

PROJECT NO. 39492

RULEMAKING TO AMEND PUC	§	PUBLIC UTILITY COMMISSION
SUBSTANTIVE RULE §26.125,	§	
RELATING TO AUTOMATIC DIAL	§	OF TEXAS
ANNOUNCING DEVICES (ADADS)	§	

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §26.125
AS APPROVED AT THE AUGUST 29, 2013 OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §26.125, relating to Automatic Dial Announcing Devices (ADADs). The proposed amendments to the rule and the Texas Permit Application form will clarify the permit procedure for ADADs and conforms the rule to changes embodied in Senate Bill 1040 to Public Utility Regulatory Act (PURA) §55.122 and §55.1225. Project Number 39492 is assigned to this proceeding.

James Kelsaw, Utility Analyst, Competitive Markets Division has 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.

Mr. Kelsaw has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be a more streamlined permitting process for ADADs. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Kelsaw has 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 (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, October 15, 2013. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendments and form 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 20 days after publication. Sixteen copies of comments to the proposed amendments are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 25 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. 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 39492.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2012) (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 provider must obtain a permit from the commission.

Cross Reference to Statutes: Public Utility Regulatory Act, §14.002 and §§55.121-138.

§26.125. Automatic Dial Announcing Devices (ADADs).

(a) (No change.)

(b) **Application.** The provisions of this section apply to an ADAD used to make a telephone call that originates or terminates in the state of Texas.

(c)(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).~~

~~(7)~~(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.*).

~~(8)~~(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.

~~(9)(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.

~~(d)(e)~~ **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.

~~(e)(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;
- (3) made by a municipality or a person calling on behalf of a municipality to deliver information to citizens of the municipality regarding public health, safety, or welfare issues; or
- (4) made by an organization to a member of the organization.

(f)(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.

(g)(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 ~~(d)(e)~~ 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 ~~(d)(e)~~ of this section.

~~(h)(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 ~~(g)(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 proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

**ISSUED IN AUSTIN, TEXAS ON THE 29TH DAY OF AUGUST 2013 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

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