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# Notice of Rulemaking Hearing

*Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.*

<b>Agency/Board/Commission:</b>	Tennessee Public Utility Commission
<b>Division:</b>	Legal Division / Consumer Services Division
<b>Contact Person:</b>	Kelly Cashman-Grams, General Counsel
<b>Address:</b>	502 Deaderick Street, 4 <sup>th</sup> FL, Nashville TN 37243
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*Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:*

<b>ADA Contact:</b>	Ectory Lawless, Docket & Records Manager
<b>Address:</b>	502 Deaderick Street, 4 <sup>th</sup> FL, Nashville TN 37243
<b>Phone:</b>	615-770-6850
<b>Email:</b>	Ectory.Lawless@tn.gov

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	Andrew Jackson State Office Building		
Address 2:	502 Deaderick Street, Hearing Room G.201 (accessible at 5 <sup>th</sup> Ave. entrance)		
City:	Nashville		
Zip:	37243		
Hearing Date:	03/21/2024		
Hearing Time:	10:00 AM	X CST/CDT	

**Additional Hearing Information:**

On April 4, 2023, Governor Lee signed into law Public Chapter 126, effective July 1, 2023, amended Tenn. Code Ann. § 65-4-401, which prohibits unsolicited telephone calls, to also include similar prohibitions for unsolicited text messages. This rule has been revised and updated in order to incorporate the new statutory prohibitions on unsolicited texts; update technical portions of the rule that have become outdated since 2000, when the rule first took effect; and certain other changes to language were made to clarify, streamline, and to improve readability. A redline copy is available on the Commission website in Docket No. 23-00030 at <https://share.tn.gov/tra/indexes/TPUCAActiveDocketIndex.htm#2023> and a limited number of hard-copies will be available during the rulemaking hearing.

**Revision Type (check all that apply):**

XX Amendment  
       New  
       Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. 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. 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 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).

- (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:
  - (d) 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.
  - (e) 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;
  - (f) Any communication to any residential subscriber who is an existing customer; or
  - (g) 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, 47-18-1526, 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 to 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.*



I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 1/22/2024

Signature: 

Name of Officer: Kelly Cashman-Grams

Title of Officer: General Counsel

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Filed with the Department of State on: 1/22/2024

  
Tre Hargett  
Secretary of State

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