

PROJECT NO. 23528

RULEMAKING TO CONSIDER	§	PUBLIC UTILITY COMMISSION
CHANGES TO §26.125,	§	
AUTOMATIC DIAL	§	
ANNOUNCING DEVICES (ADADs)	§	
AND ASSOCIATED FORMS	§	
	§	OF TEXAS

**ORDER ADOPTING AN AMENDMENT TO §26.125 RELATING TO AUTOMATIC
DIAL ANNOUNCING DEVICES (ADADs) AND ASSOCIATED FORMS AS
APPROVED AT THE JUNE 6, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §26.125, relating to Automatic Dial Announcing Devices (ADADs) with no changes to the proposed text as published in the March 22, 2002 *Texas Register* (27 TexReg 2162). The amendment clarifies the permit application and renewal process for ADAD permit holders and annual required information and reduces the fee for applications and renewals. The commission also revises the *Texas Permit Application* form and *Texas Permit Renewal* form and adopts a *Notification of Complaint* form. The amendment and forms were adopted under Project Number 23528.

The commission received comments on the proposed amendment and forms from the Office of Public Utility Council (OPC). OPC sought clarification of the reduction in fees and wondered if a cost analysis had been performed.

The commission reviewed administrative costs for the application and renewal process and reduced fees to more accurately reflect those costs. Additionally, the commission seeks to establish a more comprehensive database and wishes to impose no financial impediment to the application and renewal process.

OPC expressed concern that live operators were exempt from subsection (b)(3)(B) regarding automated dialing or hold announcements. OPC stated the Federal Trade Commission has recognized that some telemarketers play a recorded message rather than a brief hold announcement message when a live operator is not available and that the automated message delivers the same message delivered by a live operator.

The commission clarifies that live operators are not automatically exempt, if used as described above.

To better understand and monitor this segment of the telecommunications market and protect the public, the commission wishes to utilize a form for the renewal process with questions identical to those on the application form.

This amendment and forms are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its

powers and jurisdiction and specifically PURA §55.129, which provides that an ADAD operator must obtain a permit from the commission and renew that permit annually.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002; Chapter 15, Subchapter B; Chapter 17, Subchapter B; and Chapter 55, Subchapter F.

§26.125. Automatic Dial Announcing Devices (ADADs).

- (a) **Purpose.** The purpose of this section is to regulate the use of ADADs.
- (b) **Requirements for use of an ADAD.** A person who operates an ADAD to make a telephone call in which the device plays a recorded message when a connection is completed to a telephone number must comply with the following requirements.
- (1) An ADAD operator must obtain a permit from the commission and give written notice specifying the type of device to be connected to each telecommunications utility over whose system the device is to be used.
 - (2) The device must not be used for random number dialing or to dial numbers by successively increasing or decreasing integers. In addition, the device must not be used in a way such that two or more telephone lines of a multi-line business are engaged simultaneously.
 - (3) Within the first 30 seconds of the call, the ADAD message must clearly state the nature of the call, the identity of the business, individual, or other entity initiating the call, and the telephone number (other than that of the ADAD which placed the call) or address of the business, individual, or entity. This paragraph does not apply to the ADAD if the ADAD is used:
 - (A) for debt collection purposes in compliance with applicable federal law and regulations; and

- (B) by a live operator for automated dialing for hold announcement purposes.
- (4) The entire ADAD message must be delivered in a single language.
- (5) The device must disconnect from the called person's line no later than five seconds after the call is terminated by either party or, if the device cannot disconnect within that period, a live operator must introduce the call and receive the oral consent of the called person before beginning the message. In addition, the device must comply with the line seizure requirements in 47 Code of Federal Regulations §68.318(c).
- (6) The device, when used for solicitation purposes, must have a message shorter than 30 seconds or have the technical capacity to recognize a telephone answering device on the called person's line and terminate the call within 30 seconds.
- (7) All ADAD solicitors shall meet the requirements for telephone solicitors set forth in §26.126 of this title (relating to Telephone Solicitation).
- (8) For calls terminating in Texas, the device must not be used to make a call:
 - (A) for solicitation before noon or after 9:00 p.m. on a Sunday or before 9:00 a.m. or after 9:00 p.m. on a weekday or a Saturday; or
 - (B) for collection purposes at an hour at which collection calls would be prohibited under the federal Fair Debt Collection Practices Act (15 United States Code §1692, *et seq.*).
- (9) Calls may not be made to emergency telephone numbers of hospitals, fire departments, law enforcement offices, medical physician or service offices, health

care facilities, poison control centers, "911" lines, or other entities providing emergency service. In addition, calls may not be made to telephone numbers of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment, any telephone numbers assigned to paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier, or any service for which the called party is charged for the call.

- (10) If during a call a cross-promotion or reference to a pay-per-call information service is made, the call must include:
- (A) a statement that a charge will be incurred by a caller who makes a call to a pay-per-call information services telephone number;
 - (B) the amount of the flat-rate or cost-per-minute charge that will be incurred or the amount of both if both charges will be incurred; and
 - (C) the estimated amount of time required to receive the entire information offered by the service during a call.

(c) **Permit to operate an ADAD.**

- (1) An application for a permit to use one or more ADADs must be made using a form prescribed by the commission and must be accompanied by a fee of \$50. A permit is valid for one year after its date of issuance. An application for a renewal permit shall be filed using the form prescribed by the commission, accompanied by

a fee of \$15, not less than 90 days prior to the expiration date of the current permit.

- (2) Each application for the issuance or renewal of a permit under this section must contain the telephone number of each ADAD that will be used and the physical address from which the ADAD will operate in the format required by the commission. If the telephone number of an ADAD or the physical address from which the ADAD operates changes, the owner or operator of the ADAD shall notify the commission by certified mail in the required format of each new number or address not later than the 48th hour before the hour at which the ADAD will begin operating with the new telephone number or at the new address. If the owner or operator of an ADAD fails to notify the commission as required by this subsection within the period prescribed by this subsection, the permit is automatically invalid.
- (3) In determining if a permit should be issued or renewed, the commission will consider the compliance record of the owner or operator of the ADAD. The commission may deny an application for the issuance or renewal of a permit because of the applicant's compliance record.
- (4) A local exchange company (LEC) may obtain, on request to the commission, a copy of a permit issued under this section and of any changes relating to the permit.
- (5) The commission may revoke a permit to operate an ADAD for failure to comply with this section.

- (d) **Exceptions.** This section does not apply to the use of an ADAD to make a telephone call:
- (1) relating to an emergency or a public service under a program developed or approved by the emergency management coordinator of the county in which the call was received; or
 - (2) made by a public or private primary or secondary school system to locate or account for a truant student.
- (e) **Complaints, investigation, and enforcement.**
- (1) If the commission determines that a person has violated the requirements of this section, the telecommunications utility providing service to the user of the ADAD shall comply with a commission order to disconnect service to the person. The telecommunications utility may reconnect service to the person only on a determination by the commission that the person will comply with this section. The telecommunications utility shall give notice to the person using the ADAD of the telecommunications utility's intent to disconnect service not later than the third day before the date of the disconnection, except that if the ADAD is causing network congestion or blockage, the notice may be given on the day before the date of disconnection.
 - (2) A telecommunications utility may, without an order by the commission or a court, disconnect or refuse to connect service to a person using or intending to use an

ADAD if the telecommunications utility determines that the device would cause or is causing network harm.

(3) A LEC that receives a complaint relating to the use of an ADAD shall send the complaint to the commission according to the following guidelines:

(A) the complaint shall be recorded on a form prescribed by the commission;

(B) the LEC shall inform the complainant that the complaint, including the identity of the complainant and other information relevant to the complaint, will be forwarded to the commission;

(C) the complaint form and any written complaint shall be forwarded to the commission within three business days of its receipt by the LEC.

(f) **Permit suspension/child support enforcement.** In consideration of the Texas Family Code Annotated, Chapter 232, as it may be subsequently amended, which provides for the suspension of state-issued licenses for failure to pay child support, the commission shall follow the procedures set out in this subsection.

(1) **Provision of information to a Title IV-D agency.** Upon request, the commission shall provide a Title IV-D agency with the name, address, social security number, license renewal date, and other identifying information for each person who holds, applies for, or renews an ADAD permit issued by the commission. This information shall be provided in a format agreed to between the Title IV-D agency and the commission.

- (2) **Suspension of permit.** Upon receipt of a final order issued by a court or a Title IV-D agency suspending an ADAD permit under the provisions of the Texas Family Code, Chapter 232, the commission shall immediately:
- (A) record the suspension of the permit in the commission's files; and
 - (B) notify the telecommunications utility providing service to the user of an ADAD that the permit has been suspended.
- (3) **Service disconnection.** Upon receipt of notification by the commission that a permit has been suspended under the provisions of this subsection, the telecommunications utility providing service to that user of an ADAD shall immediately disconnect service to that person.
- (4) **Refund of fees.** A person who holds, applies for, or renews an ADAD permit issued by the commission that is suspended under the provisions of this subsection is not entitled to a refund of any fees paid under subsection (c) of this section.
- (5) **Reinstatement.** The commission may not modify, remand, reverse, vacate, or reconsider the terms of a final order issued by the court or a Title IV-D agency suspending a permit under the provisions of the Texas Family Code, Chapter 232. However, upon receipt of an order by the court or Title IV-D agency vacating or staying an order suspending a person's permit to operate an ADAD, the commission shall promptly issue or re-issue the affected permit to that person if that person is otherwise qualified for the permit and has paid the applicable fees as set out in subsection (c) of this section.

- (g) **Penalties.** A person who operates an ADAD without a valid permit, with an expired permit, or with a permit that has been suspended under the provisions of subsection (f) of this section or who otherwise operates the ADAD in violation of this section or a commission order, is subject to an administrative penalty of not more than \$1,000 for each day or portion of a day during which the ADAD was operating in violation of this section. However, nothing in this subsection is intended to limit the commission's authority under the Public Utility Regulatory Act §15.021, *et seq.*

This agency hereby certifies that the rule and forms, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §26.125 relating to Automatic Dial Announcing Devices (ADADs) is hereby adopted with changes to the text as proposed.

ISSUED IN AUSTIN, TEXAS ON THE 19th DAY OF JUNE 2002.

PUBLIC UTILITY COMMISSION OF TEXAS

Rebecca Klein, Chairman

Brett A. Perlman, Commissioner