

**PROJECT NO. 31900**

<b>RULEMAKING PROCEEDING TO</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>AMEND P.U.C. SUBSTANTIVE RULE</b>	<b>§</b>	
<b>26.37, RELATING TO THE TEXAS NO-</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CALL LIST</b>	<b>§</b>	

**PROPOSAL FOR PUBLICATION OF AMENDMENT TO §26.37 AS APPROVED  
AT THE DECEMBER 15, 2005, OPEN MEETING**

The Public Utility Commission of Texas (commission) proposes amendments to §26.37, relating to the Texas No-Call List. The proposed amendments comport with the amendments made to Texas Business & Commerce Code Annotated §44.101 by the 79<sup>th</sup> Legislature and also provide clarification regarding the commission's enforcement authority. Specifically, the proposed amendments: 1) define the Texas no-call list as a combined list consisting of the name and telephone numbers of each consumer in this state who has requested to be on the list and of each person in the portion of the national do-not-call registry maintained by the United States government that relates to this state; 2) provide for registration via the commission's internet website at no charge; and 3) clarify that a violation of the section by a telemarketer, other than a state licensee or telecommunications provider, is subject to enforcement action pursuant to P.U.C. PROC. R. 22.246. Project Number 31900 is assigned to this proceeding.

Chris Cowan, Staff Attorney, Legal 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.

Ms. Cowan 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 enhanced

protection of consumers' privacy rights by a curtailment of unsolicited telemarketing or telephone calls. There will be no adverse economic 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. Cowan 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, only 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. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendment 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. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. 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 31900.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (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, Texas Business & Commerce Code Annotated §§44.101-.104 (Vernon 2002, Supplement 2005) which grants the commission the authority to adopt rules to administer and enforce the no-call list.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002; Texas Business & Commerce Code Annotated §§44.101–.104.

**§ 26.37. Texas No-Call List.**

(a) – (b) (No change.)

(c) **Definitions.** The following words and terms, when used in this section shall have the following meanings, unless the context clearly indicates otherwise.

(1) – (3) (No change.)

(4) **No-call list** — A combined list that is published and distributed as required by subsection (f)(2) of this section and consists of the name and telephone numbers of each consumer in the state who has requested to be on that list and of each person in the portion of the national do-not-call registry maintained by the United States government that relates to this state.

(5) **No-call registrant** — A telephone customer who has registered, by application and, if required, payment of accompanying fee, for the Texas no-call list.

(6) – (9) (No change.)

(d) – (f) (No change.)

(g) **Notice.** A CTU shall provide notice of the no-call list to each of its residential customers as specified by this subsection. In addition to the required notice, the CTU may engage in other forms of customer notification.

(1) **Content of notice.** A CTU shall provide notice in compliance with §26.26 of this title (relating to Foreign Language Requirements) that, at a minimum, clearly explains the following:

(A) - (B) (No change.)

(C) A customer must pay a fee to register for the no-call list unless the customer registers via the commission's internet website address, in which case there is no charge.

(D) – (E) (No change.)

(F) The customer registration fee, which cannot exceed three dollars per term, must be paid by credit card when registering ~~online or~~ by telephone. When registering by mail, the fee must be paid by credit card, check or money order;

(G) – (H) (No change.)

(2) **Publication of notice.**

(A) Telephone directory. A CTU that publishes, or has an affiliate that publishes, a residential telephone directory may include in the directory a prominently displayed Internet website address, toll-free number and mailing address ~~Internet mail address~~, established by the commission, through which a person may request a form for, or request to be placed on, the Texas no-call list in order to avoid unwanted telemarketing calls.

(B) (No change.)

(3) – (4) (No change.)

(h) – (j) (No change.)

(k) **Enforcement and penalties.**

(1) – (3) (No change.)

- (4) **Other Telemarketers.** A telemarketer, other than a state licensee or telecommunications provider, that violates this section shall be subject to enforcement action ~~administrative penalties~~ pursuant to §22.246 of this title.

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 15<sup>TH</sup> DAY OF DECEMBER 2005 BY THE  
PUBLIC UTILITY COMMISSION OF TEXAS  
ADRIANA A. GONZALES**