarketing 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 annually 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~~ applies to all entities engaging in telemarketing, including, but not limited to, any contracted companies hired to perform telemarketing activities.

9. 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.

10. 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.

11. Residential Consumer Registration

Residential 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, via the MS NoCall phone application, or facsimile. Residential consumers may give notice to the Commission of their revocation of the notice by writing the Commission. Residential consumer registration is effective as long as the MTSA is re-enacted.

12. Business Consumer Registration

- a. Business consumers wishing to register ten (10) or fewer numbers 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, via the MS NoCall phone application, or facsimile.

- b. Business consumers wishing to register ten (10) or more numbers must give notice to the Commission of their objection to receiving telephone solicitations by submitting a list of the numbers they wish to register to the Commission in a .csv file format. The Commission will notify the business consumer via U.S. mail or electronic mail upon completion of registration.
- c. Business consumers may give notice to the Commission of their revocation of the notice by writing the Commission and including a list of the numbers they wish to revoke consent for in a .csv file format.
- d. Business consumer registration is effective as long as the MTSA is re-enacted.

13. 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 10th	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

14. Updates

a. Consumers

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 database but they need to submit a change of address to the Commission. Consumers who are required to obtain a different telephone

number must register the new number with the Commission to have their new number included in the database.

b. Telecommunications Providers

All telecommunications companies certified to provide telecommunications service in the State of Mississippi must submit, 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. The submission must be sent electronically to no.call@psc.ms.gov and the list of numbers must be in .csv format.

15. 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 solicitor registration number (i.e., their tax ID 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 Time.
- c. No telephone calls can be made on a Sunday or any legal holiday observed by the State of Mississippi.
- 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.

16. 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.

17. Retention

All telecommunications companies certified to provide telecommunications service in the State of Mississippi shall retain detailed records of incoming calls for a period of six (6) months.

18. Definitions

The definitions contained in the MTSA, codified as Mississippi Code §77-3-705 (Rev. 2019), are hereby incorporated by reference.

101 Semiannual Notification to Consumers

1. 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 General Rules for the Caller ID Anti- Spoofing Act

1. Responsibility of Telephone Providers

It is the responsibility of a telephone provider completing a call to ensure the caller identification displayed by the consumer's device is accurate. Telephone providers who transmit falsified, untrue, or otherwise spoofed caller identification information to the receiving device will be held responsible by the Commission for violations of the Caller ID Anti-Spoofing Act, hereinafter referred to as the "ASA."

2. Certification of Providers

Telephone providers may be exempted from being held responsible for the transmission of spoofed caller identification information by, no later than June 30 annually, seeking a determination by the Commission that the telecommunications provider has implemented current and applicable technologies to identify and block telecommunications that violate the ASA, taking into consideration applicable state and federal laws, federal regulations, and costs. Criteria for certification are determined by the Commission and subject to change annually.

3. Definitions

The definitions contained in the ASA, codified as Mississippi Code §77-3-803 (Rev. 2019), are hereby incorporated by reference.

103 Complaint Procedure

1. Form

A complaint may be initiated by a consumer or by the Commission.

2. Procedure

- a. 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.

- b. 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.
- c. 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.
- d. The penalty assessed shall be satisfied within twenty (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.

104 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 Ten Thousand Dollars (\$10,000) for each violation to be assessed and collected by the Commission. Any telephone solicitor found to have violated the ASA or other applicable law or regulation pursuant to a Commission

finding, or by default, may be subject to a civil penalty not to exceed Ten Thousand Dollars (\$10,000) 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 thirty (30) days after service of the Commission's action.