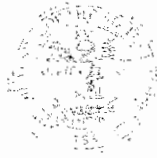


STATE OF TENNESSEE

Office of the Attorney General



PAUL G. SUMMERS
ATTORNEY GENERAL AND REPORTER

MAILING ADDRESS

P.O. BOX 20207
NASHVILLE, TN 37202

ANDY D. BENNETT
CHIEF DEPUTY ATTORNEY GENERAL

LUCY HONEY HAYNES
ASSOCIATE CHIEF DEPUTY
ATTORNEY GENERAL

MICHAEL E. MOORE
SOLICITOR GENERAL

CORDELL HULL AND JOHN SEVIER
STATE OFFICE BUILDINGS

TELEPHONE 615-741-3491
FACSIMILE 615-741-2009

June 14, 2006

The Honorable Ron Jones, Chairman
The Honorable Sara Kyle, Director
The Honorable Pat Miller, Director
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Received
RON JONES
JUN 14 2006

Re: Proposed Telephone Solicitation Regulations
— Do Not Call Register,
Chapter 1220-4-11

Dear Chairman Jones and Directors Kyle and Miller:

Pursuant to your submission, I have reviewed in accordance with Tenn. Code Ann. § 4-5-211 the proposed rules addressing telephone solicitations. I have determined that I cannot approve these proposed rules because they conflict with the statutes that govern telephone solicitations and authorize the do-not-call register, Tenn. Code Ann. §§ 65-4-401 *et seq.*

In particular, the provisions of proposed rule 1220-4-11-.01(19)(a) would exclude from the definition of "telephone solicitation" any voice communications made by real estate brokers to residential subscribers who have offered to sell their real property without using the services of a real estate broker, or who have allowed their contract with a real estate broker to expire. This would impermissibly narrow the statutory definition of "telephone solicitation" set out at Tenn. Code Ann. § 65-4-401(6)(A)(i), which defines that term to include a telephone communication that

Chairman Jones and Directors Kyle and Miller
T.R.A. Proposed Telephone Solicitation Regulations
Page 2

“[p]romotes or encourages, directly or indirectly, the purchase of . . . property, goods, or services.” The “services” to which this statute refers necessarily include those of real estate brokers. I do not believe that a person who has offered to sell real property directly can be construed to have given “prior express permission” for a solicitation so as to come within the exception set out at Tenn. Code Ann. § 65-4-401(6)(B)(i).

While the remaining provisions of the proposed rules do not appear to present any issues as to form or legality, I regret that I cannot approve the rules in the form in which they were submitted to this Office for the reasons stated above. I am therefore returning the unsigned rules to you with this letter.

Please contact me if you have any additional questions or would like to discuss this matter further.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul G. Summers", with a large, stylized loop at the beginning and a long horizontal stroke extending to the right.

PAUL G. SUMMERS
Attorney General

PGS/CLL:dh

Enclosures

cc: Richard Collier, Esq.
T.R.A. General Counsel

Rulemaking Hearing Rules
of the
Tennessee Regulatory Authority

Chapter 1220-4-11
Telephone Solicitation Regulations - Do Not Call Register

Amendment

Chapter 1220-4-11 is amended by deleting and substituting the following language, so that, as amended Chapter 1220-4-11 shall read as follows:

TABLE OF CONTENTS

1220-4-11-.01	Definitions
1220-4-11-.02	General Telephone Solicitation Regulations
1220-4-11-.03	Maintaining the Tennessee Do Not Call Register
1220-4-11-.04	Telephone Solicitor's Access to the Tennessee Do Not Call Register
1220-4-11-.05	Consumer Registration with the Tennessee Do Not Call Register
1220-4-11-.06	Public Education about the Tennessee Do Not Call Register
1220-4-11-.07	Violations of the Tennessee Do Not Call Register
1220-4-11-.08	Enforcement Provisions

1220-4-11-.01 DEFINITIONS

- (1) "Act" refers to Tenn. Code Ann. § 65-4-401 et seq.
- (2) "ADAD" or "automatic dialing and announcing device" means any device or system of devices which is used, whether alone or in conjunction with other equipment, for the purpose of automatically selecting or dialing telephone numbers and disseminating recorded messages to the numbers so selected or dialed.
- (3) "Affiliate" of a specific person means a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
- (4) "Authority" means the Tennessee Regulatory Authority.
- (5) "Business Telephone Subscriber" means a person or company who has subscribed to a business telephone service from a local exchange carrier.
- (6) "Caller identification service" or "caller ID" means telephone service that notifies telephone subscribers of the telephone number of incoming telephone calls.
- (7) "Coordinator" refers to the individual employed by the Authority to oversee the regulation of telephone solicitation practices, including the operations of the Do Not Call Register, delegated to the Authority by the General Assembly in Tenn. Code Ann. §§ 65-4-401 and 47-18-1501.
- (8) "Database" means the information from which the Authority compiles the Do Not Call Register. The database shall be maintained by the Authority, or its designee, for the purpose of fulfilling the requirements of Tenn. Code Ann. § 65-4-401.
- (9) "Division" refers to the Consumer Services Division of the Tennessee Regulatory Authority.

- (10) "Do Not Call Register" means a list of telephone numbers of residential telephone subscribers who have properly enrolled with the Authority or a Federal agency, that their telephone numbers not be solicited by telephone solicitors.
- (11) "Existing customer" includes a residential telephone subscriber with whom the person or entity making a telephone solicitation has had a business relationship within the prior twelve (12) months.
- (12) "Interexchange carrier" means a company that is certificated by the Authority to provide long distance toll telephone service.
- (13) "Local exchange companies, " as used in this Chapter, includes telecommunications service providers and competing telecommunications service providers as defined in Tenn. Code Ann. § 65-4-101, as well as telephone cooperatives and cellular or other wireless telecommunications providers operating in Tennessee.
- (14) "Not-for-profit" means an organization that is exempt from paying taxes under Section 501(c) of the Internal Revenue Code.
- (15) "Parent" means a company owning more than fifty (50) percent of the voting shares, or otherwise a controlling interest, of another company.
- (16) "Residential Telephone Subscriber" means a person residing in Tennessee who has residential telephone service.
- (17) "Subsidiary" means a corporation more than fifty percent (50%) of whose outstanding voting shares are owned by its parent and/or the parent's other Subsidiaries.
- (18) "Telephone solicitor" means any natural person, firm, organization, partnership, association or corporation, or a parent, subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephone solicitation, including, but not limited to, calls made by use of automated dialing and announcing devices or by a live person.
 - (a) "Registrant" means a telephone solicitor who has submitted an application and properly enrolled with the Authority to be provided the Do Not Call Register.
 - (b) "Principal Solicitor" means a telephone solicitor that enters into agreements with independent solicitors as defined herein for the purposes of providing telephone solicitation.
 - (c) "Independent Solicitor" means a telephone solicitor, other than an affiliate, subsidiary or employee of a Registrant, who has entered into an agreement with one and only one principal solicitor, as defined herein, to perform telephone solicitation under the indirect supervision of the principal solicitor.
- (19) "Telephone solicitation" means any voice communication over a telephone, originating from Tennessee or elsewhere, for the purposes of encouraging the purchase or rental of, or investment in, property, goods, or services except as provided for below. "For the purposes of encouraging" includes any call made with the intent that the call will ultimately result in the purchase or rental of, or investment in, property, goods, or services. Such calls include, but are not limited to: calls to set appointments, interviews or consultations; to conduct a survey; or to offer a give-away. Telephone solicitation does not include:
 - (a) any voice communication to any residential telephone subscriber with that subscriber's prior express invitation or permission;

1. An offer to sell or rent real or personal property does not constitute an express invitation or permission except for the sole purpose of purchasing or renting the property or unless (2) or (3) below applies;
 2. The use of a residential telephone line for the purpose of operating a business constitutes an express invitation or permission for the purposes of these rules;
 3. An express invitation or permission shall include the situation where a voice communication is made by a real estate broker to a residential telephone subscriber who (i) is offering to sell his/her real property without using the services of a real estate broker; or (ii) previously entered into a listing agreement with a real estate broker which has expired within six months of the voice communication;
- (b) any voice communication to a residential telephone subscriber if such communication is made on behalf of a not-for-profit organization exempt from paying taxes under the Internal Revenue Code § 501(c), provided that a bona fide member of the exempt organization makes such voice communication;
- (c) any voice communication to any residential telephone subscriber who is an existing customer; or
- (d) occasional and isolated voice communications to a residential telephone subscriber provided all the following conditions are met:
1. A direct employee of the business makes the voice communication;
 2. The communication is not made as part of a telecommunications marketing plan;
 3. The business has a reasonable belief that the specific person who is receiving the voice communication is considering purchasing the service or product sold or leased by the business and the call is specifically directed to such person;
 4. The business does not sell or engage in telephone solicitations; and
 5. The business does not make more than three (3) such voice communications in any one (1) calendar week.

Authority: T.C.A. §§4-5-201 et seq., 47-18-1501, 47-18-1526, 65-2-102, and 65-4-405. Administrative History: Original rule filed February 22, 2000; effective May 7, 2000. Amendment filed February 15, 2001; effective May 1, 2001.

1220-4-11-.02 GENERAL TELEPHONE SOLICITATION REGULATIONS

- (1) No telephone solicitor shall place a telephone call to a residential telephone subscriber at any time other than between the hours of 8:00 a.m. to 9:00 p.m. (local time at the called party's location) without the residential telephone subscriber's prior express invitation or permission.
- (2) All telephone solicitors must institute procedures for maintaining a list of persons who do not wish to receive telephone solicitations made by or on behalf of telephone solicitors in compliance with this Chapter.
- (3) All telephone solicitations to residential telephone subscribers shall, at the beginning of such call, state clearly the identity of the person initiating the call and entity or organization such person represents, and shall further meet the following requirements:

- (a) Within the first twenty-five (25) seconds of the call and at the conclusion of the call, ADAD messages must clearly state the name and telephone number of the person or organization initiating the call. The telephone number given must be one that will be answered when telephone solicitations are being made. The person answering the telephone must be willing and able to provide information concerning the automated call.
- (b) Live telephone solicitors must provide a telephone number that will be answered when telephone solicitations are being made. The person answering the telephone must be willing and able to provide information concerning the solicitation call.
- (4) Telephone solicitors are prohibited from knowingly using telephone equipment or telecommunications network elements to block or otherwise interfere with the caller ID function on the telephone of a residential telephone subscriber to whom a telephone solicitation is made so that the telephone number of the caller is not displayed on the telephone equipment of the called party.
- (5) Local exchange companies and interexchange carriers are prohibited from knowingly providing any network element or service to telephone solicitors that is used to unlawfully block or otherwise interfere with, on a per line basis, the display of the telephone solicitor's name and telephone number on the residential subscriber's caller ID equipment. If a local exchange company or interexchange carrier has knowledge that a telephone solicitor is in violation of subsection (4) of this rule, such company or carrier shall inform the Authority of such violation.
- (6) After notice and hearing, and upon finding that a telephone solicitor is in violation of this Chapter, the Authority may issue an order prohibiting local exchange companies and/or interexchange carriers from providing telecommunications service to such telephone solicitor.
- (7) Violations of this Chapter can result in civil actions prescribed by law, which include fines payable to the Authority.
- (8) Telephone solicitors must adhere to state and federal statutes regarding telephone solicitation practices, including, but not limited to, the Tennessee Consumer Protection Act.
- (9) After receipt of a complaint forwarded by the Authority, telephone solicitors shall, within ten (10) business days, file a written response with the Authority.

*Authority: T.C.A. §§4-5-201 et seq., 47-18-1501, 47-18-1526, 65-2-102, 65-4-120, 65-4-405, and 65-4-405(h).
Administrative History: Original rule filed February 22, 2000; effective May 7, 2000. Amendment filed February 15, 2001; effective May 1, 2001.*

1220-4-11-.03 MAINTAINING THE TENNESSEE DO NOT CALL REGISTER

- (1) The Authority shall maintain a database of names, addresses and telephone numbers of all Tennessee residential telephone subscribers who have elected not to receive telephone solicitations.
- (2) The information contained in the database is not open to public inspection or disclosure as defined under Tennessee Code Annotated Title 10, Chapter 7. The Authority will take all necessary steps to protect the confidentiality of the information in the database.
- (3) The Authority shall include in its Register the list of Tennessee subscribers to the Federal Communications Commission's or any other Federal agencies' Do Not Call national database, if and when such list is established.

- (4) The Division will update the Register at the beginning of each month.

Authority: T.C.A. §§65-2-102 and 65-4-405. Administrative History: Original rule filed February 22, 2000; effective May 7, 2000.

1220-4-11-.04 TELEPHONE SOLICITOR'S ACCESS TO THE TENNESSEE DO NOT CALL REGISTER

- (1) It is the duty of any telephone solicitor engaging in the solicitation of Tennessee residential telephone subscribers to register with the Authority. Telephone solicitors shall submit an application in writing to the Authority. The application must contain, but shall not be limited to, the telephone solicitor's name, including aliases, trade names, and assumed names, address, telephone number and name of the agent for service of process along with a notarized statement from an officer of the company affirming the company will comply with the provisions of this Chapter.
- (2) A principal solicitor is permitted to share its copy of the Do Not Call Register with its independent solicitors under the following conditions:
- (a) The principal solicitor submits in its application all the necessary information as required by the Division regarding its independent solicitors, including, but not limited to, verification that the independent solicitor will comply with the regulations of this Chapter;
 - (b) The principal solicitor and independent solicitor will be liable for any violations of these Rules or Tenn. Code Ann. § 65-4-401 et seq.;
 - (c) The principal solicitor assumes the responsibility of providing to each of its independent solicitors the most recent version of the Do Not Call Register; and
 - (d) The principal solicitor provides notice of the Do Not Call Register to each of its independent solicitors. The principal solicitor shall be able to produce its notice and proof of receipt of the notice by the independent solicitor upon request by the Authority. Such notice shall contain:
 - 1. A statement that any independent solicitor who chooses not to register under the principal solicitor's group registration must register as provided for in Rule 1220-4-11-.04(c);
 - 2. The most recent text of Chapter 1220-4-11 Telephone Solicitation Regulations - Do Not Call Register; and
 - 3. The most recent text of Tenn. Code Ann. title 65, chapter 4, part 4, as amended.
- (3) Access to the following information will be provided to approved telephone solicitors:
- (a) The Do Not Call Register of telephone numbers of Tennessee residential telephone subscribers who have elected not to receive telephone solicitations.
 - (b) The Do Not Call Register shall be provided, with unlimited access, via the Internet or other electronic means to telephone solicitors. It is the duty of telephone solicitors to ensure they have the most recent version of the Do Not Call Register prior to soliciting residential telephone subscribers.

- (c) Paper copies of the Do Not Call Register will be available to telephone solicitors at the current per page rate as set by the Tennessee secretary of state pursuant to Tenn. Code Ann. § 65-1-212.
- (4) Telephone solicitors doing business in the state and subject to the control and jurisdiction of this Chapter shall pay to the Authority, on or before May 1st of each year, an annual registration fee, which allows for unlimited electronic access to the Do Not Call Register. Such registration fee shall cover the time period from the following July 1st through June 30th of the following year or any part thereof.
 - (a) Telephone solicitors shall pay a registration fee of \$500.00.
 - (b) Telephone solicitors who elect to register as a principal solicitor shall pay a group registration fee of \$500.00 and an additional \$50.00 registration fee for each independent solicitor.
 - (c) The \$50.00 registration fee for the independent solicitor may be waived if the principal solicitor, in a written document on file with the Authority, assumes responsibility for the independent solicitor's compliance with the Act.
 - (d) Independent solicitors who elect not to register under a principal solicitor's group registration shall pay a registration fee of \$500.00.

Authority: T.C.A. §§4-5-201 et seq., 65-2-102, and 65-4-405. Administrative History: Original rule filed February 22, 2000; effective May 7, 2000. Amendment filed February 15, 2001; effective May 1, 2001.

1220-4-11-.05 CONSUMER REGISTRATION WITH THE TENNESSEE DO NOT CALL REGISTER

- (1) The Authority shall establish and provide for the operation of a Register on which to compile a list of telephone numbers of residential telephone subscribers who object to receiving telephone solicitations. Such Register may be operated by the Authority or by another entity under contract with the Authority. Guidelines for the operation of the Register are described as follows:
 - (a) Residential telephone subscribers may enroll on the Register as prescribed by the Division. Enrollment on to the Register will become effective sixty (60) days following the first day of the succeeding month of enrollment by the subscriber.
 - (b) A residential telephone subscriber will remain in the "Do Not Call Register" for a period of five (5) years or until the subscriber requests that the Authority removes their name from the Register.
 - (c) Business telephone subscribers may not be included on the Register.
 - (d) The Coordinator may purge the Register periodically in order to ensure accuracy.

Authority: T.C.A. §§65-2-102 and 65-4-405. Administrative History: Original rule filed February 22, 2000; effective May 7, 2000.

1220-4-11-.06 PUBLIC EDUCATION ABOUT THE TENNESSEE DO NOT CALL REGISTER

- (1) Local exchange companies shall notify their residential subscribers twice a year on how to enroll on the Register. This notification shall accompany the subscriber's monthly telephone bill and shall be developed in cooperation with the Coordinator.

- (2) In addition to the notification required by subsection (1), local exchange companies, working in cooperation with the Division, are required to place information in their White Page telephone directory informing their residential telephone subscribers how to be included in the Register.

Authority: T.C.A. §§65-2-102 and 65-4-405. Administrative History: Original rule filed February 22, 2000; effective May 7, 2000.

1220-4-11-.07 VIOLATIONS OF THE TENNESSEE DO NOT CALL REGISTER

- (1) It is a violation of Tenn. Code Ann. § 65-4-401 et seq. and this Chapter for a telephone solicitor to knowingly make or cause to be made any telephone solicitation to any telephone number that is listed in a Do Not Call Register that was in effect sixty (60) days prior to the time of the telephone solicitation.
- (2) A principal solicitor and independent solicitor are liable for violations of this Chapter by the independent solicitor. Except in the case where the principal solicitor assumes responsibility for the independent solicitor pursuant to Rule 1220-4-11-.04(4)(c), a principal solicitor shall not be liable for an independent solicitor's violations of this Chapter if:
 - (a) The principal solicitor provided the requisite notice to the independent solicitor pursuant to Rule 1220-4-11-.04(2)(d) and
 - (b) The independent solicitor is not registered with the Authority or is registered pursuant to Rule 1220-4-11-.04(4)
- (3) Violators of this Chapter are subject to a civil penalty, payable to the Authority, of an amount not to exceed Two-Thousand Dollars (\$2,000) for each violation. In addition, the Authority may seek additional relief in any court of competent jurisdiction.
- (4) It shall be a defense in any proceeding brought under this Chapter that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of this Chapter.
- (5) Violations shall be calculated in a liberal manner in order to protect the public interest and deter similar violations.

Authority: T.C.A. §§4-5-201 et seq., 65-2-102, 65-4-120, 65-4-405, and 65-4-405(h). Administrative History: Original rule filed February 22, 2000; effective May 7, 2000. Amendment filed February 15, 2001; effective May 1, 2001.

1220-4-11-.08 ENFORCEMENT PROVISIONS

- (1) The Authority may, on its own motion, or the recommendation of the Division, or the motion of the Consumer Advocate Division, or any other interested person, order the investigation of the practices of any telephone solicitor conducting business in Tennessee. Such investigation shall determine if such telephone solicitor has violated Tenn. Code Ann. §65-4-401, or this Chapter. If such investigation discloses a violation of state law or this Chapter, the Authority shall issue a show cause order with respect to such acts pursuant to Tenn. Code Ann. §65-2-106.
- (2) Local exchange companies and interexchange carriers are required to fully cooperate with the Division in any investigation of an alleged violation of this Chapter.

- (3) If one or more of the term(s) or provision(s) of this Chapter or the applications thereof, to any extent, are held to be invalid or unenforceable, then the remainder of this Chapter shall not be affected thereby.

Authority: T.C.A. §§65-2-102 and 65-4-405. Administrative History: Original rule filed February 22, 2000; effective May 7, 2000.

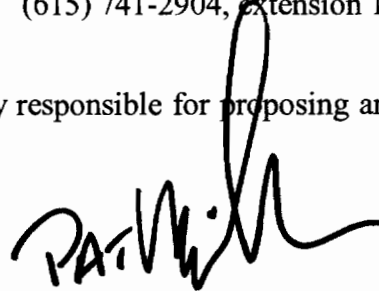
Legal Contact and/or party who will approve final copy for publication:

J. Richard Collier, General Counsel
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37343
(615) 741-2904, extension 170

Contact for disk acquisition:

J. Richard Collier, General Counsel
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243
(615) 741-2904, extension 170

Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:



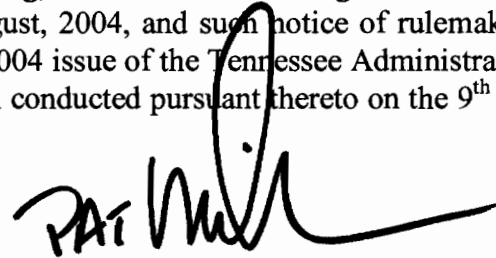
Pat Miller, Chairman

The roll-call vote by the Tennessee Regulatory Authority on these rulemaking hearing rules was as follows:

	Aye	No	Abstain
Pat Miller, Chairman	<u>X</u>	<u> </u>	<u> </u>
Ron Jones, Director	<u> </u>	<u>X</u>	<u> </u>
Sara Kyle, Director	<u>X</u>	<u> </u>	<u> </u>
Deborah Taylor Tate, Director	<u>X</u>	<u> </u>	<u> </u>

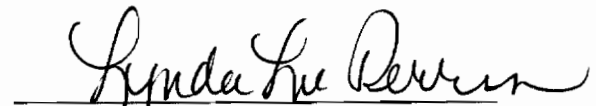
I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Regulatory Authority on the 13th day of December, 2004.

Further, I certify that the provisions of Tenn. Code Ann. § 4-5-222 have been fully complied with, that these rules are properly presented for filing, a notice of rulemaking has been filed in the Department of State on the 31st day of August, 2004, and such notice of rulemaking hearing having been published in the September, 2004 issue of the Tennessee Administrative Register, and such rulemaking hearing having been conducted pursuant thereto on the 9th day of November, 2004.



Pat Miller, Chairman

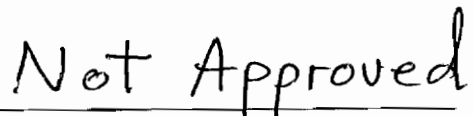
Subscribed and sworn to before me this the 9th day of February, 2005.



Notary Public

My commission expires on the 28th day of May, 2006.

All rulemaking hearing rules provided for herein have been examined by the Attorney General & Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5, Section 211.



Paul G. Summers
Attorney General & Reporter

The rulemaking hearing rules set out herein were properly filed in the Department of State on the ____ day of _____, 2005, and will become effective on the ____ day of _____, 2005.

Riley C. Darnell
Secretary of State

By: _____