

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CONSUMER EDUCATION FOR)	
TELEPHONE SOLICITATION AS)	CASE NO.
REQUIRED BY HOUSE BILL 47)	2002-00233

O R D E R

House Bill 47, § 5, to be codified in KRS Chapter 367, requires this Commission to produce a consumer education pamphlet describing recent changes in telemarketing laws, particularly regarding the zero call list. House Bill 47 also requires this Commission to mandate the inclusion of this information in telephone companies customer bills. On April 18, 2002, the Commission convened a meeting to discuss these changes. Attached to this Order is a summary of that meeting that includes a list of those who attended. Telephone utilities present at the meeting indicated that September would be an appropriate month for inclusion in their customer bills of the zero call list information.

Accordingly, the following language should be inserted in all local exchange carriers bills to their customers in September 2002 and each September hereafter, with updates as may become necessary:

Kentucky residential telephone customers who want to reduce calls from telemarketers may place their telephone numbers on a no-call list by contacting the Kentucky Attorney General's office at 1-866-KYCALL0 (1-866-592-2550) or via the Internet at www.kycall0.com. The no-call list does not restrict calls from businesses with which you have an existing relationship, debt or contract, businesses calling with your permission or charities soliciting donations. It may take up to 90 days for your request to take effect. You will remain on the no-call list unless your home telephone

number changes or you notify the Attorney General's office in writing to remove your number. You may also place your number on the Direct Marketing Association's do-not-call list by mailing your name, phone number and signature to DMA Telephone Preference Service, Box 643, Carmel, NY 10512. In addition, federal law requires a telemarketer to remove your number from its calling list upon your request. To file a complaint against a telemarketer, call 1-866-877-STOP or go to the Web site www.kycall0.com.

House Bill 47 requires this Commission to produce a consumer education pamphlet and to require that the pamphlet be included in the billing inserts of the telephone companies under the Public Service Commission's jurisdiction. It was agreed at the April 18, 2002 meeting that the insertion of language such as that prescribed above as a bill message would fulfill this statutory requirement.

Accordingly, the Commission HEREBY ORDERS that:

1. Each incumbent local exchange carrier and competitive local exchange carrier shall insert the language indicated herein in its consumer bills that are mailed or e-mailed during the month of September 2002 and each September thereafter, future messages to include updates as may be necessary. The bill message shall be in a different font and in a type size larger than any other text on the same page.
2. Any person objecting to the requirements of this Order shall file such objection within 20 days of the date of this Order.
3. If no objection is filed within 20 days of the date of this Order, the requirements of this Order shall be effective without further Order of this Commission.

Done at Frankfort, Kentucky, this 12th day of July, 2002.

By the Commission

DISSENTING OPINION OF CHAIRMAN MARTIN J. HUELSMANN

I respectfully dissent.

House Bill 47 was one of the most talked about bills adopted by the 2002 General Assembly. It was debated in both the House and the Senate. In the past several years, telemarketer bills were introduced, debated, amended, and not passed.

The Governor signed House Bill 47 on March 6, 2002. It was no secret as the bill was making its way through the General Assembly that this Commission would be required to produce a consumer education Pamphlet to be placed in the telephone bill as an Insert.

There was an informal conference on April 18, 2002 to discuss implementation of House Bill 47. Attending that conference were the Attorney General's Office, telephone company personnel, and members of the PSC staff.

At that conference, industry representatives expressed a concern over the cost of a bill insert. One company estimated a cost of \$50,000 for an insert versus a cost of \$4,000 for a bill message.

My fellow Commissioners have concluded that putting the following words on a bill satisfies the requirement of House Bill 47:

Kentucky residential telephone customers who want to reduce calls from telemarketers may place their telephone numbers on a no-call list by contacting the Kentucky Attorney General's office at 1-866-KYCALL0 (1-866-592-2550) or via the Internet at www.kycall0.com. The no-call list does not restrict calls from businesses with which you have an existing relationship, debt or contract, businesses calling with your permission or charities soliciting donations. It may take up to 90 days for your request to take effect. You will remain on the no-call list unless your home telephone number changes or you notify the Attorney General's office in writing to remove your number. You may also place your number on the Direct Marketing Association's do-not-call list by mailing your name, phone number and signature to DMA Telephone Preference Service, Box 643, Carmel, NY 10512. In addition, federal law requires a telemarketer to remove your number from its calling list upon your request. To file a complaint against a telemarketer, call 1-866-877-STOP or go to the Web site www.kycall0.com.

House Bill 47, sections 7 and 8 state as follows:

- (7) The Kentucky Public Service Commission shall produce a consumer education pamphlet that:
 - (a) Describes the changes made in the year 2002 to Kentucky's telemarketing laws including the creation of the zero call list.
 - (b) Describes the consumer's rights and responsibilities regarding the receipt of telephone solicitation.
 - (c) Explains how consumers can apply to be placed on the zero call list and on any federal do not call registry established by the Federal Communications Commission or the Federal Trade Commission.
 - (d) Explains how to apply to be placed on company-specific and industrywide no solicitation calls list, including those lists provided by the Direct Marketing Association (DMA) and the Telephone Preference Service (TPS).
 - (e) Describes how a consumer can file a complaint if the consumer receives calls after being placed on the zero call list.
- (8) At least once a year, the Public Service Commission shall require that the pamphlet be included in the billing inserts of the telephone companies under the Public Service Commission's jurisdiction. (Underline added for emphasis.)

While I fully realize that this statute creates an economic burden for the telephone industry, as well as the fact that the consumers are more likely to read a message on the bill than read an insert in their telephone bill, my legal training forces me to disagree with my colleagues.

First, there is no mention whatsoever of subsections (a) and (c). Most importantly, the statute mandates a Pamphlet being included as a billing insert of the telephone companies once a year by this Commission. In my view, this Order does not match the requirements of the letter and spirit of House Bill 47.

KRS 446.010(29) defines Shall as mandatory. See also Department of Revenue v. Oldham County, Kentucky 415 S.W.2d 386 (1967). In my opinion, the telephone industry, the Attorney General, and the PSC cannot change a law as enacted by the General Assembly.


The oral acquiescence by the sponsors of the telecommunication bills cannot override the acts of the other members of the General Assembly, who voted to adopt the act, including Sections 7 and 8.

Further, in the informal conference, the Attorney General was asked if a bill message regarding zero call list issues fulfills the statutory requirement of a bill insert. There was no answer. Notably, there is no letter from General Chandler as to the words printed on the bill as being in substantial compliance with the act.

The words are clear and unambiguous. Shall means shall. It does not mean maybe or if people agree it does not.

I would leave it to the 2003 General Assembly to make any changes in Sections 7 or 8 they deem necessary. Pamphlet means pamphlet. Pamphlet does not mean

inserting language on the consumer s bill. Billing insert means billing insert. Billing insert is not the addition of a bill message on the same page of the bill.


Martin J. Hueismann
Chairman

ATTEST:


Executive Director

INTRA-AGENCY MEMORANDUM
KENTUCKY PUBLIC COMMISSION

TO: Meeting Participants
FROM: Amy Dougherty
DATE: April 30, 2002
RE: HB 47 An Act Relating to Telephone Solicitation

On April 18, 2002, the following persons met in the Commission's offices to discuss the implementation of HB 47:

Attorney General's Office

Scott C. Sutherland
John Cubine
Ross Carter
Janet Graham

KTA

Forest Skaggs

Cincinnati Bell

Mark Romito

Verizon

Larry Callison
Jack Underwood

BellSouth

Greg Coker
Joan Coleman

MCI/WorldCom

Tom Marshall

ALLTEL

Kyle Thompson
Herb Liebman

PSC Staff

Tom Dorman
Amy Dougherty
Andrew Melnykovich
Ginny Smith
Kyle Willard

Dr. Bob Davis

Initially, we focused on the new statute's requirement that the Kentucky PSC produce a consumer education pamphlet regarding the Zero Call List. We also discussed the statute's requirement that the PSC require the pamphlet be included in the billing inserts of telephone companies under the PSC's jurisdiction, at least once a year. All of the telephone companies present indicated a strong preference for a bill message. This would be a narrative included on the companies' billing pages, as opposed to a distinct bill insert. BellSouth indicated that the production of a separate bill insert would cost approximately \$50,000 and the production of a single page bill message would cost approximately \$39,000, but the production of a 1/3 or 1/4 of a page

bill message, consisting of approximately 100 words, would cost approximately \$4,000. Representatives from the Attorney General's Office were asked if a bill message regarding the Zero Call List issues fulfilled the statutory requirement of a bill insert.

The carriers indicated that September would be an appropriate month for this message regarding the Zero Call List requirements to be included in consumer bills. Moreover, it was agreed that the PSC would draft the message to be so included and receive utility comments prior to requiring the statement's inclusion.

Next, we discussed the Attorney General's need to update the Zero Call List on a periodic basis. One of the difficulties in scrubbing this list is that by law consumers need only furnish their telephone number with no associated address or other information. The carriers asserted that they did not have adequate information to match names provided to the Zero Call List with the names in their customer accounts. This information would not be known to them in the ordinary course of business. The carriers argued that unless a customer provided the exact name of the telephone account, they would be unable to update the Zero Call List accurately. Incumbent Local Exchange Carriers argued that their records do not distinguish between a transferred telephone number and a disconnected telephone number, a further difficulty to updating the zero call list.

The Attorney General's Office and the carriers agreed to meet again to discuss the continuing need to scrub the Zero Call List and how telephone carriers might assist this effort.

AED/cj