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

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**MISSISSIPPI PUBLIC SERVICE COMMISSION**

**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**

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

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COMES NOW, the Mississippi Public Service Commission (Commission), *sua sponte*, and hereby requests comments in the above-captioned proceeding. Pursuant to Miss. Code Ann. § 77-3-45 and Rule 26 of the Public Utilities Rules of Practice and Procedure, the Mississippi Public Service Commission ("Commission") hereby declares its intent to amend the following specified rules under its jurisdiction.

1. The Commission entered its Order<sup>1</sup> temporarily amending Rule 28 and seeking comments on June 11, 2019 in response to the legislative changes made in the 2019 regular legislative session.<sup>2</sup> Among other things, these changes amended the Mississippi Telephone Solicitation Act<sup>3</sup> to include text messages and brought the Anti-Spoofing Act<sup>4</sup> into compliance with federal law.
2. The Commission entered its Order adopting the temporary rule as permanent on May 12,

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<sup>1</sup> Order Enacting Temporary Rule Amendments And Seeking Comments Regarding Proposed Amendments To Practice Rules 28: Rules Implementing The Mississippi Telephone Solicitation Act, Docket No. 2018-AD-170 (June 11, 2019).

<sup>2</sup> See S.B. 2821, See Also S.B. 2744

<sup>3</sup> Miss. Code Ann. §77-3-701

<sup>4</sup> Miss. Code Ann. §77-3-801

2020.<sup>5</sup> In its original Order seeking comment on the temporary rule changes, the Commission stated that it was “simultaneously opening a public rule-making proceeding relative to the same proposed amendments to Rule 28.”<sup>6</sup>

3. To that end, the Commission issued an Order adopting the temporary amendments as final on May 12, 2020. For reasons unknown, however, the final changes were never filed with the office of the Secretary of State or published in the Administrative Bulletin in accordance with the Administrative Procedures Act (APA). Additionally, the Commission’s final Order was issued several months after the temporary rule expired on its own terms; therefore, the procedural requirements of the APA have not been met and the rule changes seemingly adopted in May 2020 were never effective.
4. Accordingly, in compliance with the APA, the Commission hereby invites all stakeholders and interested parties in this matter to review the proposed modifications to Rule 28 reflected in the attached Exhibit “A,” and submit written comments thereon within twenty-five (25) days of the date of this Order
5. The Executive Secretary is directed to transmit a copy of this Order to the Secretary of State’s Office in accordance with the Mississippi Administrative Procedures Act, Miss. Code Ann §§ 25-43-1.101 *et seq.* Final modification to Rule 28 shall become effective upon entry of a separate Final Order and after passage of the prescribed statutory notice period.

IT IS THEREFORE ORDERED that all stakeholders and interested parties wishing to

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<sup>5</sup> Order Adopting Proposed Amendment To Practice Rules 28: Rules Implementing The Mississippi Telephone Solicitation Act

<sup>6</sup> See Order Enacting Temporarily Rule Amendments at p. 3, 2018-AD-170 (June 11, 2019).

provide comments on the matter identified herein shall do so within twenty-five (25) days of the date of this Order. This Order shall become effective upon issuance and shall be deemed issued on the day it is served upon all parties of record.

### Commission Vote

Chairman Dane Maxwell	Aye <u>X</u>	Nay _____
Commissioner Brent Bailey	Aye <u>X</u>	Nay _____
Commissioner Brandon Presley	Aye <u>X</u>	Nay _____

SO ORDERED by the Commission on this the 8<sup>th</sup> day of December, 2020.

### MISSISSIPPI PUBLIC SERVICE COMMISSION

*Dane Maxwell*

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DANE MAXWELL, CHAIRMAN



*Brent Bailey*

\_\_\_\_\_  
BRENT BAILEY, COMMISSIONER

*Brandon Presley*

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BRANDON PRESLEY, COMMISSIONER

ATTEST A TRUE COPY

*Katherine Collier*

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Katherine Collier  
Executive Secretary

Effective this the 8<sup>th</sup> day of December, 2020.

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

**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 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 Mississippi Telephone Solicitation Act ("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 an 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. The annual fee for the database shall be one thousand dollars (\$1,000.00) per year if obtained via an Internet download. 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 their 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.
- b. 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:

1. If a charitable organization files an annual report with the Mississippi Secretary of State as contemplated by Miss. Code Ann. § 79-11-503, and its most recently filed annual report shows its most recent fiscal year contributions do not exceed twenty-five thousand dollars (\$25,000.00), then the annual registration fee is waived.
2. If a charitable organization files an annual report with the Mississippi Secretary of State as contemplated by Miss. Code Ann. § 79-11-503, 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).
3. If a charitable organization files an annual report with the Mississippi Secretary of State as contemplated by Miss. Code Ann. § 79-11-503, 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).
4. If a charitable organization files an annual report with the Mississippi Secretary of State as contemplated by Miss. Code Ann. § 79-11-503, 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.a.

## **5. Mandatory 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. Registration Requirements**

Telephone solicitors registering with the Commission shall provide the following:

### **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 By Telemarketers**

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 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 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.

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 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. If the registration fee for a charitable organization is waived pursuant to RP 28.100.4.b.i, then the bond requirement contained in this subsection is waived. fHl&,-

**f. Form of Registration**

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. 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.

**10. 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.

#### 10 II. 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



## **~~11~~12. 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 database 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 certified 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.

## **13. 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~~ 14. 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 15. 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 months.

#### **15 16. 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**

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 originating a call to ensure the caller identification displayed by the consumer's device is accurate. Telephone providers who violate the Caller ID Anti-Spoofing Act ("ASA") will be held responsible by the Commission for said violations as provided by law.

#### **2. Certification of Providers**

Voice telephony service providers may be exempted from being held responsible for the originating transmission of illegally spoofed caller identification information by providing the Commission a copy of its FCC certification stating the voice service provider is in compliance with the FCC STIR/SHAKEN

mandate no later than June 30, 2021 and annually thereafter. In the event a telephone provider is unable to implement STIR/SHAKEN due to technological or financial hurdles, they must provide the Commission their Federal Communications Commission certification that they are in compliance with the Federal Communications Commission's robocall mitigation procedures, are taking reasonable steps to implement an alternative to STIR/SHAKEN, or are part of a consortium of telephone providers taking reasonable steps to implement an alternative.

Any telephone provider may request a waiver from compliance from the requirements of this rule for good cause shown. A provider requesting a waiver from this rule should email nocall@psc.ms.gov to receive a waiver application.

### **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 residential consumer, an authorized business consumer who is identified in the business' registration, 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 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.

### **103 104. 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 ~~Five Thousand Dollars (\$5,000)~~ 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 30 days after service of the Commission's action.