

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 16, 2016

IN RE:	)	
	)	
SIRIUS XM RADIO INC., FOR ALLEGED	)	Docket No. 16-00047
VIOLATIONS OF TENN. CODE ANN.	)	
§ 65-4-401 <i>et seq.</i>	)	

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ORDER DENYING SETTLEMENT AGREEMENT

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This matter came before Vice Chairman David F. Jones, Director Kenneth C. Hill and Director Robin L. Morrison of the Tennessee Regulatory Authority (the “Authority”), the voting panel assigned to this docket, during the regularly scheduled Authority Conference held on June 20, 2016, to consider the *Settlement Agreement* filed by the Authority’s Compliance Division (“Compliance Division”) and Sirius XM Radio Inc. (“Sirius”) on April 29, 2016.

**BACKGROUND AND PROCEDURAL HISTORY**

Sirius conducts business in Tennessee and offers, among other services, satellite radio services to consumers.<sup>1</sup> On April 29, 2016, the Compliance Division and Sirius filed the *Settlement Agreement*. According to the *Settlement Agreement*, fourteen (14) separate complaints allege Sirius violated the Tennessee Do-Not-Call Telephone Solicitation prohibitions (“DNC”) found in Tenn. Code Ann. § 65-4-401, et seq. and TRA Rules and Regulations 1220-4-11-.07.<sup>2</sup> The *Settlement Agreement* describes complaints that allege Sirius, its vendors, or its agents placed fourteen (14) telephone calls to the phone numbers of

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<sup>1</sup> *Settlement Agreement*, p. 1 (April 29, 2016).

<sup>2</sup> The docket file does not contain the referenced consumer complaints. The *Settlement Agreement* does not provide specific descriptions or details of the complaints, such as when they occurred.

Tennessee consumers that are on the DNC list. In addition, the *Settlement Agreement* states that the Compliance Division conducted an investigation of the complaints described above in conjunction with the Consumer Advocate and Protection Division (“Consumer Advocate”) of the Tennessee Attorney General’s Office.<sup>3</sup> Neither the Consumer Advocate nor any other party sought intervention in the docket.

On May 9, 2016, during a regularly scheduled Authority Conference, the panel questioned the parties regarding the application of specific provisions of the *Settlement Agreement*. The parties were asked to clarify the application of Paragraph 9 and Paragraph 17 of the *Settlement Agreement*.<sup>4</sup> After hearing the responses of the parties, the panel took the matter under advisement. On June 20, 2016, during a regularly scheduled Authority Conference, the panel questioned the parties regarding the removal of Paragraph 17 of the *Settlement Agreement*.<sup>5</sup> Following the response of the parties, the panel deliberated.

#### **THE SETTLEMENT AGREEMENT**

The *Settlement Agreement* seeks to resolve the fourteen (14) consumer complaints referenced in the *Settlement Agreement*. As part of the *Settlement Agreement*, Sirius agrees to follow applicable Tennessee and Authority DNC requirements and provisions. Sirius further agrees to pay \$15,000.00 to the Authority, representing \$1,000.00 for each complaint and \$1,000.00 for the failure to register as a telephone solicitor. Paragraph 17 of the *Settlement Agreement* also requires the Authority to adopt a specific procedural process for handling complaints of DNC violations alleged against Sirius. In the event the Authority received a complaint regarding Sirius, the Authority would be required to contact Sirius and provide the Company with time and opportunity to “remedy” the complaint.

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<sup>3</sup> *Settlement Agreement*, p. 1 (April 29, 2016).

<sup>4</sup> Transcript of Authority Conference, pp. 129-134 (May 9, 2016).

<sup>5</sup> Transcript of Authority Conference, pp. 38-39 (June 20, 2016).

### **AUTHORITY CONFERENCES OF MAY 9, 2016 AND JUNE 20, 2016**

During the regularly scheduled Authority Conference held on May 9, 2016, the parties to the *Settlement Agreement* were questioned by the panel regarding Paragraph 17. The parties presented the process as a mechanism to allow Sirius to resolve a complaint if one of its vendors is not complying with DNC requirements before there is a pattern of DNC complaints.<sup>6</sup> Further, the parties stated it is their intent that the process is binding and that the Authority would be required to engage in this process before attempting to enforce DNC statutory and regulatory requirements.<sup>7</sup> During the regularly scheduled conference on June 20, 2016, the parties were asked by the panel if they would object to the deletion of Paragraph 17 from the *Settlement Agreement*. While the Compliance Division had no objection, Sirius stated that Paragraph 17 was comparable to the language employed in settlements with state attorney generals and that Sirius sought approval of the *Settlement Agreement* as written.<sup>8</sup>

### **FINDINGS AND CONCLUSIONS**

Generally, settlements of DNC violations approved by the Authority resolve a specific group of complaints and the provisions of those agreements have no impact on future complaints or on the Authority's ability to investigate complaints and enforce DNC legislation and regulations. The *Settlement Agreement* here goes beyond the group of complaints that initiated this investigation. Paragraph 17 of the agreement sets up a process for the handling of future violations in which the burden is placed on the Authority to contact Sirius to request an explanation for new violations and entitles Sirius an opportunity to remedy such complaints, effectively providing treatment unavailable to others the Authority regulates. The process agreed to in the *Settlement Agreement* would bind the Authority in

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<sup>6</sup> Transcript of Authority Conference, p. 129 (May 9, 2016).

<sup>7</sup> *Id.* at 129, 132-133.

<sup>8</sup> Transcript of Authority Conference, p. 40 (June 20, 2016).

perpetuity as there is no provision governing its expiration. This formal process is not available to other telephone solicitors that conduct business in Tennessee.

Based upon a review of the entire record, the panel voted unanimously to deny the *Settlement Agreement*. In denying the *Settlement Agreement*, the panel found that it is not in the public interest to bind the Authority to an alternative dispute resolution process specific to one company in perpetuity. The DNC program has provided an immeasurable benefit to the households of this state, and the Authority continues to enforce the mandate of the statute on behalf of Tennesseans. It is not in the public interest to weaken or otherwise restrain the investigatory and regulatory tools that the Authority employs to enforce the DNC program. While the Authority encourages settlements to resolve disputes and has approved settlements between DNC violators and Authority Party Staff, it will not bind itself to a process that appears to give preferential treatment to one company.

**IT IS THEREFORE ORDERED THAT:**

The *Settlement Agreement* filed on April 29, 2016, between the Compliance Division of the Tennessee Regulatory Authority and Sirius XM Radio Inc. is denied.

**Vice Chairman David F. Jones, Director Kenneth C. Hill and Director Robin L. Morrison concur.**

**ATTEST:**



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**Earl R. Taylor, Executive Director**