

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Don Myers at 9:00 a.m. on February 5, 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: Mike Reeht, AT&T
Karen Matson, Chief of Telecommunications, KCC

Others attending: See attached list

Chairman Don Myers mentioned to the Committee that hearings will continue today on **HB 2649**.

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

The Chairman recognized Mike Reeht, State Director of Government Affairs for AT&T in Kansas, opponent, and he spoke in opposition to **HB 2649**. Mr. Reeht noted that his comments are offered in support of the Kansas Telecommunications Association (KTA) Industry testimony regarding **HB 2649** that no legislation should be passed this session. (Attachment #1)

The Chairman mentioned that information was distributed from Michael Murray, Sprint, opponent, who spoke in opposition to **HB 2649** and noted that state law to prevent slamming is premature. (Attachment #2)

The Chairman recognized Karen Matson, Chief of Telecommunications, Kansas Corporation Commission. Ms. Matson mentioned that she was speaking on behalf of the Commission staff regarding HB 2649 (Attachment #3). Ms. Matson mentioned that there are some ideas and options the Committee may wish to consider on page 6 of her testimony.

The Chairman announced that the hearings were closed on **HB 2649**. Questions and discussion followed.

The Chairman acknowledged Representative Johnson who made a motion referencing a KCC suggestion in their testimony to allow this law to go into effect with a sunset provision that when the FCC rules are finalized this law would sunset. Representative Dreher seconded the motion. Discussion followed. Motion failed.

The Chairman recognized Representative Alldritt who made a motion to amend **HB 2649** with a balloon amendment (Attachment #4) to put New Sec. 1 a, b and c to replace a, b and c; and to add a sub-section to c that would say any charge that is involved in a change shall be paid by the new provider or the chosen provider so the consumer does not pay a switching charge; and at the bottom of paragraph 2, it shall be liable for a fine of not less than \$1,000. Representative McKinney seconded the motion.

The Chairman, due to not enough available time for discussion, mentioned that this motion will be held for discussion in tomorrow's meeting, February 6.

The meeting was adjourned at 10:00 a.m.

The next meeting is scheduled for February 6, 1998.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 5, 1998

NAME	REPRESENTING
Rosemary Foreman	KCC
Dave D. Harmon	KCC
Mike Recht	AT&T
Roger Beles	KOPR
Rob Hughes	KTA
Steve McCall Tom Becher	Hair & Hair McCall? Asso.
Walker Hendrix	curb
Hanne Ann Brown	KS Govt Council
Arby Adams	Golden Belt Telephone
Barry & Kenz	Golden Belt Telephone
Todd Thompson	Entco
Lami Recht	SM
Kristy Hiebert	KS Attorney General
Steve RARRICK	A.B.
Dung Ong	Kings Corporation
John Reinert	Kearny Law Office
Heather Randall	Whitney Samson, PA
Steve Matgomery	CAPs



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**TESTIMONY ON BEHALF OF AT&T
BEFORE THE HOUSE UTILITIES COMMITTEE
HOUSE BILL 2649
FEBRUARY 5, 1998**

Mr. Chairman and members of the Committee:

My name is Mike Reecht and I am State Director of Government Affairs for AT&T in Kansas.

The following comments are offered in support of the Kansas Telecommunications Association (KTA) industry testimony regarding HB 2649. AT&T concurs with the KTA conclusion that no legislation should be passed this session.

The Federal Communications Commission (FCC) which oversees interstate telecommunications services and the Kansas Corporation Commission (KCC) which has primary jurisdiction over intrastate services are both engaged in examining new rules which would strengthen consumer protection from unauthorized carrier changes by unscrupulous telecommunications providers.

The proposed legislation as crafted in HB 2649, although well intentioned, would serve to restrict customer choice in their selection of a carrier. The logistics of transmitting signed documentation to a local company who would effectuate the change would become unmanageable. As the local market becomes more competitive with customers able to choose between various local providers just the determination of where to send the change request notice becomes problematic. The bill, as drafted, would negatively affect the customer's ability to change carriers rapidly.

It is also increasingly important that the rules covering carrier selection are consistent between the interstate and intrastate jurisdictions. As local companies begin to offer interstate long distance service in competition with existing long distance companies and long distance companies begin competing for local customers, it is essential that consistent rules exist for customers to make their competitive choices, whether it be for a local or long distance service provider.

The telecommunications industry is truly in a state of transition. The KCC should have the flexibility to adopt rules and procedures to fit this emerging industry, and those rules must be consistent with the federal rules.

AT&T agrees with the KTA position that the regulatory agency is in the best position to take the necessary action to protect the consumer from unscrupulous telecommunications providers.

House Utilities
02-05-98
Attachment 1



A state law to prevent slamming is premature.

Slamming is a plague on the competitive long distance marketplace, and it will undoubtedly spread to local telephone markets if and when competition develops there. While Sprint is eager to find a solution to slamming, it does not want 50 different state-specific remedies that will make it difficult for consumers to switch long distance companies and unnecessarily increase the cost of service.

Sprint suggests that a state law to address the issue is premature. The Federal Communications Commission (FCC), as well as the Kansas Corporation Commission, have been looking into ways to prevent slamming. Indeed, the FCC has already adopted aggressive rules requiring independent verification of telemarketing orders in order to minimize the opportunities for slamming. The FCC has also sought public comment on how it should implement the anti-slamming requirements of the federal Telecommunications Act of 1996.

Slamming allegations arise from several different causes.

Some slamming allegations seem to result from confusion in the customer's household about who had the authority to authorize a change, some from "buyers remorse" (when a customer may authorize a change, but later regret and recant), and some from customers seeking to avoid having to pay change charges.

Also, there are bad actors at work. Some customers have been known to assert they were slammed by various carriers at different times with the sole motive of obtaining free service for a period of time. On the other hand, there seems to be a significant number of outlaw carriers who ruthlessly slam innocent customers, hoping they'll pay the bill without complaint. The bad actors should be put out of business.

There are also the inadvertent slams. When a long distance carrier advises a local telephone company that a customer has decided to change service, a lot of data is passed between them to accomplish the conversion. A single-digit error can result in the wrong customer being connected to the wrong carrier, despite a valid order.

A way to curb the fraud

Long distance selections are changed by submitting orders to the local telephone company. The telephone company, in order to be completely non-discriminatory, simply executes the order. Knowing the process, unscrupulous actors can submit false orders to telephone companies, get the customers converted and hope they'll pay before discovering or complaining about the unauthorized service change.

Sprint believes An effective way to curb fraudulent slammers would be to make a neutral third party responsible for verifying all change orders before they are executed. It could even reject orders from carriers who've been proved to have fraudulently slammed unsuspecting customers in the past. Such a neutral third party could also eliminate the possibility of anticompetitive conduct by an incumbent telephone company that is also competing against long distance carriers. Sprint believes its suggestion could significantly curb slamming and is working hard for its adoption by the FCC.

Sprint encourages the Kansas Legislature not to act prematurely and to ensure that Kansas requirements are consistent with those being developed at the FCC.

For additional information, contact Michael Murray at 785 232-3826.

House Utilities
02-05-98
Attachment 2

H.B. 2649
Before the House Utilities Committee
Karen J. Matson
Chief of Telecommunications
Kansas Corporation Commission
February 6, 1998

INTRODUCTION

Mr. Chairman and members of the committee, I am Karen Matson, Chief of Telecommunications for the Kansas Corporation Commission. I head the research staff for the Commission in matters dealing with telephone companies and their services. I am speaking for the Commission Staff today regarding H.B. 2649.

Slamming is a consumer issue that has been with us for several years. We don't oppose the committee trying to address what we consider to be a serious problem. Early on the states and the Federal Communications Commission (FCC) struggled, in their own separate jurisdictions, to establish reasonable verification standards for long distance service. Finally, in 1996, as part of the re-write of the Federal Telecommunications Act, Congress directed the FCC to establish verification procedures for local as well as long distance. It also required that the individual states enforce these verification procedures within their state jurisdictions consistent with the FCC standards.[Section 258(a)] The FCC did have four verification standards for long distance service already in place; however, the FCC needed to review and modify those standards to incorporate local service. These blended standards have been a long time in the making. The last round of comments finally closed on January 30, 1998, and a final decision is expected in May or June of this year.

STATE LEVEL ENFORCEMENT

What is the current picture in Kansas? The majority of complaints received in our office tend to fall into one of two categories: slamming or deceptive marketing. I was able to provide the committee some preliminary numbers on slamming last week. Our internal tracking of slamming has worked off of two data bases in the past, so to give you the most accurate number

we merged the data bases and cleaned up some of the data to get a final number for you. These numbers will be slightly different from the totals I gave you last week. Here is the result of our tracking in the last five years:

	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>
Slamming	48	60	278	255	179
Deceptive Mktg.	0	0	11	73	342
<u>TOTAL</u>	48	60	289	328	521

All slamming complaints were tracked as "slamming" until about mid-year 1995. At that time we broke out "Deceptive Marketing" into its own category. What our staff records as "slamming" is the situation in which the customer alleges no contact with the "slammer". This situation occurs if, for example, an over zealous marketing agent goes through a telephone book at random and writes down numbers and names, fraudulently signing them up for telephone carrier changes.

We record a complaint as "Deceptive Marketing" when a customer has had some contact with the slammer. For example, the customer may say that they did indeed talk with the "XYZ Long Distance Company" or endorsed a check from the "XYZ Long Distance Company"; but the customers insist that they did not realize that they had actually authorized a telephone carrier change.

You'll notice two things right away about our tracking numbers. The total complaints each year is increasing; and the number of deceptive marketing complaints, which we refer to the AG's office for enforcement, is also increasing.

STATE PROCEDURES

All complaints received by the Commission are reviewed and resolved. Deceptive

marketing complaints are referred on to the AG's office. The staff calls on the customer's behalf to be sure the customer is changed back to the carrier of choice and that the customer is credited the Change Charge (\$5.00). The customer is also refunded any charges that are in excess of those of their carrier of choice. We very rarely have any objections from the carrier which committed the slam when we request this remedy be granted the customer. This work is all handled at the staff level without formal Commission action.

The Commission has pursued administrative penalties through formal action for four companies in addition to ordering those companies to relinquish the slammed customers, provide refunds or credits for the change charge, and refund excessive revenues.

- National Accounts - \$9,000
- Direct Network - \$ 750
- Equal Net - \$6,750
- Telecom Network - \$1,000

These companies were selected for formal investigation because of either having a significant number of repeat slamming incidents or they appeared to be responsible for slamming a large number of customers in one or more incidents. The fines are paid into the State Treasurer's Office where they are deposited in the General Fund.

FEDERAL LEVEL ENFORCEMENT

Enforcement on the federal level is handled by the Common Carrier Bureau's Enforcement Division. Since 1994, nine companies accused of slamming have entered into consent decrees and have agreed to make payments to the U.S. Treasury totaling \$1,245,000. Five Notices of Apparent Liability have been issued for apparent slamming violations with combined proposed forfeiture penalties of \$400,000 and two Notices of Forfeiture have been issued, with combined forfeiture penalties of \$160,000.

The Consumer Protection branch processes written complaints and inquiries. During 1995, that bureau handled 12,795 slamming complaints which comprised 34 percent of total complaints. During 1996, the total number of complaint were significantly higher as were the slamming complaints. The bureau handled 25,482 slamming complaints which made up 36 percent of total complaints that year.

VERIFICATION PROCEDURES AND ENFORCEMENT

The current verification procedures we use match the four criteria set by the FCC. The KCC did use a written authorization only standard from 1995 to June 30, 1996. On July 1, 1996, following the requirements of K.S.A. 66-2002(j), which directed the KCC to monitor the FCC slamming guidelines and to modify the state requirements accordingly, the KCC modified its verification requirements to match the FCC's four criteria.

The KCC does have an investigation underway at this time to address Slamming on a state-wide basis, rather than on a company-by-company basis. Slamming is one part of a larger review of Consumer Billing Standards. It's my expectation that the final rules would be consistent with the FCC verification procedures.

ENFORCEMENT

There needs to be more work done in this area. In our work on this issue, we know the AG's office also processes slamming complaints, a portion of those are the deceptive marketing complaints which our office has recorded and referred the callers on to them. Duplication of effort by two state agencies does not seem to be an efficient way to handle the stiff enforcement steps slamming seems to require. The increasing number of "deceptive marketing" complaints, which are consumer protection issues, also demonstrates to us that the entire matter of slamming may be best handled by the Attorney General's office since it is in a better position for enforcement.

H.B. 2649 may be very timely in that it cleanly moves slamming into the Attorney

General's arena so there's no uncertainty about which agency has jurisdiction. If the penalty language is modified to be consistent with the Consumer Protection Act, it would also provide a significantly higher level of fining authority (\$5,000 per occurrence) than either the existing language or the KCC's existing enforcement statutes allow (\$1,000 per occurrence - K.S.A. 66-138).

ADDITIONAL ISSUES

Regardless of which agency you select for enforcement, we'd like to draw your attention to issues you may wish to consider. As the committee is aware, this bill only allows one type of verification - a written verification signed by the customer. This is what a lot of the hollering from the industry is about: do you continue with the proposed verification procedure (written authorization only) or do you expand the verification procedures to include the FCC procedures? (Please note the FCC procedures have received final comment - decision expected in May or June.)

- The FCC has four verification standards. [Verification of Changes in Telecommunications Services. (CC Docket No. 94-129)]
 - A) written verification;
 - B) electronic ordering (Customers place their own orders for changes through an electronic process);
 - C) verbal order confirmed by an off-site independent third party; and
 - D) a verbal order followed by a "information package" that is mailed to the subscriber within 2-3 days which explains the terms of the agreement and verifies the change. The customer has 14 days to back out of the decision.

- The Federal Act directs that the states maintain compliance with the FCC standards. Retaining the single verification procedure places the law at a higher risk of being "overturned" in court if challenged.

Ideas and options which the committee may wish to consider:

- Modify language in the bill to indicate that written authorization is not necessary to change telephone service providers. However, written verification is the only defense in response to a slamming complaint.
- Leave language unchanged except for including a sunset provision which would go into effect when the FCC rules are finalized. This would have the effect of creating an "interim" law that would cease when the FCC verification procedures go into effect..
- Incorporate the current proposed FCC verification procedures.

I wish to thank you for your time. A number of our staff is with me today: Dave Dittmore, Director of the Utilities Division; Susan Stanley, Assistant General Counsel for the Commission; Rosemary Foreman, Director of the Public Information Office; and David Heinemann, Executive Director of the Commission. If you desire, Mr. Chairman, we are available for any questions you and your committee may have.

DRAFT

House Bill No. 2649

New Sec. 1 (a) No local exchange carrier or telecommunications carrier shall honor a request by any person other than its customer to change the primary carrier of long distance or local exchange service to such customer in the state, except: (1) Where the request is placed by a local or long distance company that has received a letter of agency containing clear and conspicuous disclosure of such change signed by the customer authorizing the change; (2) where the customer affected by the change initiated the contact with the local or long distance company in order to request the change; (3) where the customer affected by the change called a toll-free number to confirm the request for change made in response to a contact initiated by the local exchange or long distance company requesting the change; or (4) where the state corporation commission or Federal Communications Commission otherwise expressly authorize. For purposes of this section, "customer" means any person, firm, partnership, corporation, or legal entity that is authorized to order telecommunications services supplied by a telecommunications services provider.

(b) The requisite letter of agency at a minimum shall identify a single designated carrier, shall be separate or severable from any sweepstakes, contest, or similar promotional program, shall contain the telephone number of the account, and shall be signed by the customer responsible for paying charges on the account. In the event that a local exchange carrier or telecommunications carrier changes the primary carrier for any customer based upon representations that the change was authorized by the customer in writing or by a customer initiated contact, which is later disputed by the customer who seeks to be switched back to the original primary carrier and is not verified by the carrier requesting the change, the telecommunications carrier or local exchange carrier requesting the change shall be liable to the customer for any amount collected from the customer in excess of what the prior provider would have charged, shall be liable to the local exchange carrier or telecommunications carrier for the costs of investigating, making and reversing the change, and shall be liable for a fine of not less than \$250 for the first occurrence, \$500 for the second occurrence, \$1000 each for the third and any subsequent occurrences and shall be liable for any other fines, penalties or damages provided by law.

(c) Local exchange carriers may make available to their customers the option to require prior written authorization from the customer in order to change the provider of long distance or local exchange service for such customer.

*House Utilities
02-05-98
Attachment 4*