

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairperson Don Myers at 9:00 a.m. on February 24, 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:

Others attending: See attached list

Chairman Don Myers noted that Staff had distributed the proposed amendment for **Substitute for Substitute for HB 2649.** (Attachment #1) The Chairman asked Representative Aurand to brief the committee on the proposed amendments. Representative Aurand noted that there were some terms that were discussed in the Sub-committee with the Attorney General's Office and the Kansas Corporation Commission to be sure that the terms were clear. Questions and discussion followed.

The Chairman recognized Representative Aurand who made a motion to accept the proposed amendments and Representative Mayans seconded the motion. Motion carried.

The Chairman recognized Representative McKinney who made a motion on Page 1, sub-section (b), last line of the paragraph after the word authorization, to reinstate the terms "by clear and convincing evidence". The motion was seconded by Representative Alldritt. Discussion followed. Motion carried.

The Chairman recognized Representative Alldritt who made a motion to pass **Substitute for Substitute for HB 2649** favorable as amended. The motion was seconded by Representative McKinney. Motion passed.

The Chairman asked Representative Alldritt to carry the bill.

The meeting was adjourned at 9:55 a.m.

The next meeting is scheduled for March 4, 1998.



## Substitute for Substitute for HOUSE BILL NO. 2649

By Committee on Utilities

AN ACT concerning telecommunications; prescribing procedures for certain changes in a consumer's primary long distance carrier or local exchange carrier and changes or additions to a consumer's other telecommunications services; providing penalties for violations.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) As used in this section:

(1) "Express authorization" means an express, affirmative act by a consumer clearly agreeing to the change in the consumer's primary long distance carrier or local exchange carrier to another carrier or to change or add to the consumer's other telecommunications services.

(2) "Telecommunications services" has the meaning provided by K.S.A. 66-1,187 and amendments thereto.

(b) No local exchange carrier or telecommunications carrier shall submit to a local exchange carrier an order to change a consumer's primary long distance carrier or local exchange carrier to another carrier or to change or add to a consumer's other telecommunications services without having obtained the express authorization of the consumer authorized to make the change or addition. The local exchange carrier or telecommunications carrier requesting the change or addition shall have the burden of proving the express authorization.

(c) No local exchange carrier, telecommunications carrier or third party utilized to verify an order to change a consumer's primary long distance carrier or local exchange carrier to another carrier or to change or add to a consumer's telecommunications services shall:

(1) Engage in any activity, conduct or representation while soliciting or verifying a change in a consumer's primary long

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distance carrier or local exchange carrier to another carrier or a change or addition to a consumer's telecommunications services that has the capacity to mislead, deceive or confuse the consumer;

(2) employ a box or container used to collect entries for sweepstakes, contests or drawings to gather letters of agency or other documents that constitute authorizations by consumers to change the consumers' primary long distance carrier or local exchange carrier to another carrier or to change or add to the consumers' other telecommunications services; or

(3) use any methods not approved by the federal communications commission statutes, rules and regulations (as in effect on the effective date of this act) or state corporation commission rules and regulations to change a consumer's primary long distance carrier or local exchange carrier to another carrier or to change or add to a consumer's other telecommunications services.

(d) Any local exchange carrier or telecommunications carrier that violates subsection (b) or (c) shall be liable to the consumer:

(1) For a refund of any amounts collected and a credit for any unpaid amounts charged by the carrier not properly authorized to change a consumer's primary long distance carrier or local exchange carrier to another carrier or to change or add to a consumer's other telecommunications services, including any charges for local or long distance services, switching fees or other related charges; and

(2) for restoration of any premiums to which the consumer would have been entitled if the unauthorized change had not occurred.

(e) Every local exchange carrier or telecommunications carrier that submits an order for a change of a consumer's primary long distance carrier or local exchange carrier to another carrier, within three business days after the order to change is placed, shall mail to the consumer authorized to make

the change or addition a letter, using first class mail, postage prepaid, that complies with the following:

(1) The letter must be the sole and separate document in the envelope and the envelope must be clearly marked, on the front, in 12 point or larger type, "NOTICE OF SWITCH IN TELEPHONE CARRIER".

(2) The letter, for which the sole purpose is to describe the change in carrier authorized by the consumer, must be printed in 10 point or larger type and contain clear and plain language that confirms the details of the change, including the name, address and telephone number of the carrier submitting the order to change; the name of the consumer requesting the change; all terms, conditions and fees applicable to the change; and a toll free number that the consumer can call to cancel the service.

(f) Any local exchange carrier or telecommunications carrier that violates subsection (b), (c), (d) or (e) shall be subject to a civil penalty of not less than \$5,000 nor more than \$20,000 for each such violation.

(g) Any violation of this section is a deceptive and unconscionable act or practice under the provisions of the Kansas consumer protection act and shall be subject to any and all of the enforcement provisions of the Kansas consumer protection act. Nothing in this section shall preclude the state corporation commission from exerting its authority as it pertains to intrastate services nor the attorney general from pursuing violations of any other provisions of the Kansas consumer protection act by a local exchange carrier or telecommunications carrier.

(h) This section shall be part of and supplemental to the Kansas consumer protection act.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.