

23-00030

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Sequence Number: 07-07-24

Rule ID(s): 10115

File Date: 7/9/2024

Effective Date: 10/7/2024

## Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).**Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

<b>Agency/Board/Commission:</b>	Tennessee Public Utility Commission
<b>Division:</b>	Consumer Services / Legal
<b>Contact Person:</b>	Kelly Cashman-Grams, General Counsel
<b>Address:</b>	502 Deaderick Street, 4 <sup>th</sup> FL, Nashville TN
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**Revision Type (check all that apply):**☒ Amendment☐ New☐ Repeal☐ Content based on previous emergency rule filed on \_\_\_\_\_☐ Content is identical to the emergency rule

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1220-04-11	Tennessee Do Not Call/Text Regulations
Rule Number	Rule Title
1220-04-11-.01	Definitions
1220-04-11-.02	General Regulations
1220-04-11-.03	Do Not Call/Text Register
1220-04-11-.04	Telephone Solicitors
1220-04-11-.05	Consumer Registration
1220-04-11-.06	Public Education
1220-04-11-.07	Violations
1220-04-11-.08	Enforcement
1220-04-11-.09	Reserved
1220-04-11-.10	Reserved

Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

The Chapter Title to Rule 1220-04-11, Telephone Solicitation Regulations – Do Not Call Register, is amended by deleting the title in its entirety and substituting instead the following language so that, the chapter title shall read:

## **TENNESSEE DO NOT CALL/TEXT REGULATIONS**

Rule 1220-04-11-.01 Definitions, is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

### **1220-04-11-.01 DEFINITIONS**

- (1) "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.
- (2) "Commission" means the Tennessee Public Utility Commission.
- (3) "Business Telephone Subscriber" means a person or company who has subscribed to a business telephone service from a local exchange carrier.
- (4) "Caller identification service" or "caller ID" means telephone service or functionality that provides the telephone number and other identifying information of incoming communication.
- (5) "Database" means the information from which the Commission compiles the Do Not Call Register. The database shall be maintained by the Commission, or its designee, for the purpose of fulfilling the requirements of T.C.A. § 65-4-401.
- (6) "Do Not Call/Text Register" or "Register" means a list of telephone numbers of residential subscribers who have properly enrolled with the Commission or a Federal agency.
- (7) "Existing customer" includes a residential subscriber with whom the person or entity making a telephone solicitation has had a business relationship within the prior twelve (12) months.
- (8) "Local exchange companies," as used in this Chapter, include telecommunications service providers as defined in T.C.A. § 65-4-101, as well as telephone cooperatives and cellular or other wireless telecommunications providers operating in Tennessee; provided, however, that those providers that have elected market regulation under T.C.A. § 65-5-109(l) are excluded from the jurisdiction of the Commission consistent with T.C.A. § 65-5-109(m) and (n).
- (9) "Parent" means a company owning more than fifty (50) percent of the voting shares, or otherwise a controlling interest, of another company.
- (10) "Residential Subscriber" means a person residing in Tennessee who has residential telephone service or a state government telephone subscriber.
- (11) "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.
- (12) "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 or text messages 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 Commission 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.
- (13) "Telephone solicitation" or "Solicitation" means any voice or text message communication over a telephone or technology that provides similar functionality, 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 communication made with the intent that the communication will ultimately result in the purchase or rental of, or investment in, property, goods, or services. Such communications include, but are not limited to, communications to set appointments, interviews or consultations; to conduct a survey; or to offer a give-away. Telephone solicitation does not include:
- (a) Any communication to any residential subscriber with that subscriber's prior express permission;
    - 1. An offer to sell or rent a discrete piece of real or personal property does not constitute express permission except for the sole purpose of purchasing or renting the property or unless (2) below applies.
    - 2. The use of residential telephone service for the purpose of operating a business constitutes express permission for the purposes of these rules.
  - (b) Any communication to a residential 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 communication;
  - (c) Any communication to any residential subscriber who is an existing customer; or
  - (d) Occasional and isolated communications to a residential subscriber provided all the following conditions are met:
    - 1. A direct employee of the business makes the 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 communication is considering purchasing the service or product sold or leased by the business and the communication 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 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, 65-4-405, and 65-5-109.

Rule 1220-04-11-.02 General Telephone Solicitation Regulations, is amended by deleting the rule in its entirety, including the rule title, and substituting instead the following language so that, as amended, the rule shall read:

#### **1220-04-11-.02 GENERAL REGULATIONS**

- (1) No Telephone solicitor shall place a telephone call or send a text message to a residential 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 subscriber's prior express permission.

- (2) All Telephone solicitors must institute procedures for maintaining a list of persons who do not wish to receive solicitations made by or on behalf of Telephone solicitors in compliance with this Chapter.
- (3) All Telephone solicitations to residential subscribers shall, at the beginning of such communication, state clearly the identity of the person initiating the and entity or organization such person represents, and shall further meet the following requirements:
  - (a) Within the first twenty-five (25) seconds of the voice call and at the conclusion of the call, made via an automated dialing device 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) 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 any method to block or otherwise interfere with the caller ID of a residential subscriber.
- (5) Local exchange companies are prohibited from knowingly providing service to a Telephone solicitor that is used to unlawfully block or otherwise interfere with, on a per line basis, a residential subscriber's caller ID. If a local exchange company has knowledge that a Telephone solicitor is in violation of subsection (4) of this rule, such company or carrier shall inform the Commission of such violation.
- (6) After notice and hearing, and upon finding that a Telephone solicitor is in violation of this Chapter, the Commission may issue an order prohibiting local exchange companies 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 Commission.
- (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 Commission, Telephone solicitors shall, within ten (10) business days, file a written response with the Commission.

**Authority:** T.C.A. §§ 4-5-201, et seq., 47-18-1501, 47-18-1502, 47-18-1509, 47-18-1510, 47-18-1526, 65-2-102, 65-4-120, 65-4-405, and 65-4-405(h).

Rule 1220-04-11-.03 Maintaining the Tennessee Do Not Call Register, is amended by deleting the rule in its entirety, including the rule title, and substituting instead the following language so that, as amended, the rule shall read:

#### **1220-04-11-.03 DO NOT CALL/TEXT REGISTER**

- (1) The Commission shall maintain a Database of telephone numbers of all Tennessee residential 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 Commission will take all necessary steps to protect the confidentiality of the information in the Database.
- (3) The Commission shall include in its Register the list of Tennessee subscribers included in any Do Not Call or Do Not Text database created by the Federal Communications Commission or any other Federal

agency.

- (4) The Commission will update the Register monthly.

**Authority:** T.C.A. §§ 65-2-102 and 65-4-405.

Rule 1220-04-11-.04 Telephone Solicitor's Access to the Tennessee Do Not Call Register, is amended by deleting the rule in its entirety, including the rule title, and substituting instead the following language so that, as amended, the rule shall read:

**1220-04-11-.04 TELEPHONE SOLICITORS**

- (1) It is the duty of any Telephone solicitor engaging in the solicitation of Tennessee residential subscribers to register with the Commission. Telephone solicitors shall submit an application to the Commission.
- (2) A Principal solicitor is permitted to share its copy of the 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 Commission 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 T.C.A. §§ 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 Register; and
  - (d) The Principal Solicitor provides notice of the 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 Commission. 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- 04-11-.04(4)(c);
    2. The most recent text of Chapter 1220-04-11 Telephone Solicitation Regulations - Do Not Call/Text Register; and
    3. The most recent text of T.C.A. title 65, chapter 4, part 4, as amended.
- (3) Access to the following information will be provided to Registrants:
  - (a) The Register of telephone numbers of Tennessee residential subscribers who have elected not to receive telephone solicitations.
  - (b) The Register shall be provided, with unlimited access, via the Internet or other electronic means to Registrants. It is the duty of Registrants to ensure they have the most recent version of the Register prior to soliciting residential subscribers.
- (4) Telephone solicitors doing business in the state and subject to the control and jurisdiction of this Chapter shall pay to the Commission, on or before May 1<sup>st</sup> of each year, an annual registration fee. Such registration fee shall cover the time period from the following July 1<sup>st</sup> through June 30<sup>th</sup> 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 \$1000.00 and an additional \$50.00 registration fee for each Independent Solicitor.

- (c) 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.

Rule 1220-04-11-.05 Consumer Registration with the Tennessee Do Not Call Register, is amended by deleting the rule in its entirety, including the rule title, and substituting instead the following language so that, as amended, the rule shall read:

#### **1220-04-11-.05 CONSUMER REGISTRATION**

- (1) Guidelines for the consumer registration for the Register are described as follows:
  - (a) Residential subscribers may enroll on the Register as prescribed by the Commission. Enrollment on the Register will become effective thirty (30) days following the first day of the succeeding month of enrollment by the subscriber.
  - (b) A residential subscriber will remain on the Register until the Commission shall provide information on its website informing subscribers on the Register as to how to have their telephone numbers removed from the Register.
  - (c) Business telephone subscribers may not be included on the Register.

**Authority:** T.C.A. §§ 65-2-102 and 65-4-405.

Rule 1220-04-11-.06 Public Education about the Tennessee Do Not Call Register, is amended by deleting the rule in its entirety, including the rule title, and substituting instead the following language so that, as amended, the rule shall read:

#### **1220-04-11-.06 PUBLIC EDUCATION**

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.

**Authority:** T.C.A. §§ 65-2-102 and 65-4-405.

Rule 1220-04-11-.07 Violations of the Tennessee Do Not Register, is amended by deleting the rule in its entirety, including the rule title, and substituting instead the following language so that, as amended, the rule shall read:

#### **1220-04-11-.07 VIOLATIONS**

- (1) It is a violation of T.C.A. §§ 65-4-401 et seq. and this Chapter for a Telephone solicitor to knowingly make or cause to be made any solicitation to any telephone number that is in the Register.
- (2) A Principal Solicitor and Independent Solicitor are liable for violations of this Chapter by the Independent Solicitor. Except, 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 1220-04-.11-.04(2)(d); and
  - (b) The Independent Solicitor is not registered with the Commission or is registered pursuant to Rule 1220-04-11-.04(4)(c).
- (3) Violators of this Chapter are subject to a civil penalty, payable to the Commission, of an amount not to exceed Two-Thousand Dollars (\$2,000) for each violation. In addition, the Commission 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).

Rule 1220-04-11-.08 Enforcement Provisions, is amended by deleting the rule in its entirety, including the rule title, and substituting instead the following language so that, as amended, the rule shall read:

**1220-04-11-.08 ENFORCEMENT.**

- (1) The Commission may order the investigation of the practices of any Telephone solicitor conducting business in Tennessee. Such investigation shall determine if such Telephone solicitor has violated T.C.A. § 65-4-401, or this Chapter. If such investigation discloses a violation of state law or this Chapter, the Commission shall issue a show cause order with respect to such acts pursuant to T.C.A. § 65-2-106.
- (2) Local exchange companies are required to fully cooperate with the Commission 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.

Rule 1220-04-11-.09 Reserved, remains unchanged.

**1220-04-11-.09 RESERVED**

**Authority:** T.C.A. §§ 4-5-201, et seq.; 47-18-1501, et seq.; and 65-2-102.

Rule 1220-04-11-.010 Reserved, remains unchanged.

**1220-04-11-.10 RESERVED**

**Authority:** T.C.A. §§ 65-2-102 and 65-4-405.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chair Herbert H. Hilliard	X				N/A
VC David F. Jones	X				N/A
Comm. Robin L. Morrison	X				N/A
Comm. Clay R. Good	X				N/A
Comm. Kenneth C. Hill	X				N/A
Comm. David Crowell	X				N/A
Comm. John Hie	X				N/A

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Public Utility Commission (board/commission/other authority) on 05/24/2024 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 01/22/2024

Rulemaking Hearing(s) Conducted on: (add more dates). 03/21/2024

Date: 6/20/2024

Signature: 

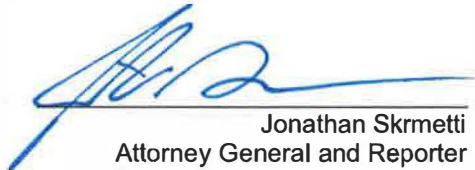
Name of Officer: Kelly Cashman-Grams

Title of Officer: General Counsel

Agency/Board/Commission: Tennessee Public Utility Commission

Rule Chapter Number(s): Rule Chapter 1220-04-11 et seq.

All rulemaking hearing rules provided for herein have been examined by the Attorney General and 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.

  
Jonathan Skrmetti  
Attorney General and Reporter  
July 2, 2024  
Date

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Jul 09 2024, 3:10 pm

Secretary of State  
Division of Publications

Filed with the Department of State on: 7/9/2024

Effective on: 10/7/2024

  
Tre Hargett  
Secretary of State  
RDA 1693



**Public Hearing Comments**

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

No comments were submitted. See attached.

## **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

The proposed rule impacts voice and text message solicitors. For the 2023-2024 registration period, there were a total of 186 registered solicitors. The Commission does not collect information during the solicitor registration process sufficient to classify a registrant as being a small business. Based upon the Commission's knowledge of telephone and text solicitation, it is likely there are solicitors that are small businesses.

The proposed rule is not anticipated to increase reporting, recordkeeping, or other administrative costs relative to existing rules. Solicitor registration fees were not changed in the rule. The rule seeks to decrease compliance costs by streamlining the annual solicitor registration process.

To ensure coverage of all Tennesseans that do not want to receive unsolicited telephone calls or text messages, the Tennessee Public Utility Commission imports the telephone numbers with Tennessee area codes in the federal Do-Not-Call register into the state Do-Not-Call/Text register. In December 2023, the Federal Communications Commission (FCC) mirrored Tennessee's action by extending the protections of the federal Do-Not-Call Register to text messaging. The FCC action does not pre-empt, supersede or limit enforcement of this rule. Rather, the FCC's action is complementary to this rule.

Exemption of small businesses from the rule is not in the public interest because the requirements contained in the rule are statutorily mandated. Exemption of small businesses would likely increase the number of unsolicited calls and text messages made to Tennesseans.

### **Impact on Local Governments**

**Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."**

**This rule has no financial impact on local government.**

### **Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The Do-Not-Call/Do-Not-Text Law prohibits telephone and text communications to enrolled residential subscribers for the purpose of soliciting the subscriber (prospective customer) to purchase, rent, or invest in property, goods or services sold/provided by the solicitor. The purpose of the law is to guard consumers from unwanted telephone/text solicitations; specifically, direct marketing in which a salesperson solicits prospective customers to buy products, subscriptions, or services, etc., over the phone or by text message.

The Tennessee Public Utility Commission had two objectives when modifying the existing Do-Not-Call rule to include the prohibition of unsolicited text messaging required by the Tennessee General Assembly. The first objective was to incorporate the statutory prohibition concerning unsolicited text messages. Achieving this goal was rather straightforward as the language used in the statute largely parallels the existing Do-Not-Call law and existing Do-Not-Call rules.

The second objective was to streamline the rules as they impacted the Commission's management of the Do-Not-Call/Do-Not-Text regulations. The Do-Not-Call rules have been largely unmodified since their adoption in the early 2000s. The most recent modification was a minor change in 2018, which was limited to addressing obsolete portions of the rule stemming from Tennessee's adoption of deregulatory laws for telecommunications providers and changes to the operation of the federal Do-Not-Call list. The Do-Not-Call program rules adopted in the early 2000s codified a "paper-based" approach to conducting business with solicitors purchasing access to the Do-Not-Call list. The Commission's approach was to modify or delete rule sections proscribing such outdated business practices. These changes allow the Commission to implement the rule more efficiently and provide a better customer experience for solicitors complying with the rule.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

On April 4, 2023, Public Chapter 126 ("PC 126") was signed into law and codified in Tenn. Code Ann. § 65-4-401, et seq. The statutory amendment expands the existing Do-Not-Call law to include a prohibition for unsolicited text messages under the regulatory scheme in this area.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

These rules most directly impact persons and entities that utilize telephone communication or text messages to solicit prospective customers to purchase, rent, or invest in property, goods, or services sold or provided by the solicitor. Such solicitors are required to register with the Commission and annually purchase the Do-Not-Call/Do-Not-Text list maintained by the Commission to ensure that subscribers who have opted-out of solicitations by enrolling their telephone number on the list are not contacted. None urged adoption or rejection of this rule.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The Commission expects no fiscal impact on state and local government revenues and expenditures from the promulgation of this rule.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Jerry Kettles, TPUC Economist  
Stacy Balthrop, TPUC Consumer Services Director

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Kelly Cashman-Grams, General Counsel  
Jerry Kettles, TPUC Economist  
Stacy Balthrop, TPUC Consumer Services Director

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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Stacy.Balthrop@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Redline version of Rule is attached.



# TENNESSEE PUBLIC UTILITY COMMISSION

Kelly Cashman-Grams  
General Counsel  
(615) 770-6856



Andrew Jackson State Office Bldg.  
502 Deaderick Street, 4<sup>th</sup> Floor  
Nashville, TN 37243-0001

May 20, 2024

RE: Public Hearing Comments  
Rule 1220-04-11, Tennessee Do Not Call/Text Regulations  
TPUC Docket No. 23-00030

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The Tennessee Public Utility Commission filed its Notice of Rulemaking Hearing with the Tennessee Secretary of State on January 22, 2024 and held a rulemaking hearing on the proposed new rule on March 21, 2024. The Commission issued the Notice of Rulemaking Hearing and a Notice Soliciting Public Comment on Rulemaking in Commission Docket 23-00030 on January 25, 2024 and January 30, 2024, respectively. During the rulemaking hearing, no one came forward to comment on the rule. In addition, no written comments were filed in the docket file.

**FOR THE TENNESSEE PUBLIC UTILITY COMMISSION:**

  
\_\_\_\_\_  
Kelly Cashman Grams, General Counsel

**RULES  
OF  
TENNESSEE PUBLIC UTILITY COMMISSION**

**CHAPTER 1220-04-11  
~~TELEPHONE SOLICITATION REGULATIONS – DO NOT CALL REGISTER~~  
TENNESSEE DO NOT CALL/TEXT REGULATIONS**

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		1220-04-11-.10	Reserved

**1220-04-11-.01 DEFINITIONS.**

- (1) ~~“Act” refers to T.C.A. §§ 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) [(1)] “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) [(2)] “Commission” means the Tennessee Public Utility Commission.
- (5) [(3)] “Business Telephone Subscriber” means a person or company who has subscribed to a business telephone service from a local exchange carrier.
- (6) [(4)] “Caller identification service” or “caller ID” means telephone service [or functionality] that ~~notifies telephone subscribers of~~ [provides] the telephone number [and other identifying information] of incoming ~~telephone calls~~ [communication].
- (7) ~~“Coordinator” refers to the individual employed by the Commission to oversee the regulation of telephone solicitation practices, including the operations of the Do Not Call Register, delegated to the Commission by the General Assembly in T.C.A. §§ 65-4-401 and 47-18-1501.~~
- (8) [(5)] “Database” means the information from which the Commission compiles the Do Not Call Register. The database shall be maintained by the Commission, or its designee, for the purpose of fulfilling the requirements of T.C.A. § 65-4-401.
- (9) ~~“Division” refers to the Consumer Services Division of the Tennessee Public Utility Commission.~~
- (10) [(6)] “Do Not Call/[Text] Register” [or “Register”] means a list of telephone numbers of residential ~~telephone~~ subscribers who have properly enrolled with the Commission or a Federal agency, ~~that their telephone numbers not be solicited by telephone solicitors.~~

- (11) [(7)] “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 Commission to provide long-distance toll telephone service; provided, however, that those providers that have elected market regulation under Tenn. Code Ann. § 65-5-109(l) are excluded from the jurisdiction of the Commission consistent with Tenn. Code Ann. § 65-5-109(m) and (n).~~
- (13) [(8)] “Local exchange companies,” as used in this Chapter, include ~~telecommunications service providers and competing~~ telecommunications service providers as defined in T.C.A. § 65-4-101, as well as telephone cooperatives and cellular or other wireless telecommunications providers operating in Tennessee; provided, however, that those providers that have elected market regulation under T.C.A. § 65-5-109(l) are excluded from the jurisdiction of the Commission consistent with T.C.A. § 65-5-109(m) and (n).
- (14) ~~“Not for profit” means an organization that is exempt from paying taxes under Section 501(c) of the Internal Revenue Code.~~
- (15) [(9)] “Parent” means a company owning more than fifty (50) percent of the voting shares, or otherwise a controlling interest, of another company.
- (16) [(10)] “Residential ~~Telephone~~ Subscriber” means a person residing in Tennessee who has residential telephone service or a state government telephone subscriber.
- (17) [(11)] “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) [(12)] “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 ~~[or text messages]~~ 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 Commission 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) [(13)] “Telephone solicitation” ~~[or “Solicitation”]~~ means any voice ~~[or text message]~~ communication over a telephone ~~[or technology that provides similar functionality]~~, 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[communication]~~ made with the intent that the ~~call[communication]~~ will ultimately result in the purchase or rental of, or investment in, property, goods, or services. Such ~~calls[communications]~~ include, but are not limited to: ~~calls[communications]~~ 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 a discrete piece of 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) below applies.

2. The use of ~~a~~ residential ~~telephone line~~~~[telephone service]~~ for the purpose of operating a business constitutes ~~an~~ express ~~invitation or~~ permission for the purposes of these rules.
- (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~~~~[communication]~~ 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, 65-4-405, and 65-5-109.

#### **1220-04-11-.02 GENERAL ~~TELEPHONE SOLICITATION~~ REGULATIONS.**

- (1) No Telephone solicitor shall place a telephone call ~~[or send a text message]~~ 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~~~~[communication]~~, 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 ~~[voice]~~ call and at the conclusion of the call, ~~ADAD messages~~ ~~[made via an automated dialing device]~~ 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~~~~[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~~ any method 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 [a] 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 [a]~~ 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 Commission of such violation.
- (6) After notice and hearing, and upon finding that a Telephone solicitor is in violation of this Chapter, the Commission 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 Commission.
- (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 Commission, Telephone solicitors shall, within ten (10) business days, file a written response with the Commission.

**Authority:** T.C.A. §§ 4-5-201, et seq., 47-18-1501, 47-18-1502, 47-18-1510, 47-18-1526, 65-2-102, 65-4-120, 65-4-405, and 65-4-405(h).

#### **1220-04-11-.03 MAINTAINING THE TENNESSEE DO NOT CALL/[TEXT] REGISTER.**

- (1) The Commission shall maintain a ~~d~~[D]atabase of telephone numbers of all Tennessee residential ~~telephone~~ subscribers who have elected not to receive telephone solicitations.
- (2) The information contained in the ~~d~~[D]atabase is not open to public inspection or disclosure as defined under Tennessee Code Annotated Title 10, Chapter 7. The Commission will take all necessary steps to protect the confidentiality of the information in the ~~d~~[D]atabase.
- (3) The Commission shall include in its Register the list of Tennessee subscribers ~~to~~ [included in any Do Not Call or Do Not Text database created by] the Federal Communications Commission's [Commission] or any other Federal ~~agencies' Do Not Call national database, if and when such list is established~~ [agency].
- (4) The ~~Division~~ [Commission] will update the Register ~~at the beginning of each month~~ [monthly].

**Authority:** T.C.A. §§ 65-2-102 and 65-4-405.

#### **1220-04-11-.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 Commission. Telephone solicitors shall submit an application ~~in writing~~ to the Commission. ~~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~~ [Commission] 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 T.C.A. §§ 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 Commission. 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 1220-04-11-.04(4)(c);
  - 2. The most recent text of Chapter 1220-04-11 Telephone Solicitation Regulations - Do Not Call[/Text] Register; and
  - 3. The most recent text of T.C.A. title 65, chapter 4, part 4, as amended.
- (3) Access to the following information will be provided to ~~approved telephone solicitors~~[Registrants]:
  - (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~~[Registrants]. It is the duty of ~~telephone solicitors~~ [Registrants] to ensure they have the most recent version of the ~~Do-Not-Call~~ Register prior to soliciting residential ~~telephone~~ subscribers.

~~(Rule 1220-04-11-.04, continued)~~

- ~~(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 T.C.A. § 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 Commission, on or before May 1<sup>st</sup> 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 1<sup>st</sup> through June 30<sup>th</sup> 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 \$1000.00 and an additional \$50.00 registration fee for each Independent Solicitor.
  - (c) 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.

#### **1220-04-11-.05 CONSUMER REGISTRATION ~~WITH THE TENNESSEE DO NOT CALL REGISTER.~~**

- (1) ~~The Commission 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 Commission or by another entity under contract with the Commission. Guidelines for the operation of the Register are described as follows:~~[Guidelines for the consumer registration for the Register are described as follows:]
- (a) Residential ~~telephone~~ subscribers may enroll on the Register as prescribed by the ~~Division~~[Commission]. Enrollment on to the Register will become effective ~~sixty (60)~~ [thirty (30)] days following the first day of the succeeding month of enrollment by the subscriber.
  - (b) A residential ~~telephone~~ subscriber will remain on the “~~Do Not Call Register~~” [Register] until ~~the subscriber requests that the Commission remove his or her telephone number from the Register. No later than January 31<sup>st</sup> of each year the Commission shall publish~~ [the Commission shall provide] information on its website informing subscribers on the Register as to how to have their telephone numbers removed 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.

#### **1220-04-11-.06 PUBLIC EDUCATION ~~ABOUT THE TENNESSEE DO NOT CALL REGISTER.~~**

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.

**Authority:** T.C.A. §§ 65-2-102 and 65-4-405.

#### **1220-04-11-.07 VIOLATIONS ~~OF THE TENNESSEE DO NOT CALL REGISTER.~~**

- (1) It is a violation of T.C.A. §§ 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~~ [the] 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, 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 1220-04-.11-.04(2)(d); and
  - (b) The Independent Solicitor is not registered with the Commission or is registered pursuant to Rule 1220-04-11-.04(4)(c).
- (3) Violators of this Chapter are subject to a civil penalty, payable to the Commission, of an amount not to exceed Two-Thousand Dollars (\$2,000) for each violation. In addition, the Commission 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).

**1220-04-11-.08 ENFORCEMENT PROVISIONS.**

- (1) The Commission 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 T.C.A. § 65-4-401, or this Chapter. If such investigation discloses a violation of state law or this Chapter, the Commission shall issue a show cause order with respect to such acts pursuant to T.C.A. § 65-2-106.
- (2) Local exchange companies ~~and interexchange carriers~~ are required to fully cooperate with the ~~Division~~ [Commission] 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.

**1220-04-11-.09 RESERVED.**

**Authority:** T.C.A. §§ 4-5-201, et seq.; 47-18-1501, et seq.; and 65-2-102.

**1220-04-11-.10 RESERVED.**

**Authority:** T.C.A. §§ 65-2-102 and 65-4-405.