Approved:_____

Date 2/17/98

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Don Myers at 9:00 a.m. on January 29, 1998 in Room 514-S of the Capitol.

All members were present except:

Committee staff present: Lynne Holt, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Mary Shaw, Committee Secretary

Conferees appearing before the committee: Rob Hodges, Kansas Telecommunications Association
Michael Jay Ensrud, Secretary of Comp Tel-Kansas

Others attending: See attached list

Chairman Don Myers mentioned that three days of minutes were distributed for the meetings for January 20, January 21 and January 22 and they will be reviewed and approved/corrected at a meeting next week. Today the Committee will work **HB 2649** - prohibiting unauthorized change of consumer's telephone service provider. On Friday the Committee will be hearing and possible final action on **HCR 5035** urging congress to leave deregulation of electricity to the states and final action on **HB 2649** - prohibiting unauthorized change of consumer's telephone service provider.

Lynne Holt, Staff, Legislative Research Department, distributed copies of an article that appeared in the Lawrence Journal World regarding slamming. The Chairman asked if there were any bill introductions. There being none, the Chairman recognized Representative Sloan regarding the Retail Wheeling Sub-committee. Representative Sloan said the Sub-committee will be meeting at noon today and meetings are tentatively scheduled for Monday, Wednesday and Thursday of next week. If anyone wants to testify, please notify him The Chairman mentioned that Representative Sloan had given him a list that the Kansas Corporation Commission had given to Representative Sloan of those items in the present retail wheeling bill that the Commission felt were assigned to them. If anyone wants a copy of the list, please contact Representative Sloan's secretary.

Hearing on HB 2649 - Prohibiting unauthorized change of consumer's telephone service provider

The Chairman introduced Mary Ann Torrence, Staff, Revisor of Statutes Office, who gave a briefing on **HB 2649.** Staff also distributed the fiscal note on **HB 2649**. The Chairman mentioned that the closing on the fiscal note indicated that the bill would have no fiscal impact on state revenues or expenditures. He also stated that in the fiscal note, it is mentioned that it is assumed that any penalties deposited in the state general fund would be negligible.

The Chairman noted that there were no proponents scheduled to testify at this time and he inquired if any proponent was in the room and wished to speak. There were none.

The Chairman recognized Rob Hodges, Kansas Telecommunications Association, opponent, who spoke in opposition to **HB 2649**. He noted that KTA members in no way approve of slamming, but have trouble with the provisions of **HB 2649**. He indicated that **HB 2649** would put in place a slamming law that could conflict with federal anti-slamming efforts, would be burdensome to Kansas telecommunications companies and could result in fewer benefits of competition becoming available for Kansas consumers. (Attachment #1) Questions and discussion followed.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

The Chairman recognized Michael Jay Ensrud, Secretary of Comp Tel-Kansas, opponent, who spoke in opposition to **HB 2649**. He mentioned that there are already Federal Communications Commission (FCC) standards concerning "slamming". He also felt that since the Kansas Corporation Commission (KCC) is establishing a procedure to address "slamming" as part of on-going rulemaking, the bill is not needed at this time. (Attachment #2) Questions and discussion followed.

The Chairman noted that he will be changing the agenda for the remainder of this week. **HB 2649** will not be worked tomorrow and he asked that the Kansas Corporation return next Thursday, February 5, with a statement as to what the Corporation Commission feels about the bill, what they have proposed and when we will see some results from that proposal. The Chairman mentioned that hearings will be continued on **HB 2649** next Thursday, February 5 and he will decide at that time if the Committee will go ahead and work the bill. Additional questions and discussion followed.

The Chairman thanked all the conferees that appeared to testify and all those who spoke in regard to **HB 2649**.

The meeting was adjourned at 10:02 a.m.

The next meeting is scheduled for January 30, 1998.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: January 29, 1998

NAME	REPRESENTING
ED SCHAUB	WESTERN RESOURCES
J.C. LONG	UtiliCorp United Inc.
Susie Hoffmann	~~Praegon~~ SITA
Todd Thompson	Intern for Sloan
Paul Snider	SWBT
Gail Bright	A.G.
Larrie Ann Brown	ICS Govt Consult.
Milt Theologon	Jim Morrison
Vonda Miles	KEC
Rob Hodges	KTA
Julie Hein	Hein & Weir
Amy Lignitz	AP
Roger Bailey	KCPR
Jon Caches	McGill & Asso.
Karen Matson	KCC
Heinemann	"
WALKER HENDRIX	CURB

Legislative Testimony

Kansas Telecommunications Association 700 SW Jackson St., Suite 704, Topeka, KS 66603-3758 V/TTY 785-234-0307 FAX 785-234-2304

Before the House Committee on Utilities

HB 2649 January 29, 1998

Mr. Chairman, members of the committee, I am Rob Hodges, President of the Kansas Telecommunications Association. Our membership is made up of local telephone companies, long distance companies, wireless telecommunications companies, and firms and individuals that provide service to and support for the telecommunications industry in Kansas.

KTA members share the frustration of legislators and other telephone consumers regarding unauthorized changes in their selected providers of telecommunications services – the practice commonly referred to as "slamming."

KTA members believe that slamming

- denies the consumer the right to choose who provides his or her telecommunications services
- denies the consumer the rates and services provided by the carrier they have chosen
- denies the rightful provider of the service the revenues and other benefits of serving the customer
- costs valuable time and money in researching complaints and returning consumers to the rightful providers service when slamming has occurred.

In no way do KTA members approve of slamming. But we have trouble with the provisions of HB 2649. Let me tell you why.

HB 2649 would put in place a slamming law that

- could conflict with federal anti-slamming efforts
- would be burdensome to Kansas telecommunications companies, and
- could result in fewer benefits of competition becoming available for Kansas consumers

The Federal Communications Commission (FCC) and the Kansas Corporation Commission (KCC) are each addressing slamming. KTA members ask you to wait until the regulatory bodies have completed their work before you consider a state law. Until those regulatory proceedings have been completed, the KTA believes it is premature for the Kansas Legislature to act.

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The FCC is acting because Section 258 of the federal Telecommunications Act of 1996 makes it unlawful for any telecommunications carrier to

> "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the [Federal Communications] Commission shall prescribe."

The section further provides that

> "[a]ny carrier that violates the verification procedures ... and that collects charges for telephone exchange service or telephone toll service from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation."

With such clear anti-slamming language in the federal law, what verification procedures have been prescribed by the FCC?

As of today, the FCC has not completed establishing the verification procedures. We anticipate having them later this year – perhaps in May or June. While the FCC's final order establishing the standards has not been released, we do know what they are proposing. The FCC proposals are attached to this testimony and titled "Appendix C. Proposed Rule Changes."

You'll find language at item number 4 in that attachment that closely parallels some of the language of HB 2649. But you'll also notice that this is only one method of verification being contemplated by the FCC. It would be the sole method available to Kansas consumers if HB 2649 were passed into law.

Before I go on, I must point out that the provisions of HB 2649 describe a verification procedure similar to that already being performed by most small, rural telephone companies in Kansas. Every such company I spoke to told me they contact the customer before making a change in long distance providers. I must point out, however, that these small Kansas companies devised a process that works for them. That solution will not work well for a large telephone company. HB 2649 would superimpose one method for every company regardless of its size or what might be working well today.

Southwestern Bell processed 7,700,000 primary interexchange carrier (PIC) changes in calendar year 1997. Nearly 550,000 of those PIC changes were in Kansas. They resulted in 28,029 slamming complaints from customers. These numbers reflect only the changes received from the interexchange carriers and do not include changes received directly from customers. Such volume does not lend itself to a paperwork solution.

KTA members believe that enactment of HB 2649 **would**

- result in differences between state and federal slamming standards
- deprive Kansas consumers of the ability to make changes in their telephone service providers over the telephone
- result in Kansas consumers losing access to the benefits of national marketing campaigns of telecommunications providers
- create a paperwork nightmare for Kansas telecommunications service providers
- penalize telecommunications service providers that work hard to obey the rules and serve their customers
- give incumbent providers of local service notice of every customer they could be losing and an opportunity to talk the customer into staying with them.

Enactment of HB 2649 **would not**

- solve the all of the problems of slamming caused by unscrupulous providers of telecommunications services
- promote competition among providers of service, local or long distance

How would a large company adjust to handle the paperwork blizzard created by HB 2649 when it has been working for years to automate its systems to achieve the economies demanded by a competitive market?

KTA members believe that the major telecommunications companies would not redesign their marketing and billing processes for Kansas. They would instead target their efforts to customers in states where the FCC's verification procedures were in force. This could mean that Kansas consumers might not be afforded the benefits of competition.

At the local level, what is a company supposed to do with the paperwork created by HB 2649? Are they supposed to verify the signatures? Or do they trust that each signature is valid? Do they throw the forms away after making the change or file the forms away? If they file them, how long do they keep them? Who pays for all the extra paperwork, verification, and storage? The customer does.

Mr. Chairman, members of the committee: the KTA is not in favor of slamming. But HB 2649 is not the answer to the problems of slamming -- especially at this time when the FCC and KCC are still deciding how to proceed.

We respectfully request you to allow the regulatory bodies to complete their work. If their efforts do not result in an agreeable solution, KTA members pledge to work with all interested parties in writing a bill that will benefit Kansans.

Thank you for your time. I'll attempt to respond to any questions you have.

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CC Docket No. 94-129
FURTHER NOTICE OF PROPOSED RULEMAKING AND
MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

APPENDIX C

PROPOSED RULE CHANGES

Part 64 of the Commission's Rules and Regulations, Chapter I of Title 47 of the Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation for Part 64 continues to read as follows:

   AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 258, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228, 258, unless otherwise noted.

2. The title of Part 64, Subpart K, is proposed to be amended to read as follows:

   Subpart K - Verification of Changes in Telecommunications Service

3. Part 64, Subpart K, is further proposed to be amended by modifying Section 64.1100 to read as follows:

   64.1100 Verification of orders for telecommunications service generated by telemarketing.

   No telecommunications carrier shall submit a primary carrier change order generated by telemarketing unless and until the order has first been confirmed in accordance with the following procedures:

   (a) The telecommunications carrier has obtained the subscriber's written authorization in a form that meets the requirements of 64.1150; or

   (b) The telecommunications carrier has obtained the subscriber's electronic authorization, placed from the telephone number(s) on which the primary carrier is to be changed, to submit the order that confirms the information required in paragraph (a) of this section to confirm the authorization. Telecommunications carriers electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the primary carrier change, including automatically recording the originating automatic numbering identification; or

   (c) An appropriately qualified independent third party operating in a location physically separate from the telemarketing representative has obtained the subscriber's oral authorization to submit the primary carrier change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth or social security number); or

(d) Within three business days of the subscriber's request for a primary carrier change, the telecommunications carrier must send the subscriber an information package by first class mail containing at least the following information concerning the requested change:

(1) An explanation that the information is being sent to confirm a telemarketing order placed by the subscriber within the previous week;
(2) The name of the subscriber's current carrier;
(3) The name of the newly-requested carrier;
(4) A description of any terms, conditions, or charges that will be incurred;
(5) The name of the person ordering the change;
(6) The name, address, and telephone number of both the subscriber and the soliciting carrier;
(7) A postpaid postcard which the subscriber can use to deny, cancel or confirm a service order;
(8) A clear statement that if the subscriber does not return the postcard the subscriber's long distance service will be switched within 14 days after the date the information package was mailed by [name of soliciting carrier];
(9) The name, address, and telephone number of a contact point at the Commission for consumer complaints; and
(10) Carriers must wait 14 days after the form is mailed to subscribers before submitting their primary carrier change orders. If subscribers have cancelled their orders during the waiting period, carriers cannot submit the subscribers' orders.

4. Part 64, Subpart K, is further proposed to be amended by modifying Section 64.1150 to read as follows:

64.1150 Letter of agency form and content.

(a) A telecommunications carrier relying on a written authorization for a primary carrier change must obtain a letter of agency as specified in this section. Any letter of agency that does not conform with this section is invalid.

(b) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in paragraph (e) of this section having the sole purpose of authorizing a telecommunications carrier to initiate a primary carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the primary carrier change.

(c) The letter of agency shall not be combined on the same document with inducements of any kind.

(d) Notwithstanding paragraphs (b) and (c) of this section, the letter of agency may be combined with checks that contain only the required letter of agency language as prescribed in paragraph (e) of this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a primary carrier change by signing the check. The letter of agency language shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's billing name and address and each telephone number to be covered by the primary carrier change order;

(2) The decision to change the primary carrier from the current telecommunications carrier to the soliciting telecommunications carrier;

(3) That the subscriber designates [name of submitting carrier] to act as the subscriber's agent for the primary carrier change;

(4) That the subscriber understands that only one telecommunications carrier may be designated as the subscriber's interstate or interLATA primary interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional primary interexchange carriers (e.g., for intrastate, intraLATA or international calling), the letter of agency must contain separate statements regarding those choices. One telecommunications carrier can be both a subscriber's interstate or interLATA primary interexchange carrier and a subscriber's intrastate or intraLATA primary interexchange carrier; and

(5) That the subscriber understands that any primary carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's primary carrier.

(f) Any carrier designated in a letter of agency as a primary carrier must be the carrier directly setting the rates for the subscriber.

(g) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications carrier.

(h) If any portion of a letter of agency is translated into another language then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

5. Part 64, Subpart K, is proposed to be amended by adding Sections 64.1160 and 64.1170 to read as follows:

64.1160 Changes in Subscriber Carrier Selections

(a) Prohibition. No telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telecommunications service except in accordance with the verification procedures prescribed in this Subpart. Nothing in this section shall preclude any State commission from enforcing these procedures with respect to intrastate services.

(1) Where the submitting carrier submits a verification that fails to comply with 64.1160(a), the executing carrier will be liable where there has been some wrongdoing or malfeasance on the part of the executing carrier; otherwise the submitting carrier will be solely liable for violating 64.1160(a).

(2) Where the submitting carrier has complied with 64.1160(a), but the executing carrier executes the change inconsistent with the subscriber carrier change selection, the executing carrier will be solely liable for violating 64.1160(a).

(3) When a dispute arises between the submitting and executing carriers regarding liability, the carriers must pursue private settlement negotiations prior to requesting that the Commission institute proceedings to resolve any such dispute.

(b) Carrier Liability for Charges. Any telecommunications carrier that violates the verification procedures prescribed by the Commission and that collects charges for telecommunications service from a subscriber shall be liable to the subscriber's properly authorized carrier in an amount equal to all charges paid by such subscriber after such violation. The remedies provided by this subsection are in addition to any other remedies available by law.

64.1170 Reimbursement Procedures

(a) Upon receiving notification from the subscriber that the subscriber's carrier selection was changed without authorization, the properly authorized carrier must, within ten days, request from the unauthorized carrier the following:

(1) An amount equal to the charges paid by the subscriber to the unauthorized carrier; and,

(2) An amount equal to the value of any premiums to which the subscriber would have been entitled if the subscriber's selection had not been changed.

Where a subscriber notifies the unauthorized carrier, rather than the properly authorized carrier, of an unauthorized subscriber carrier selection change, the unauthorized carrier must, within ten days, notify the properly authorized carrier.

(b) Upon notification of a violation of 64.1160(a), the unauthorized carrier must remit to the affected subscriber's properly authorized carrier the total charges collected from the subscriber and the value of any premiums to which the subscriber would have been entitled if the subscriber's selection had not been changed.

(c) Restoration of Premium Programs. Upon receiving from the unauthorized carrier the value of premiums to which the subscriber would have been entitled if the subscriber's selection had not been changed, the properly authorized carrier must provide or restore to the subscriber any premiums to which the subscriber would have been entitled if the subscriber's selection had not been changed. Where a particular premium cannot be restored, the properly authorized carrier may substitute an equivalent premium or dollar amount as reasonably determined by the properly authorized carrier.

(d) Dispute Resolution. Carriers must pursue private settlement negotiations regarding the transfer of charges and the value of lost premiums from the unauthorized carrier to the properly authorized carrier prior to requesting that the Commission institute proceedings to resolve any dispute regarding such transfer of charges and the value of lost premiums.

Adopted July 14, 1997 Released July 15, 1997

CompTel-Kansas

Competitive TELECOMMUNICATIONS
Kansas ASSOCIATION

REASONS WHY HOUSE BILL No. 2649 SHOULD BE REJECTED

Presented by Michael Jay Ensrud, Secretary of CompTel-Kansas

There are already Federal Communications Commission (FCC) standards concerning "slamming". In addition, the Kansas Corporation Commission (KCC) is establishing a procedure to address "slamming" as part of an on-going rulemaking. The bill is not needed at this time.

HB# 2649 is redundant. Both the FCC and KCC have authority over this type of issue. There is no need for a third venue to address "slamming". Further, if there is variance between your standards, the KCC's standards, and the FCC's standards, such variance may be a basis to seek clarification from the Courts for any discrepancy between the various jurisdictions.

Either of the aforementioned regulatory agencies is better suited to judge the technical nature of "slamming" than are parties not knowledgeable about the industry. In CompTel's opinion, the legal determination of what constitutes a "slam" should involve a determination of the carrier's "intent". Without the carrier having the intent to purposefully change a customer's 1+ carrier without the customer's authorization, the penalties being considered are not justified.

The transfer of a customer from one carrier to another generally involves a customer providing the telephone numbers to be re-assigned to the new carrier-of-choice. In turn, the carrier-of-choice reports the telephone numbers to be changed to the serving Local Exchange Company ("LEC" or local service company). Errors can take place in the relay of the digits that constitute the customer's telephone number. Typing errors can occur. Such errors can result in one telephone line which should have been re-assigned, remaining with the "old" carrier and the carrier-of-choice not receiving

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traffic to which it is entitled. There is also a telephone line that was never authorized for transfer, but which was transferred due to the wrong telephone number being relayed. CompTel does not believe this type of clerical error should be subject to a $1000.00 fine.

An error of this nature should be rectified and the carrier requesting the change should be responsible for any and all costs associated with getting the mis-assigned line corrected - as long as it was not an error on the LEC's part. In this case, there was no intent to defraud. The KCC is the best party to determine the intent of the carrier who requested the LEC to change the telephone line for 1+ purposes from one carrier to another.

A second question is: who would be the "violator" and be subject to the fine, if either the customer or the LEC made the error? Surely, if it is a reasonable determination that it was a party other than the carrier who made the error, then the carrier should not be subject to the fine. In short, in these circumstances, who is the "violator" referenced in the bill?

When a party receives a bill containing unidentified long distance charges, it is not always an indication an unauthorized change in service provider has occurred. CGI (the company I work for) had a customer who assumed they had been slammed because CGI billed the party for long distance service. However, proper investigation showed that no change in the customer's 1+ carrier had occurred. Instead, another party in the customer's household placed calls via 10XXX (dial-around) service. If the customer had filed a complaint, the party adjudicating the matter would need to understand the difference between 1+ traffic and 10XXX traffic in order to issue a fair decision. The adjudicator needs to know how to confirm that the 1+ designated carrier, indeed, has changed since it is possible to place toll calls via a different carrier's network, but not change 1+ carriers.

All these technical nuances of what constitute a "slam" means that the KCC is better attuned to adjudicate such charges than are the parties listed in the bill.

For the aforementioned reasons, there is no need for the bill.