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Sequence Number: 09-26-08
 Notice ID(s): 917
 File Date: 09/25/2008

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Tennessee Regulatory Authority
Division:	Legal Division
Contact Person:	J. Richard Collier
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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:

ADA Contact:	ADA Coordinator
Address:	460 James Robertson Parkway, Nashville, TN 37243-0505
Phone:	(615) 741-2904, ext. 251 or 1-800-342-8359, ext. 251
Email:	

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

Address 1:	Hearing Room, Ground Floor 460 James Robertson Parkway		
Address 2:			
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	11/24/2008		
Hearing Time:	10:00 a.m.	<input checked="" type="checkbox"/> CST	<input type="checkbox"/> EST

Additional Hearing Information:

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Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) (for additional chapters, copy and paste table)

	Chapter Number	Chapter Title
	1220-4-11	Telephone Solicitation Regulations
	Rule Number	Rule Title
	1220-4-11-.08	General ADAD Regulations
	1220-4-11-.09	ADAD Registration Requirements – Issuance and revocation of Permits
Renumbered	1220-4-11-.10	Enforcement Provisions

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Proposed New Rule 1220-4-11-.08 shall read:

1220-4-11-.08 General ADAD Regulations

- (1) No person shall use, employ or direct another person to use, or contract for the use of an ADAD for the purpose of advertising or offering for sale, lease, rental or as a gift any goods, services or property, either real or personal, primarily for personal, family or household use or for the purpose of conducting polls or soliciting information where:
 - (a) Consent is not received prior to the initiation of the calls;
 - (b) The ADAD is used at any time other than between the hours of eight o'clock a.m. (8:00 a.m.) and nine o'clock p.m. (9:00 p.m.);
 - (c) The ADAD will operate unattended, or is not designed and equipped with an automatic clock and calendar device that will not operate unattended, even in the event of a power failure;
 - (d) The use of the ADAD involves either the random or sequential dialing of telephone numbers;
 - (e) The ADAD does not automatically and immediately terminate its connection with any telephone call within ten (10) seconds after the person called fails to give consent for the recorded message or otherwise terminates the telephone call;
 - (f) The ADAD recorded message fails to state clearly the name and telephone number of the person or organization initiating the call within the first twenty-five (25) seconds of the call and at the conclusion of the call. The telephone number stated on the recorded message must be promptly and personally answered during normal business hours by someone who is willing and able to provide information concerning the automatic calls and is an agent of the person or organization in whose behalf the automatic calls are made;
 - (g) The ADAD places calls to telephone numbers which, at the request of the customer, have been omitted from the telephone directory published by the telephone company or cooperative serving the customer; or
 - (h) The ADAD places calls to hospitals, nursing homes, fire protection agencies or law enforcement agencies.
- (2) A person may give consent to a call made with an ADAD when a live operator introduces the call and states intent to play a recorded message. Any such consent shall apply only to a particular call and shall not constitute prior consent to receive further calls through the use of such ADAD.
 - (a) Any person wishing to receive telephone calls through the use of an ADAD shall give written consent to the person using, employing, directing another person to use, or contracting for the use of such ADAD.
 - (b) Any form used for written consent by any person using, employing, directing another person to use, or contracting for the use of such ADAD shall clearly and conspicuously state its purpose and effect, and clearly and conspicuously give notice of how such consent may be withdrawn.
 - (c) A record of written consent shall be maintained by the person to whom consent is given, and shall be made available to the Authority or its authorized representative during normal business hours and following reasonable notice.
 - (d) Written consent, unless withdrawn, shall be valid for a period of two (2) years from the date on which it is executed and shall be maintained by the person to whom consent is given for at least the same period of time.

- (e) Any consent to receive telephone calls through the use of an ADAD shall be void and withdrawn on the fifteenth day following the receipt of a letter withdrawing consent. It is unlawful for any person to whom written consent is given to fail to maintain the record of such consent for the time required, or to prevent or hinder the Authority or its authorized representative from inspecting any such record of written consent.

Authority: Tenn. Code Ann. §§ 4-5-201 et seq., 65-2-102, 65-4-120, 47-18-1501 et seq.

Proposed New Rule 1220-4-11-.09 shall read :

1220-4-11-.09 ADAD Registration Requirements – Issuance and Revocation of Permits

- (1) It is a violation of Tenn. Code Ann. § 47-18-1503 to connect any ADAD to any telephone line in Tennessee for the purpose of making telephone calls in this state through the use of such ADAD unless a permit has been issued for such ADAD by the Authority. Prior to the utilization of an ADAD to call telephone numbers located in Tennessee, any company or individual utilizing such equipment shall register with the Authority to receive a permit.
- (2) Any person or company desiring to use an ADAD in Tennessee shall make application for a permit to the Authority on forms prescribed by the Authority, and shall pay a fee of one hundred dollars (\$100.00). Permits shall be renewed every two (2) years upon payment of a renewal fee in the amount of one hundred dollars (\$100.00).
- (3) Each application must be accompanied by a surety bond executed by the ADAD operator from a surety company authorized to conduct business in Tennessee for the sum of ten thousand dollars (\$10,000) to be maintained continuously in full force and effect. This bond requirement may be waived for any operator demonstrating financial responsibility by the submission of a letter of credit from an accredited financial institution.
- (4) Failure to obtain a permit from the Authority prior to the utilization of an ADAD to call numbers located in Tennessee and failure to abide by the Authority rules governing ADAD operations is a violation of Tenn. Code Ann. § 47-18-1501 et seq.
- (5) Permits shall be subject to suspension or revocation by the Authority for any violation of Tenn. Code Ann. § 47-18-1501 et seq. or this Chapter. Revoked permits are not renewable. Reinstatement of revoked or expired permits require a new application accompanied by a one hundred dollar (\$100.00) application fee.

Authority: Tenn. Code Ann. §§ 4-5-201 et seq., 65-2-102, 65-4-120, 47-18-1501 et seq.

Rule 1220-4-11-.08 shall be renumbered to 1220-4-11-.10:

1220-4-11-.10 Enforcement Provisions

- (1) The Authority 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 Tenn. Code Ann. § 65-4-401, or this Chapter. If such investigation discloses a violation of state law or this Chapter, the Authority shall issue a show cause order with respect to such acts pursuant to Tenn. Code Ann. § 65-2-106.
- (2) Local exchange companies and interexchange carriers are required to fully cooperate with the Division 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: Tenn. Code Ann. §§ 65-2-102 and 65-4-405. Administrative History: Original rule filed February 22, 2000; effective May 7, 2000.