

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF AF PIERRE, INC.)	DECLARATORY RULING
DBA ANYTIME FITNESS' PETITION FOR)	REGARDING ANYTIME
DECLARATORY RULING REGARDING)	FITNESS' GIFT
ALLEGED DO NOT CALL VIOLATIONS)	MEMBERSHIP CALLS;
)	NOTICE OF ENTRY
)	
)	
)	TC19-041

On July 10, 2019, the South Dakota Public Utilities Commission (Commission) received a Petition for Declaratory Ruling (Petition) from AF Pierre, Inc. dba Anytime Fitness (AF) in Pierre, South Dakota, to determine whether it is a telephone solicitor as defined in SDCL 49-31-1 (30). According to the Petition, AF has a program whereby its members can gift friends and family a trial membership worth \$100 if the member provides AF the names and phone numbers of up to 10 friends and family. These 10 individuals are then contacted by AF via telephone to make an appointment to redeem the gift trial membership worth \$100. AF stated that the precise issue to be answered by the Commission's declaratory ruling is:

Are the gift membership calls AF makes to consumers "telephone solicitation calls" as defined by SDCL 49-31-1 (30)?

On July 11, 2019, the Commission electronically transmitted notice of the filing and the comment deadline of July 24, 2019, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. On July 15, 2019, Commission staff filed a Response to Declaratory Ruling contending that the calls do violate Do-Not-Call laws. On July 17, 2019, Commission staff filed an Amended Response clarifying AFs status as a business entity. On July 17, 2019, AF filed a letter requesting an extension of time to September 17, 2019. On July 18, 2019, AF filed a Reply to Commission staff's Response to Petition for Declaratory Ruling.

The Commission finds it has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-1, and 49-31, specifically SDCL 1-26-15, 49-1-11, 49-31-1 (30), 49-31-1 (31), 49-31-1.5, 49-31-101 and ARSD 20:10:01:34 and 20:10:01:35. The Commission may rely upon any or all of these laws or other laws of this state in making its determination.

At its regularly scheduled meeting on September 17, 2019, the Commission considered this matter. Having reviewed the filed documents and having listened to the oral presentations and arguments of the parties, the Commission voted unanimously to declare that the gift membership calls AF makes to consumers are "telephone solicitation calls" as defined by SDCL 49-31-1 (30). It is therefore

DECLARED, that the gift membership calls AF makes to consumers are "telephone solicitation calls" as defined by SDCL 49-31-1 (30).

Dated at Pierre, South Dakota, this 25th day of September 2019.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.

By: Karen E. Cremer

Date: 09/25/19

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson

GARY HANSON, Chairperson

Chris Nelson

CHRIS NELSON, Commissioner

Kristie Fiegen

KRISTIE FIEGEN, Commissioner

NOTICE OF ENTRY

PLEASE TAKE NOTICE that this Declaratory Ruling was duly issued and entered on the 25th day of September 2019.