

PROJECT NO. 23528

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

**PROPOSAL FOR PUBLICATION AS APPROVED
AT THE MARCH 6, 2002 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §26.125 relating to Automatic Dial Announcing Devices (ADADs) and related forms. The proposed amendments will clarify the permit application and renewal process for ADAD permit holders and annual required information and reduce the fees for applicants. Project Number 23528 has been assigned to this proceeding.

The commission is also considering revisions to the *Texas Permit Application* form and the *ADAD Permit Renewal Application* form. The commission is proposing a *Notification of Complaint* form to be used by local exchange carriers and is accepting comments on the amended rule and forms. The rule and forms under consideration may be obtained from the commission's Central Records Division or through the Project Number 23528 web page at: <http://www.puc.state.tx.us/rules/rulemake/23528/23528.cfm>.

Betsy Tyson, Network Analyst, Telecommunications Division and Mark Gladney, Attorney, Legal Division, have determined that for each year of the first five-year period the proposed

section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Tyson and Mr. Gladney have determined that for each year of the first five years the proposed sections is in effect the public benefit anticipated as a result of enforcing the section will be more accurate information on this industry, increased protection of customers in a competitive environment, and increased enforcement. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Tyson and Mr. Gladney have also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments on the proposed amendment and forms (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 23528.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2002) (PURA), which provides the Public Utility 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.

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) ~~(ADAD)~~.

(a) **Purpose.** The purpose of this section is to regulate the use of ADADs. ~~automatic dial announcing devices.~~

(b) **Requirements for use of an ADAD.** ~~automatic dial announcing device.~~ 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) — (2) (No change.)

(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 such~~-business, individual, or ~~other~~ entity. This paragraph does not apply to the ADAD if the ADAD is used: However, if an ADAD is used for debt collection purposes and the use complies with applicable federal law and regulations, and the ADAD is used by a live operator for automatic or hold announcement purposes, the use complies with this paragraph.

(A) for debt collection purposes in compliance with applicable federal law and regulations; and

(B) by a live operator for automated dialing or hold announcement purposes.

(4) (No change.)

(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)~~(2)~~.

(6) (No change.)

(7) All ADAD solicitors shall meet the requirements for telephone solicitors set forth in §26.126 of this title (relating to Telephone Solicitation).

~~(8)(7)~~ 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)(8)~~ 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)~~(9) 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~~~~\$500~~. 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.~~Renewals must be applied for no later than 90 days prior to the expiration date of the current permit. Subject to~~

~~paragraph (3) of this subsection, a permit may be renewed annually by making the filing required by this section and paying a renewal fee of \$100.~~

- (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) — (5) (No change.)

(d) (No change.)

(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 device 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 device 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) (No change.)

(f) (No change.)

~~(g) — **Obligations of the ADAD solicitor.**~~

~~(1) — An ADAD solicitor may not use any method, including per call blocking or per line blocking, that prevents caller identification information from the ADAD solicitor's lines from being shown by an end user's caller identification device.~~

~~(2) — The ADAD solicitor's displayed caller identification number must be one at which telephone calls may be received from end users if the ADAD solicitor~~

~~uses a device which plays a recorded message when a connection is completed to a telephone number.~~

~~(g)(h)~~ **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.* ~~(Vernon 1998).~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 8TH DAY OF MARCH 2002 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
RHONDA G. DEMPSEY**