

Decision No. C01-865

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 01R-385T

IN THE MATTER OF PROPOSED RULES REGARDING THE COLORADO NO-CALL LIST.

NOTICE OF PROPOSED RULEMAKING

Mailed Date: August 24, 2001

Adopted Date: August 22, 2001

I. BY THE COMMISSION

A. Statement

1. The Colorado Public Utilities Commission gives notice of proposed rulemaking regarding the Colorado No-Call List. The proposed rules implement the Colorado No-Call List Act ("Act"), §§ 6-1-901 *et. seq.*, C.R.S.¹ A copy of the proposed rules is attached to this notice of proposed rulemaking. The statutory authority for the proposed rules is found at §§ 6-1-905(3), 40-2-108 and 40-3-102, C.R.S.

2. The purpose of the rules is to implement the No-Call List Act. The Act intends that the Commission implement a mechanism by which the privacy of residential telephone subscribers and the commercial interests of telephone solicitors are reasonably and fairly balanced. Specifically, the Act

¹ The Colorado Legislature enacted this statute in the 2001 legislative session, House Bill, 01-1405.

permits residential subscribers to notify telephone solicitors of their objection to receiving solicitations by telephone or fax. Residential subscribers, according to the Act, can give notice of their objection to receiving telephone solicitations by placing their telephone numbers and zip codes on the Colorado No-Call List. The Act requires telephone solicitors to remove from their calling lists the numbers of any residential subscriber who have given notice of an objection to receiving telephone solicitations.

3. In § 6-1-905(3), the Act directs the Commission to promulgate rules to guide the Designated Agent² in the development and maintenance of the Colorado No-Call List. The proposed rules are intended to accomplish that purpose.

4. Section 3 of the proposed rules establishes the procedures by which the Commission will set annual registration fees for persons wishing to make telephone solicitations in the state. Rule 3.1, consistent with the Act, requires telephone solicitors to pay annual registration fees to the Designated Agent. Section 4 of the proposed rules establishes the responsibilities of the Designated Agent in development and operation of the No-Call List program. Section 5 directs regulated telephone local exchange carriers to carry out certain actions that may be necessary or convenient in operation of the

² The Designated Agent is the private party with whom the Commission will contract for the development and maintenance of the No-Call List. See § 6-1-905(2), C.R.S.

program, such as providing to the Designated Agent a list of changed, transferred, or disconnected telephone numbers.

5. The Commission requests comment on the proposed rules attached to this Notice of Proposed Rulemaking. In addition, we specifically request comment on certain issues discussed here:

a. The Act (§ 6-1-903(10)) defines "telephone solicitation" to exclude calls by a person that has an "established business relationship" with the residential subscriber. "Established business relationship" is defined (6-1-903(7)), in part, as a relationship that was formed "through a *voluntary*, two-way communication between a seller or telephone solicitor and a residential subscriber..." (emphasis added). We request comment regarding our authority to impose limitations on telephone solicitations by regulated telephone public utilities to their ratepayers, including any First Amendment implications of such a limitation. For example, interested persons may submit comment on this question: because local exchange carriers were until recently regulated monopolies, is their existing business relationship with ratepayers "voluntary" within the meaning of the Act?

b. The proposed rules allow subscribers to wireless telephone service to place their numbers on the No-Call List. We request comment regarding our legal authority to

include wireless subscribers in the No-Call List program, and the advisability of doing so.

c. Proposed Rule 5.2 requires regulated local exchange carriers to inform customers of their rights under the Act to add their telephone number to the Colorado No-Call List. Such a provision does not appear in the Act itself. However, we now believe that we possess the authority to adopt such a rule under our general regulatory authority over public utilities (see § 40-3-102), and that such a provision advances the legislative intent underlying the Act. Interested persons should submit comment on these and related issues.

d. Proposed Rule 4.13 directs the Designated Agent to maintain only an automated, web-based complaint system that will permit residential subscribers to report violations of the Act over the Internet. The rule does not presently contemplate a mechanism that would accommodate subscriber complaints in any other manner, such as through a toll-free telephone number. We recognize that the Act (§ 6-1-905(3)(b)(VII)) only requires the designated agent to maintain an automated, on-line complaint system. Our draft rules follow the Act in this regard. It appears this requirement is designed to minimize the costs to the designated agent and we are mindful of this goal. However, this requirement will make it difficult for a large number of Colorado residents who do not have ready access to the Internet

to complain of violations of the Act. For that reason, we seek comment as to whether it is technically and economically feasible to require an additional complaint mechanism based on an automated telephone system.

6. The Commission will conduct a hearing on the proposed rules and related issues at the below stated time and place. Interested persons may submit written comments on the rules and present these orally at hearing, unless the Commission deems oral presentations unnecessary. The Commission also encourages interested persons to submit written comments before the hearing scheduled in this matter. In the event interested persons wish to file comments before hearing, the Commission requests that such comments be filed on or before September 21, 2001. The Commission will consider all submissions.

II. ORDER

A. The Commission Orders That:

1. This Notice of Proposed Rulemaking shall be filed with the Colorado Secretary of State for publication in the September 10, 2001 edition of The Colorado Register.

2. Hearing on the proposed rules and related matters shall be held as follows:

TIME: October 1, 2001
DATE: 9:00 a.m.
PLACE: Commission Hearing Room A
Office Level 2 (OL2)
Logan Tower
1580 Logan Street
Denver, Colorado

At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Commission deems oral comments unnecessary.

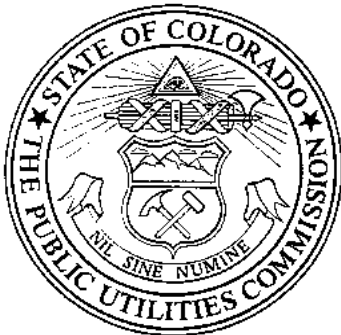
3. Interested persons may file written comments in this matter before hearing. The Commission requests that such prefiled comments be submitted on or before September 21, 2001. All submissions, whether oral or written, will be considered by the Commission.

4. This order is effective immediately upon its mailed date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
August 22, 2001.**

(S E A L)

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



RAYMOND L. GIFFORD

POLLY PAGE

ATTEST: A TRUE COPY

Bruce N. Smith

Bruce N. Smith
Director

JIM DYER

Commissioners