NEBRASKA ADMINISTRATIVE CODE

EFFECTIVE DATE: September 28, 2013 LAST ISSUE DATE: February 7, 2000

TITLE 291 - NEBRASKA PUBLIC SERVICE COMMISSION

CHAPTER 11 - AUTOMATIC DIALING-ANNOUNCING DEVICES RULES AND REGULATIONS

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001 SCOPE:

001.01 General: These rules and regulations govern the use of automatic dialing-announcing devices as set forth in the Automatic Dialing-Announcing Devices Act.

001.02 Definitions: As set forth in this chapter, unless the context otherwise requires:

001.02A Automatic Dialing-Announcing Device: A device which selects and dials telephone numbers and automatically plays a recorded message.

001.02B Commission: The Nebraska Public Service Commission.

001.02C Emergency Purposes: Any situation affecting the health and safety of a consumer.

001.02D Established Business Relationship: A prior or existing relationship formed by a voluntary two-way communication between a person and a residential or business telephone subscriber, with or without an exchange of consideration, on the basis of an inquiry, application, purchase, or transaction by the subscriber regarding products or services offered by the person, which relationship has not been previously terminated by either party.

001.02E Person: Any individual, firm, organization, corporation, company, association, partnership, joint stock association, body politic, common carrier, society, legal representative, trustee, receiver, assignee, guardian, executor or administrator.

001.02F Telephone Solicitation: A telephone call or message using an automatic dialing-announcing device for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which call or message is transmitted to any person. The term shall not include a call or message:

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001.02F1 Made to any person with the person's prior express invitation or permission;

001.02F2 Made to any person with whom the caller has an established business relationship;

001.02F3 Made by a tax-exempt nonprofit organization;

001.02F4 Not made for commercial purposes;

001.02F5 Made for a commercial purpose but which does not include the transmission of unsolicited advertisement; or,

001.02F6 Placed by a live operator and a prerecorded message is not utilized.

001.02G Unsolicited Advertisement: Any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's express invitation or permission.

002 PERMITS AND REGISTRATIONS:

002.01 Permit or Registration Required: No person shall operate or connect any automatic dialing-announcing device for the purpose of making telephone solicitations or unsolicited advertisements on any telephone line unless the person has a current permit from the Commission for the device. Any person using an automatic dialing-announcing device other than for telephone solicitations or unsolicited advertisements shall register the device with the Commission. A separate permit or registration is required for each device connected or operated.

002.02 Application Forms:

002.02A Permit Applications: An applicant seeking a permit shall file a written application with the Commission and remit a fee of five hundred dollars ($500) for each device. The application shall be on a form prescribed by the Commission.

002.02B Registration Applications: An applicant seeking a registration shall file a written application with the Commission, no filing fee is required for a registration. The application shall be on a form prescribed by the Commission.

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002.02C Review of Applications: Upon review of an application, the Commission shall determine if a permit or registration is required.

002.03 Demonstration and Inspection: Prior to issuing any permit or registration, the Commission may require the applicant to submit its automatic dialing-announcing device to a demonstration and inspection.

002.04 Permits and Registrations Not Transferrable: Permits or registrations are not transferable and a new permit or registration is required for a change in the person operating or connecting the automatic dialing-announcing device.

002.05 Filing with Telephone Company: Upon issuance of a permit or registration, and prior to operating or connecting the device to any telephone line, the permit holder or registrant shall notify the serving telephone company of the telephone line on which the device is proposed to be connected or operated. The telephone line shall be considered a business line.

002.06 Release of Telephone Line: All automatic dialing-announcing devices delivering a recorded message to a person shall release the telephone line of the person called within five (5) seconds of the time notification is transmitted to the device that the person called has hung up, or as soon thereafter as the serving telephone company's central office equipment permits, to allow the telephone line of the person called to be used to make or receive other calls.

002.07 Disconnection: Use of an automatic dialing-announcing device shall not impair the telephone service of others.

002.07A Automatic: The serving telephone company may suspend or disconnect, without prior notice, the telephone service of the permit holder or registrant if the use of the automatic dialing-announcing device causes the prevention, obstruction or delay of telephone service to others.

002.07B Notification: The serving telephone company shall immediately notify the permit holder or registrant in writing of such disconnection and the reason for the disconnection.

002.07C Reestablishment: Service may be reestablished with the consent of the serving telephone company or by order of the Commission after notice and hearing.

002.08 Changes in Information Contained in Application: The permit holder or registrant shall notify the Commission of any changes in the information contained in its application within five (5) days. This section shall not apply to script changes which shall be made pursuant to sections 003.03C and 004.04C.

002.09 Renewal of Permit or Registration; Duration of Permit or Registration: If a permit or registration is granted, the permit or registration shall remain in force for two (2) years from the date of issuance, and each application for the renewal of a permit or registration shall be treated as a new application. Applications for renewal of permits or registrations should be filed thirty (30) days prior to the expiration date to allow for review and consideration by the Commission. No device may be operated after the expiration date unless a renewed permit or registration has been issued by the Commission.

002.10 Sequential Dialing Prohibited: A person shall not connect or operate an automatic dialing-announcing device in such a manner as to allow it to dial telephone numbers sequentially which means in any manner other than a random manner. A detectable, predictable pattern which can be used to accurately project the device's number dialing shall satisfy a finding that sequential number dialing is taking place in violation of this section.

003 AUTOMATIC DIALING-ANNOUNCING DEVICES USED FOR TELEPHONE SOLICITATIONS AND UNSOLICITED ADVERTISEMENTS:

003.01 Hours: A person may only make a telephone solicitation or unsolicited advertisement using an automatic dialing-announcing device to a residential telephone line between the hours of 8:00 a.m. and 9:00 p.m., Monday through Saturday, and between the hours of 1:00 p.m. and 9:00 p.m., Sunday and legal holidays. All times indicated are local times of the party called.

003.02 Time Limit: No message transmitted by any automatic dialing-announcing device used for telephone solicitations or unsolicited advertisements shall exceed two (2) minutes in length.

003.03 Message Requirements: A person using an automatic dialing-announcing device for the purpose of making telephone solicitations or unsolicited advertisements shall deliver a message which:

003.03A At the beginning of the message clearly states the identity of the person making the call.

003.03B During or after the message, clearly states the telephone number, other than that of the device which made the call, or address of the person.

003.04 Filing of Script: A person using an automatic dialing-announcing device for telephone solicitations or unsolicited advertisements or contracting with a third party to connect or operate an automatic-dialing announcing device for the purpose of making telephone solicitations or unsolicited advertisements shall file with the Commission the message to be used and any subsequent change to the message shall be filed with the Commission within five (5) days after the change.

003.05 Do-Not-Call Lists: A person shall not make a telephone solicitation or unsolicited advertisement to a residential or business telephone line unless the caller has instituted procedures for maintaining a list of telephone subscribers who do not wish to receive telephone solicitations or unsolicited advertisements made by, or on behalf of, the caller. A caller shall at no time make telephone solicitations or unadvertised solicitations to subscribers on such list. Such procedures shall meet the following minimum standards:

003.05A A written policy, available upon demand, for maintaining a do-not-call list must be established.

003.05B Personnel engaged in any aspect of telephone solicitation or unsolicited advertisement must be informed of the existence of and trained in the use of the do-not-call list.

003.05C If a person making a telephone solicitation or unsolicited advertisement, or on whose behalf a solicitation or advertisement is made, receives a request from a residential or business telephone subscriber not to receive calls from that person, the person shall record the request and place the subscriber's name and telephone number on the do-not-call list and the time the request is made. If the requests are recorded or maintained by someone other than the person on whose behalf the telephone solicitation or unsolicited advertisement is made, the person on whose behalf the solicitation or advertisement is made shall be liable for any failure to honor the do-not-call request. In order to protect a telephone subscriber's privacy, a person making telephone solicitations or unsolicited advertisements shall obtain a telephone subscriber's prior express consent to share the telephone subscriber's request not to be called with, or to forward such request to, someone other than the person on whose behalf a telephone solicitation or unsolicited advertisement is made or an affiliated entity.

003.05D In the absence of a specific request by a telephone subscriber to the contrary, a residential or business telephone subscriber's do-not-call request shall apply to the particular person making the call or on whose behalf a call is made and shall not apply to affiliated entities unless the telephone subscriber reasonably would expect them to be included given the identification of the caller and the product being advertised.

003.05E A person making telephone solicitations or unsolicited advertisements shall maintain a do-not-call list for the purpose of any future telephone solicitations or unsolicited advertisements.

003.06 Emergency Numbers; Restrictions: A person shall not initiate a telephone solicitation or unsolicited advertisement, other than a call made for emergency purposes, using an automatic dialing-announcing device to:

003.06A An emergency telephone line, including 911 or any emergency or business line of a hospital, physician or medical service office, health care facility, poison control center, fire protection agency, or law enforcement agency;

003.06B The telephone line of any guest room of a hospital, health care facility, nursing home, or similar facility;

003.06C Any telephone number assigned to a paging service, a cellular telephone service, a specialized mobile radio service, any other radio common carrier service, or any service for which the person is charged for the call; or,

003.06D A residential or business telephone line unless the telephone solicitation or unsolicited advertisement is otherwise permitted by Neb. Rev. Stat. Sections 86-236 to 86-257.

003.07 Inspection: The permit holder shall inspect the automatic dialing-announcing device at least once a month to ensure proper operation and compliance with these rules, and shall maintain a record of such inspections for at least two (2) years. All automatic dialing-announcing devices used for telephone solicitations or unsolicited advertisements may be inspected by the Commission during the hours of operation specified in the application.

003.08 Facsimile Telephone Solicitation; Prohibited Use: A person shall not use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine.

003.09 Joint and Several Liability: A person contracting with a third party to connect or operate an automatic dialing-announcing device for the purpose of making telephone solicitations on any telephone line shall be jointly and severally liable with the third party for connecting and operating the automatic dialing-announcing device in violation of the Automatic Dialing-Announcing Devices Act or the rules and regulations adopted and promulgated under the act.

004 AUTOMATIC DIALING-ANNOUNCING DEVICES USED FOR OTHER THAN TELEPHONE SOLICITATIONS OR UNSOLICITED ADVERSTISEMENTS:

004.01 Registration: Any person using an automatic dialing-announcing device other than for telephone solicitations or unsolicited advertisements shall register the device with the Commission pursuant to the application process, without a fee, and shall include with the application a detailed explanation of the use planned and the message to be used.

004.02 Hours: A person may only make a telephone call for other than solicitation purposes using an automatic dialing-announcing device between the hours of 8:00 a.m. and 9:00 p.m., Monday through Saturday, and between the hours of 1:00 p.m. and 9:00 p.m., Sunday and legal holidays. All times indicated are local times of the party called.

004.03 Time Limit: No message transmitted by any automatic dialing-announcing device used for other than solicitation purposes shall exceed two (2) minutes in length.

004.04 Message Requirements: A person using an automatic dialing-announcing device other than for telephone solicitations or unsolicited advertisements shall deliver a message which:

004.04A At the beginning of the message states clearly the identity of the person on whose behalf the message is being transmitted;

004.04B During or after the message, clearly states the telephone number, other than that of the device which made the call, or address of the person operating the device.

004.05 Exceptions to Registration: Section 004 does not apply to:

004.05A A message from any elementary, secondary, or postsecondary educational institution to any of its students, parents, or employees;

004.05B A message to a person with whom the person placing the call or the person on whose behalf the message is being transmitted has an established business or personal relationship;

004.05C A message from an employer advising any of its employees of work schedules; or

004.05D A message from a political subdivision as defined in Neb. Rev. Stat. § 13-903.

004.06 Filing of Script: A person using an automatic dialing-announcing device other than for telephone solicitations or unsolicited advertisements or contracting with a third party to connect or operate an automatic dialing-announcing device for other than telephone solicitations shall file with the Commission the message to be used within twenty-four (24) hours after the message is transmitted.

004.07 Joint and Several Liability: A person contracting with a third party to connect or operate an automatic dialing-announcing device for other than telephone solicitations shall be jointly and severally liable with the third party for connecting and operating the automatic dialing-announcing device in violation of the Automatic Dialing-Announcing Devices Act or the rules and regulations adopted and promulgated under the act.

005 ENFORCEMENT:

005.01 Complaint: The Commission may conduct investigations upon written complaint and supporting affidavit that an applicable law, rule or regulation has been, or is being, violated.

005.01A Cease and Desist Order: The Commission may enter a Cease and Desist Order on an ex parte basis against the party named in the complaint.

005.01B Duration of Order: The order shall have a duration of no more than twenty (20) days, and a hearing upon the complaint shall be held no later than twenty (20) days after the order is entered.

005.02 Revocation or Suspension of Permit or Registration: Failure to comply with an applicable law, rule, or regulation shall constitute grounds for revocation or suspension of a permit or registration.

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005.03 Administrative Fines: The Commission may administratively fine pursuant to Neb. Rev. Stat. Section 75-156 any person who violates the Automatic Dialing-Announcing Devices Act or the rules and regulations adopted and promulgated thereunder.

005.04 Other Penalties: In addition to any other penalties available at law, any person who violates such sections shall be guilty of a Class IV misdemeanor.

006 APPEALS:

006.01 Commission Decision; Appeal: A party seeking to obtain reversal, modification, or vacation of an order entered by the Commission pursuant to this Section may appeal such order in accordance with the state's Administrative Procedure Act.

APPROVED

SEP 23 2013

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