Approved: March 14, 2000 Carl Dean Holmes
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:09 a.m. on February 18, 2000 in Room 231-N of the Capitol.

All members were present.

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

Conferees appearing before the committee: Richard Morris, Sprint
Wayne Bogart, Networks Plus
Richard Cimerman, National Cable TV Association
Mike Reecht, A. T. & T.
Secretary Dean Carlson, Department of Transportation

Others attending: See Attached Guest List

A copy of an article from the Rutland Daily Herald entitled "Unnecessary Law" (Attachment 1) was distributed to the committee. The article deals with unwanted telephone solicitations.

HB 2704 - Cable operators required to provide access to broadband internet facilities for internet service providers.

Mr. W. Richard Morris, Vice President External Affairs/Local Markets for Sprint, testified in support of **HB 2704** (Attachment 2). He stated that Sprint urges the committee to adopt legislation that would require cable television operators to provide open access not only to internet service providers, but also to providers of non-video programming telecommunications services. Mr. Morris included a copy of a balloon amendment with his testimony.

Wayne Bogart, Director of Internet Services for Networks Plus, provided testimony as a proponent of **HB 2704** (Attachment 3). Mr. Bogart stated that the only way to have a competitive market for telecom services in the future is to allow competitors to share the wire leading to customer's homes. He also stated that cable companies are entering the two-way telecommunications world and must be subject to the same requirements as any other new entrant. Telephone companies do not have access blocked by the owners. Mr. Bogart said that a closed access policy will ultimately lead to broadband Internet access monopoly in the cable technology arena and threaten the health and growth of the Internet itself.

The proponent conferees responded to questions from Rep. Kuether, Rep. Alldritt, Rep. Klein, Rep. McClure, Rep. Krehbiel, Rep. Sloan, Rep. Dahl and Rep. Holmes.

Richard Cimerman, Director of State Telecommunications Policy for the National Cable Television Association, testified in opposition to **HB 2704** (Attachment 4). Mr. Cimerman stated that, like similar bills in other states, this bill would have the opposite effect its sponsors claim it will have. Passage of the bill would not be promoting investment and competition in Internet facilities and services, it would deter new investment and saddle the Internet with legacy regulation designed for the railroad and telephone monopolies of a century ago. It also appears to be inconsistent with federal law barring common carrier regulation of cable companies. He concluded by saying that the debate really boils down to whether one believes in government regulation of a competitive market or whether the competitive market place itself is the best way to encourage broadband deployment to meet the needs of consumers.

Mike Reecht, on behalf of A. T. & T., provided testimony as an opponent to **HB 2704** (Attachment 5). Mr. Reecht explained that A. T. & T. believes the bill would force cable providers to open their networks to ISP's through mandatory government regulation. He stated that this mandate would slow down the process of deployment of the much needed competitive infrastructure in Kansas.

The opponent conferees responded to questions from Rep. Krehbiel.

Chairman Holmes announced the committee would reconvene at approximately 12:30 p.m.

Committee was recessed at 10:58 a.m.

Chairman Holmes reconvened the committee at 12:18 pm for a brief presentation by Secretary Dean Carlson, Kansas Department of Transportation. Secretary Carlson spoke to **HB 2897 - Grant of public easements for telecommunications access**. He apologized for not appearing the day of the hearing, but did have some remarks he wanted to share with the committee. Secretary Carlson read a letter from Department of Administration Secretary Stanley that gave approval for the right-of-way contract. He explained that DISC had been fully informed of the circumstances of the contract and that it was not a contract for telecommunications. The fibre optic cable will be used as part of a construction project to allow them to communicate from one interchange to the other. Secretary Carlson stated he wanted the committee to know, for the record, that KDOT has cooperated with DISC in every way so that they know that capacity is available for other agencies or other operations for the state.

The committee recessed at 12:25 p.m. for lunch and reconvened at 12:48 p.m.

HB 2945 -Task force to make recommendations to legislature regarding 911 and E911 telephone service.

Rep. McClure introduced a proposed balloon to the bill. The balloon would change the composition of the task force membership, remove the adjutant general's office and change support staff provisions. Rep. McClure moved to adopt the balloon, Rep. Long seconded the motion. Motion carried. Rep. Krehbiel moved to adding two members, one who has experience with a telecommunications local exchange carrier that serves more than 50,000 access lines in Kansas and one who has experience with less than 50,000 lines. Rep. Alldritt seconded the motion. Motion carried. Rep. McClure moved to change page 2, line 24 to read "...house standing committee on utilities or the senate standing committees on utilities or commerce." Rep. Long seconded the motion. Motion carried. Rep. Loyd moved to recommend favorable passage as amended. Rep. Vining seconded the motion. Motion carried. Rep. Morrison will carry the bill.

HB 2943 - Authorized uses of tax revenues collected for emergency (911) telephone service

Rep. McClure moved to amend page 1, line 36 by changing the words 'hearing impairments' to 'communication impairments'. Rep. Alldritt seconded the motion. Motion carried. Rep. Klein moved to add 'charges for vehicle preemption and priority control systems' as new section 6. Rep. Kuether seconded the motion. Motion failed. Rep. Loyd moved to table **HB 2943.** Seconded by Rep. Myers. Motion carried.

Rep. Sloan requested to reconsider **HB 2945** to change the reporting date to earlier in the legislative session.

HB 2945 -Task force to make recommendations to legislature regarding 911 and E911 telephone service.

Having voted on the prevailing side on **HB 2945**, Rep. Sloan moved to reconsider the previous action. Rep. McClure seconded the motion. Motion carried. Rep. Sloan moved to change page 2, line 22 to read 'the first day of the legislative session, 2001'. Rep. Alldritt seconded the motion. Motion carried. Rep. Sloan moved to recommend **HB 2945**, as amended, favorable for passage. Rep. Dahl seconded the motion. Motion carried.

HB 2984 - Owners of fiber-optic cable required to submit certain information to state.

Rep. Sloan distributed a balloon amendment that would change the definition of owner of fiber optic cable to include telephony, internet and video transmission, that would exclude local intraexchange facilities with no Kansas access points, would designate certain items as proprietary and would remove the expiration date. Rep. Sloan moved to adopt the balloon and Rep. Alldritt seconded the motion. Motion carried. Rep. Dahl moved to change line 29 to read ..."other characteristics, excluding capacity ownership and quantity of dark fiber...". Rep. Loyd seconded the motion. Motion carried. Rep. Sloan moved to report **HB 2984**, as amended, favorable for passage. Rep. Dahl seconded the motion. Motion carried. Rep. Compton will carry the bill.

HB 2897 - Grant of public easements for telecommunications access

Rep. Dreher moved to strike 'secretary of education' from line 23. Rep. McClure seconded the motion. Motion carried. Rep. Loyd explained his proposed balloon which added a provision that any consideration received for the granting of an easement shall be for the benefit of the state as a whole. Rep. Loyd moved the adoption of the balloon and Rep. Vining seconded the motion. Motion carried. Rep. Alldritt moved to change sec 3, line 33, to read 'publication in the Kansas Register.' Rep. Vining seconded the motion. Motion carried. Rep. Loyd moved to report **HB 2897** as amended, favorable for passage. Rep. Dreher seconded the motion. Motion carried. Rep. Dreher will carry the bill.

HB 2634 - Authorizing consumer to choose provider of electricity if generated from renewable resources.

Rep. Sloan distributed a balloon and detailed explanation (Attachment 6) of the balloon to the committee. The amendments were 1) requires the generated power be placed directly into the certificated company's distribution line, 2) establish a threshold of 2 MWs before provisions of bill take effect, 3) require green power generator and certificated utility to negotiate terms and conditions, and 4) require power from green power generator be available for at least 75% of the time. Rep. Sloan reiterated that this bill and proposed amendments would not constitute retail wheeling because it effectively limited the bill's impact to Kansas renewable generators. Rep. Sloan moved to adopt the balloon. Rep. Alldritt seconded the motion. Motion failed. Rep. Myers moved to table **HB 2634.** Rep. Vining seconded the motion. Motion carried.

HB 2849 - Certain electric public utility construction work in progress allowed in rate base

Rep. Sloan distributed a balloon and support documentation (Attachments 7 and 8) to the committee. The balloon would amend Section 1(2) definition of a public utility property, would allow the KCC to approve Construction Work in Progress (CWIP) if they decide it is in the best interest of the customers and companies, and permit merchant power plants to be constructed in Kansas and be taxed as commercial property. Rep. Sloan moved to adopt the balloon and Rep. McClure seconded the motion. Motion carried. Rep. Sloan moved to report **HB 2849**, as amended, favorable for passage. Rep. Dreher seconded the motion. Motion failed.

HB 2891 - Telemarketer no-call list

Rep. McClure distributed a balloon to the committee. Also distributed to the committee was information on the Louisiana Law on Caller ID (Attachment 9), a copy of the Oregon Law relating to telephone solicitation (Attachment 10), and a proposal modeled on the Oregon Law (Attachment 11). The balloon would remove the references to the Corporation Commission and replace them with the attorney general and would remove the required fee payment from the consumer. Rep. McClure moved the adoption of the balloon and Rep. Kuether seconded the motion. Motion carried. Rep. Loyd moved to amend by striking lines 12 through 15 on page 3 and restoring the previously deleted language on page 4, lines 5 and 6. Rep. Sloan seconded the motion. Rep. Alldritt requested the motion be divided. The chairman allowed the division. The first part of the motion to amend carried. The second part of the motion to amend carried

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES in Room 231-N on February 18, 2000 at 9:09 a.m.

with a request by Rep. Alldritt, Rep. Klein, and Rep. Kuether to have their 'no' votes recorded in the minutes. Rep. McClure moved to amend the bill by not allowing the list to be sold or traded away. Rep. Alldritt seconded the motion. Motion failed. Rep. Sloan moved to amend the bill to allow the distribution of the list to associations' own memberships. Rep. McClure seconded the motion. Motion carried. Rep. Krehbiel moved to amend page 3, line 26 by striking 'company to inform its residential' and adding 'carrier, each telecommunications carrier and each wireless telecommunication service provider to inform its'. Rep. Kuether seconded the motion. Motion carried. Rep. Loyd moved and Rep. Alldritt seconded to delete on page 1, line 41 the words 'an existing business relationship' and replace with 'a business relationship within the preceding 36 months'. Motion carried. Rep. Krehbiel moved to strike subsection d on page 2, line 1. Rep. Myers seconded the motion. Motion carried. Rep. Sloan moved to add a section to exclude organizations within the county to which the call was made. Motion died due to lack of second. Rep. Alldritt moved to report **HB 2891**, as amended, favorable for passage. Rep. Loyd seconded the motion. Motion carried. Rep. Alldritt will carry the bill.

Rep. Dahl, having voted on the prevailing side, moved to reconsider the action on **HB 2849.** Rep. Myers seconded the motion. Motion failed.

Meeting adjourned at 3:23 p.m.

Next meeting will be Tuesday, February 21, 2000 at 9:00 a.m.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 18, 2000

NAME	REPRESENTING
Whitney Damron	ONEOK, Inc.
Rick Morris	Sprint
Richard Lawson	Sprint
Mike Murray	Sprint
Doug LAURENCE	SW Bell
Guy McDonald	KCC-Staff
Donna Mack	Interpreter. - Sign Link Inc.
Gail Bright	A.G.
Steve Ramick	A.G.
Teresa Salts	A.G.
Bob FLAPPAN	AT&T
WARD MORGAN	NETWORKS PLUS
WAYNE BOGART	Networks Plus
BRUCE GRAHAM	KEPCo
Dick Bohle	Western Resources
Bill Smith	KAR
Martha Jane Smith	KMHA
Erik Sartorius	Johnson Co. Board of Realtors
ANDY SCHARF	DISC
Rob Hodges	KTIA

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 18, 2000

NAME	REPRESENTING
Doug Smith	State Independent Telephone Assn
Dave Holthaus	W. Res.
John Federico	KCTA
DREW FLEMING	Cox Communications / KCTA
TOM KREWSON	COMCAST
Richard Cimerman	NCTA
Jay Hilbaugh	Cox Communications
Larry Holloway	KCC
Janette Luehring	KCC
Christine Aarnes	KCC
Steve Montgomery	MCI WorldCom
Roger Froltzo	KCC
Jim Yanally	Cellular One
Don Seifert	City of Olathe
~~STEVE KARCHER~~	~~ATTORNEY GENERAL~~
~~GAIL ANGLE~~ already signed	"
~~TERESA SAIS~~	"
JC Long	Utilicorp United Inc.
Dean Carlson	KDOT
Nancy Bogina	KDOT

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 18, 2000

NAME	REPRESENTING
Chuck Bredahl	Adjutant General's Dept
David Lake	Bd. of EMS
Bill Brady	KS Gov't Consulting
Jon K Stiles	KEC
Susan Cunningham	KCC
Cynthia Smith	KCPL
Mike Fenton	AT+T
Jim Yonally	Cellular One
ED SCHAUB	WESTERN RESOURCES
REBECCA J. ROSENTHAL	KCOHH
DAVID ROSENTHAL	SWBT/KRC
Douglas Johnston	House Dist 92
Charles Heyman	KNRC/Sierra Club
Pat Lehman	KFSA
Sandy Braden	McGill, Gaches, Assoc.
Kelly Kultala	City of Overland Park
Kim Gulley	CKN
Steve Montgomery	MCI/Worldcom
ELDRIDGE LUBER	ONEOK/KGS
STEVE KEARNEY	ALLTEL

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 18, 2020

NAME	REPRESENTING
Cindy Lash	Post Audit
Walker Hendrix	CURB
Pat Hurley	
Tom Day	KCC
Rep Ted Powers	

ESTABLISHED 1794

Rutland Daily Herald

FROM ARTICLE XVIII OF THE VERMONT BILL OF RIGHTS (Adopted July 1777)
"That frequent recurrence to fundamental principles, and a firm adherence to justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the blessings of liberty, and keep government free."

R. JOHN MITCHELL, *President and Publisher*
JOHN W. VAN HOESEN, *Managing Editor*
DAVID R. MOATS, *Editorial Page Editor*

ROBERT W. MITCHELL, *Editor and Publisher (1942-1993)*

Saturday, April 4, 1998

Unnecessary Law

When the Legislature finally acts on some bills, as it seems poised to do with a much-needed drunken driving measure, one is tempted to respond "It's about time."

But for other legislative proposals, the proper reaction might well be "Why?"

That question should be asked of a bill under consideration in the Vermont Senate. S.297 — An Act Relating to Unwanted Telephone Solicitations — would force businesses to pay up to $500 annually to the state before they could sell by phone. These registration fees would then fund a Vermont Telemarketing Freedom Registry, a list of those who do not want to be pestered by telephone solicitations.

Anyone who's had a pleasant dining experience interrupted by a telephone solicitor knows how irritating the practice can be. But that common annoyance doesn't excuse this bill, which is expensive, unnecessary, discriminatory and likely to be ineffective.

To get the registry up and running, the state would have to take $100,000 out of the existing Universal Service Fund. This fund, into which all the state's telephone customers pay, helps with programs like the one that subsidizes phone service for low-income Vermonters. Why divert money from such important enterprises?

The bill may also be unnecessary. Harried consumers may not realize just how much they can already do to fight unwanted phone solicitations.

S.297 would duplicate certain features of a federal law that already limits some telephone solicitations. The 1991 Telephone Consumer Protection Act allows consumers to avoid unwanted calls simply by asking the calling company to place their names on a do-not-call list. The caller must keep a record of that request for 10 years. If the calls persist, consumers can seek legal relief.

The bill wouldn't provide comprehensive relief from the problem it purports to solve.

Those who want to avoid those annoying calls may also contact the Telephone Preference Service Direct Marketing Association (P.O. Box 9014, Farmington, N.Y. 11735-9014) and register their names. The DMA lists can be effective because it's a waste of time and money for companies to call those who aren't interested in doing business over the phone.

Another major weakness of S. 297 is that it seems biased against legitimate businesses.

It requires an annual fee, which is really nothing more than a tax on certain kinds of business activities.

In calling someone on the proposed list, a business is judged to have committed consumer fraud and is subject to a fine of up to $10,000 per call.

These hardly seem like business-friendly provisions.

Enrolling in the DMA's registry won't stop every act of telephone harassment, but neither would the proposed Senate bill. S.297 would seek to block commercial solicitations, but would make exemptions for charities, police organizations, political fund raising and the like. The bill, therefore, wouldn't provide comprehensive relief from the problem it purports to solve.

In the final flurry before legislative adjournment, it would be easy for a bill such as S.297 to slip through to pass. But a little time for reflection, and bright light of day, should make lawmakers realize there's simply no need for law.

HOUSE UTILITIES
DATE: 2-18-00
ATTACHMENT 1

112 STATE STREET
DRAWER 20
MONTPELIER VT 05620-2601
TEL: (802) 828-2811

FAX: (802) 828-2342
TTY (VT): 1-800-734-8390
e-mail: vtdps@psd.state.vt.us
Internet: http://www.state.vt.us/psd

STATE OF VERMONT
DEPARTMENT OF PUBLIC SERVICE

Memorandum

To: Senate Finance Committee

From: Deena L. Frankel, Director of Consumer Affairs & Public Information, *802.882.4021, frankel@psd.state.vt.us*

Subject: Telemarketing reduction campaign results

Date: February 2, 2000

As requested, this memo presents results of the telemarketing reduction public awareness campaign conducted in late 1998 and early 1999 by a coalition of state agencies, telecommunications companies and other businesses. The campaign included two rounds of bill stuffers in all local telephone bills, a press conference, a public service announcement by Governor Dean, and articles in business publications informing businesses about their obligations. The campaign sought to inform consumers of the availability of the national Telephone Preference Service as a means to reduce telemarketing calls, as well as their rights under the Federal Telephone Consumer Protection Act to be placed on company-by-company do-not-call lists.

As of:	*Status of campaign*	*VT households registered with the Telephone Preference Service*	*Percent change*
January 1998	Pre-campaign	6,226	
January 1999	First phase underway	9,873	+59%
October 1999	Second phase complete	40,835	+556%

October enrollment represents approximately 15 percent of all Vermont residential telephone customers. State-by-state enrollment data shows that Vermont has by far the largest percentage enrollment in the TPS of any state, with 6.6 percent per capita, in comparison to a national average of one percent.

Complaint statistics maintained by the Attorney General's Consumer Assistance Program show no trend during the campaign period.

The attorney general shall establish and provide for the operation of a committee composed of government, telephone companies, and businesses to compile a list of educational tools to help consumers understand their options with regard to telephone solicitations. The attorney general shall also establish a toll-free telephone number and/or a website that residential subscribers may call or access to review their options with regard to telephone solicitations. It shall be the duty of the attorney general to have the committee established no later than January 1, 2001. The website and/or toll-free telephone number may be operated by the attorney general or by another entity pursuant to a contract with the attorney general, and shall be operative no later than July 1, 2001.

Sprint

Before the Kansas House of Representatives
Committee on Utilities
Testimony of W. Richard Morris
Sprint Vice President – Local Markets
Regarding House Bill No. 2704
February 18, 2000

- Sprint supports the concepts contained in House Bill No. 2704 but encourages the Committee to go even further. Specifically, Sprint urges the Committee to adopt legislation that would require cable television operators to provide open access not only to Internet service providers, but also to providers of non-video-programming telecommunications services.

- Open access to cable television systems is important because it will speed the delivery of advanced telecommunications services to consumers

- One such service is Sprint's Integrated On-Demand Network, Sprint ION

  - Sprint ION is an integrated local and long distance, voice and data product using ATM protocol that replaces multiple stand alone services provided by multiple carriers. Sprint ION is an advanced service because part of its data capabilities includes high speed Internet access.

- Today Sprint ION can be delivered to the customer's home or small business through the use of digital subscriber line (xDSL) equipment. Larger locations may be served through dedicated access lines. XDSL capable lines are not ubiquitously available, and many are restricted due to the use of incumbent local exchange carrier (ILEC) digital line concentrator (DLC) equipment. Access to cable TV plant, including the high-speed modems of cable television operators, would provide more ubiquitous access to services like Sprint ION.

- Sprint can more quickly bring Sprint ION to a greater mass of consumers if cable television operators are required to provide open access.

- Why should cable television operators provide open access?

  - The incredible growth of the Internet economy has depended on open access

  - A closed network will slow down the growth of innovative services, which includes high-speed Internet access and products like Sprint ION, and slow down the growth of user adoption of these services

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ATTACHMENT 2

- Cable operators, owners of one of only two lines to the home, should not be allowed to block open access and stifle competition or be given special treatment

    - Telephone companies can not dictate what services customers receive over their telephone lines
    - Electric companies can not dictate what brand of appliances their customers use

    - Why then can a cable operator dictate the broad band services their customers receive on cable facilities? Sprint believes they shouldn't.

- Sprint urges you to adopt legislation that requires cable television operators to open their networks for the delivery of not only competing Internet services, but also for the deivery of advanced telecommunications services like Sprint ION's

Session of 2000

HOUSE BILL No. 2704

By Committee on Utilities

1-25

AN ACT concerning broadband internet access transport services; requiring cable operators to provide certain access to such services; providing remedies for violations.

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

Section 1. As used in this act:

(a) "Access" means the ability to make a physical connection to cable operator's facilities at any place where a cable operator exchanges consumer data with any ~~internet~~ service provider, or at any other technically feasible point selected by the requesting ~~internet~~ service provider, so as to enable consumers to exchange data over such facilities with the consumers' chosen ~~internet~~ service provider.

(b) "Affiliate" means a person who, directly or indirectly, owns or controls, is owned or controlled by or is under common ownership or control with another person. For purposes of this definition, "own" means to own:

(1) An equity or other financial interest, or the equivalent thereof, of more than 10%; or

(2) any management interest.

(c) "Broadband" means having a capacity in excess of 200 kilobits per second.

(d) "Broadband internet access transport services" means the broadband transmission of data between a user and the user's internet service provider's point of interconnection with the broadband internet access transport provider's facilities.

(e) "Cable operator" has the meaning provided in 47 U.S.C. 522(5), as in effect on the effective date of this act.

(f) "Cable service" has the meaning provided in 47 U.S.C. 522(7) as in effect on the effective date if this act.

(g) "Franchise" has the meaning provided in 47 U.S.C. 522(9), as in effect on the effective date of this act.

(h) "Franchising authority" has the meaning provided in 47 U.S.C. 522(10), as in effect on the effective date of this act.

(i) "Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software,

Amended by Kansas Gas Service -
Mr. Richard Pound Direct Gas Market

which comprise the interconnected worldwide network of networks that employ the transmission control protocol/internet protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(j) "~~Internet service~~ provider" means a person who provides a service that enables users to access content, information, electronic mail or other services offered over the internet

"Service

or provides other non-video-programming telecommunications services.

Sec. 2. (a) Each cable operator holding a franchise to provide cable service shall provide any requesting ~~internet~~ service provider access to the cable operator's broadband ~~internet~~ access transport services, unbundled from the provision of content, on rates, terms and conditions that are at least as favorable as those on which it provides such access to itself, to its affiliates or to any other person. Such access shall be provided at any technically feasible point selected by the requesting ~~internet~~ service provider. Except as otherwise specifically required by law, such cable operator shall not restrict the content of information that a consumer may receive over the internet. These requirements shall apply to each cable operator and to any other entity to which the cable operator's franchise may be transferred, assigned or granted or which may otherwise exercise rights under such cable operator's franchise.

(b) If a cable operator providing broadband ~~internet~~ access transport services is or shall become subject to more extensive or different access requirements with respect to the provision of broadband ~~internet~~ access transport services imposed by or agreed upon with any other jurisdiction in the United States, any requesting ~~internet~~ service provider, at its option, may require such cable operator to comply with such other requirements in lieu of subsection (a). In such event, nothing shall alter the applicability of sections 3, 4 and 5, and amendments thereto.

Sec. 3. Any ~~internet~~ service provider who has been denied access to a cable operator's broadband ~~Internet~~ access transport services in violation of section 2, and amendments thereto, has a private cause of action to enforce rights in accordance with those provisions and to seek all other appropriate relief, including, without limitation, injunctive relief and monetary damages. In such an action, the prevailing party shall be entitled to recover its reasonable costs, expenses and attorney fees from the losing party. The "prevailing party' means the party determined by the court to have most nearly prevailed as a matter of law, not necessarily the party in whose favor judgment may be entered.

Sec. 4. A violation of section 2, and amendments thereto, shall render the violator liable for a civil penalty of $50,0000 for each day the violation continues, not to exceed $10,000,000. Such civil penalty shall be recoverable in an individual action brought by the ~~internet~~ service provider or the attorney general. In an action under this section, the ~~internet~~

service provider or attorney general may recover reasonable expenses and investigation fees, as determined by the court. Civil penalties sued for and recovered by the attorney general under this section shall be paid into the state general fund.

Sec. 5. In addition to any other penalty, remedy or enforcement measures provided for by federal, state or local law, the attorney general or a franchising authority may bring an action to enforce the requirements of section 2, and amendments thereto, and to seek all appropriate relief, including, without limitation, injunctive relief. In addition, at its option, a franchising authority may require the cable operator and any requesting ~~Internet~~ service provider to submit to mediation or binding arbitration, or both.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

The Testimony of Wayne Bogart

Networks Plus

Before the Kansas House of Representative's

Committee on Utilities

Friday, February 18, 2000

Good morning. Thank you Mr. Chairman for giving my colleagues and I the opportunity to testify before this committee today on House Bill 2704 and the important issue high-speed Internet Access. My name is Wayne Bogart and I am the Director of Internet Services for Networks Plus, a company based in Manhattan, KS that employs over 60 workers across the state. Networks Plus is very supportive of House Bill 2704 and feels that preserving competition over the Internet through an open access policy is imperative for the Internet and companies similar to mine to flourish.

Let me first tell you a little about Networks Plus. We started our Internet Service to provide customers high-quality Internet access at a lower cost than was previously available. Many thousands of businesses and households have since come to depend upon us to provide their Internet connection, yet the

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ATTACHMENT 3

majority of those customers cannot receive cost-effective high-speed Internet from us because we do not have access to the cable lines going into the homes.

While I'm speaking on behalf of my company today I would like to bring to the committees attention that there are over 6,400 other Internet Service providers across America. Most of these providers are small businesses that would be devastated if Internet pipelines are closed off to competition.

There is no disputing the fact that the Internet will be the core communication service of the future. That's why I'm here today, and that's why your actions are so important to your constituents.

My message to you is simple: the only way to have a competitive market for the Internet is to allow competitors to share the wires leading to customer's homes. Open access is the only way to ensure such competition.

I would like to make two points that will clarify the need for Open access in our quickly changing telecom world:

First, in our homes we will use a variety of devices, which communicate via the Internet. We will use telephone-like devices to have voice conversations over

the Internet. We will use one-way and two-way video devices that communicate through the Internet. We will use many different web-capable and email capable devices and Internet applications that we cannot yet imagine. As this happens, of course, the circuit switched phone network that we know today will shrink in importance, eventually becoming insignificant. This is not a bold prediction. This is quite certain. Internet access will be the core telecom service of the future. The only significant debate now occurring is how long the transformation will take.

Second, this telecom world of the future will clearly require home connectivity which is truly broadband, always-on, and which is available at an affordable consumer price. This means that the majority of consumers will have this core telecom service delivered to their homes through a wire. In order to have an always-on connection consumers need a broadband delivery that is affordable and competitive.

The only way to have a competitive market for telecom services of the future is to allow competitors to share the wires leading to customer's homes.

As we know, this is how it works in today's Internet access market. The last mile connection in today's narrowband world is made via a phone call. Local

telephone companies cannot block that call. Consumers can use that last mile connection to connect to dozens of competing ISPs. And, 6,400 ISPs currently compete fiercely on many points of customer choice including price, ease of use, technical support, reliability, and network performance.

Together, they have driven the incredible growth of the Internet. It is fair to say that we would not have the Internet as we know it today if the only ISPs were the phone companies.

In today's world, the Internet Service Provider is not regulated. The Internet itself is not regulated. However, the underlying telecommunications conduit is regulated to the extent of requiring non-discriminatory service, interconnection agreements, and reasonable resale agreements. This system works very well. In fact, Congress endorsed this very system when they adopted the 1996 Telecommunications Act. Customer choice and innovation have flourished.

This sound public policy applies equally well to the broadband world we are now entering. The problem is we are not following the policy. For many homes, the cable company wire is likely to be the only one capable of delivering high bandwidth, and two-way service. Unfortunately the cable

industry does not plan on offering access to their last mile networks, on any terms, to competitive service providers.

By offering the underlying transmission capability, which allows Internet access services, cable companies are entering the two-way telecommunications world. They must be subject to the same requirements as any new entrant! What would have happened if local telephone companies had not allowed consumers to connect to the ISP of their choice? It is safe to say that the Internet phenomenon that we are experiencing today would not exist!

We must make sure that the open nature of today's Internet survives the transition to broadband networks. Congress, the FCC and state regulators didn't let the telephone companies' block access then, and they shouldn't let the cable companies' block access now. I urge you to pass House Bill 2704 to make sure the underlying transmission capacity of "last mile networks" – telephone company, cable company, or otherwise – is available to competitive service providers on a non-discriminatory basis.

This is not, as the representative from the cable industry who will follow my presentation will state, imposing some onerous new regulation on anyone – it is simply and justly part of the same successful and pro-competitive industry structure that we currently have. This is not, as cable companies charge

regulating the Internet. In fact, ensuring open access and competitive choice is the key to avoiding regulation of the Internet. This will not, as the cable industry has claimed, retard investment. One needs to look no farther than the billions of dollars being invested in competitive telecom companies and Internet infrastructure today to see that.

The cable industry will tell you open access is not fair. They will tell you that they have built or purchased their systems and have the right to control access. Those cable systems were built with the support of the public, not only through franchise awards but also through guaranteed consumer revenue in the form of predictable cable rates. The public therefore has a right to open access to that system. In reality, AT&T and the cable companies are trying to create an unlevel playing field by creating a closed system that forces consumers into making difficult, non-competitive choices.

Let me make it clear that ISPs are not looking for a free ride on cable lines. We are willing to pay reasonable fair market rates to the cable operators for nondiscriminatory access to their networks. This type of arrangement will benefit the cable operators, the ISP's and most importantly, the consumers. The Internet continues to arrive at an incredible speed. A speed that is much different from the introduction of other means of communication in this

country. For example, radio took 37 years to reach 50 million listeners, it took television 18 years, cable TV 10 years and finally it will take the Internet only 5 years to become an integral means of communication to over 50 million Americans. By the year 2002 there will be over 85 million Internet users in this country.

In a marketplace in which time to market is everything, the advantage of owning the phone or cable wire to the home cannot be underestimated. In fact, it is precisely due to the power and control exercised by local loop infrastructure owners that the government has required open access to the phone wire in order to create competition as a precondition for telecos entering the long distance voice and data markets.

A closed access policy will ultimately lead to Broadband Internet Access monopoly in the cable technology arena, and threaten the health and growth of the Internet itself. It took over 30 years to break up the telephone monopoly the nature of a rapidly expanding, competitive and changing communications industry, we cannot afford the luxury of that much time.

Mr. Chairman, members of the committee, thank you very much for the opportunity to participate today.

Testimony Of

Richard L. Cimerman
Director of State Telecommunications Policy
National Cable Television Association

On

The Truth Behind Forced Access

Why Government Regulation Would Limit Choice and Forestall Competition

Before The

Kansas House
Utilities Committee

February 18, 2000

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DATE: 2-18-00
ATTACHMENT 4

Testimony of Richard L. Cimerman of the
National Cable Television Association
Before the Kansas House Utilities Committee
Forced Access to Cable Systems

Good morning Mr. Chairman and members of the committee. I appreciate the opportunity to testify before you on the issue of forced access to cable systems. My name is Rick Cimerman, Director of State Telecommunications Policy for the National Cable Television Association (NCTA). Prior to coming to NCTA I was the Director of the Telecommunications Division of the Maryland Public Service Commission, and before that a staff member of the Florida Public Service Commission.

Across the country, and across this state, consumers are benefiting as cable helps end the wait by rolling out new high-speed Internet connections. Consumers are benefiting as cable's broadband rollout accelerates the deployment of broadband alternatives, such as the DSL service (that's Digital Subscriber Line – the competing high-speed service offered by telephone companies) offered by SBC and high-speed wireless offerings on tap from MCI and Sprint. And consumers are benefiting as SBC and others lower their prices to compete with cable. In fact, just this week SBC announced that it is lowering its price for DSL service to $39.95 plus the cost of an ISP.

But these benefits, and the continued deployment of broadband cable services, are put at risk by our competitor's calls for the government to step in and slow down the competition. Cable modem service is still a very new service. Indeed, as the FCC has indicated repeatedly, the broadband market is in its infancy.

Because of the intense competition in the market for Internet access generally and for broadband Internet access in particular, a policy that relies on market forces rather than regulation will provide the greatest public benefits to the citizens of Kansas. Given the substantial market-driven investment in broadband plant and new services, there is no need to impose "access" requirements on cable operators. Indeed, imposing restrictive legislative language on new entrants to the Internet access market will only undermine the cable industry's incentives to upgrade facilities and offer new services.

Cable operators are investing billions of private capital to upgrade cable networks in Kansas and across the nation. These investments will enable cable operators to provide high-speed "broadband" services in every neighborhood they serve, in rural areas and in urban areas, in areas which are economically disadvantaged and in areas which are ethnically diverse. Cable's investment in system upgrades will also enable the industry to provide other advanced technological services to Kansas consumers in the near future.

Not surprisingly, the competing telephone companies, who have the most to lose, would like to prevent cable from competing with them. They have launched a campaign to force cable operators to provide access to cable's broadband facilities. If they succeed in burdening cable with unnecessary regulation, they will be able to forestall the

competition for local phone service and Internet access that the cable industry is just beginning to provide.

I have carefully reviewed HB 2704. It is very much like bills and ordinances that have been introduced in other states and localities with the strong support of the entrenched telephone companies. Like those bills it would have precisely the opposite effect its sponsors claim. Far from promoting investment and competition in Internet facilities and services, the bill would deter new investment and saddle the Internet with legacy regulation designed a century ago for the railroads and telephone monopolies. The bill is also inconsistent with federal law barring common carrier regulation of cable companies. My testimony will address these policy and legal concerns.

Numerous Broadband Alternatives are Developing:

In the Internet world cable is still a small player. While our competitors claim that we will somehow monopolize the Internet, the fact is we have less than 3% of the Internet access market. That is but one out of every thirty-two subscribers. It's hard to see how that could be a monopoly. And, while cable companies have been investing billions of dollars to rebuild their networks to provide new broadband services, numerous other companies are deploying high-speed Internet access. Telephone companies, electric companies, fixed wireless and satellite companies are all rolling out high-speed Internet services.

In fact, numerous broadband alternatives to cable are developing. By the end of last year, DSL was available to more than 38 million U.S. homes. New high-speed investments seem to be announced nearly every day.

Our Deployment has Spurred the Deployment of Others and Caused Prices to Fall:

These alternative deployments do make a difference. As FCC Chairman Kennard has stated, - the forced access debate "goes away if we have more than two pipes going into the home." He has also remarked that "[w]e cannot regulate against problems that have yet to materialize in a market that has yet to develop."

So it is not surprising that the FCC found, both in January 1999, and again in a staff report issued in October, that the broadband industry is in its infancy, and there is no reason to single out cable systems for special regulatory treatment. To the contrary, the Commission found that such regulation would ultimately slow deployment, and that regulatory restraint should be practiced by all levels of government.

Cable Internet Enhances Consumer Choice:

Rather than suffering any harm, consumers have only benefited by the deployment of cable modems, a new choice in Internet access. Our competitors complain that our deployment of high-speed Internet access somehow restricts consumer choice. In fact, our deployment enhances consumer choice, bringing consumers a new way to access the Internet. All the existing choices remain, with a new choice added to the mix.

Cable Offers Unfettered Access to All Internet Content:

Another of the speculative harms that has been raised is that cable operators will somehow control Internet content. That is simply absurd. Our high-speed service offers easy, one-click access to all available content the Internet has to offer. With cable a customer can set their default home page to AOL or any other content provider, so that another content provider's page is the first thing a user sees when connecting to the Internet. As new entrants, cable operators have no incentive to restrict subscriber access to unaffiliated content and applications because such actions would drive consumers away from their Internet services. Rather, cable operators have every reason to make the broadest possible array of content and applications available in order to attract new subscribers and retain current ones.

Cable's Internet is not "Closed":

Cable's Internet infrastructure is not a "closed" system that needs to be "opened" by intrusive government regulations. Cable interconnects with every Internet backbone provider, and as I've just described, offer unfettered access to any and all Internet content. That is hardly a closed system. Moreover, AT&T and Time Warner, the two largest cable companies have indicated that they will carry multiple ISPs when their exiting ISP contracts expire. And Cox has indicated that it too is open to business deals with other ISPs.

Forced Access Would Be Counterproductive and Would Slow Broadband Deployment:

Not only is forced access unnecessary, but it could damage the very markets the legislature is seeking to enhance by undermining the cable industry's incentives to invest in new facilities and services. Cable companies are raising the substantial funds necessary to upgrade their facilities in the private capital market. These investments are risky and lack a guaranteed return. Cable's ability and incentive to continue the rollout of broadband facilities and services is closely linked to a stable regulatory environment that promotes investment and rewards risk taking.

Forced access requirements would also weaken the forces driving investment by others in new facilities. As I have already discussed, cable's investment in broadband has served as a powerful competitive spur to the incumbent telephone companies and other facilities-based providers, multiplying the benefits of cable's investment across platforms and services and driving down prices. By slowing cable's investments in broadband facilities and services, government-mandated access will deprive consumers of this valuable competitive spur.

Forced Access Would Mire the Government in Regulation of the Internet:

Claims that "forced access" can be easily implemented are disingenuous. In fact, forced access would require complex and burdensome regulation and ongoing government oversight.

Regarding the costs and effects of regulation FCC Chairman Kennard recently stated:

> *It is more than a notion to say that you are going to write regulations to open the cable pipe. It is easy to say that government should write a regulation, to say that as a broad statement of principle that a cable operator shall not discriminate against unaffiliated Internet service providers on the cable platform. It is quite another thing to write that rule, to make it real and then to enforce it. You have to define what discrimination means. You have to define the terms and conditions of access. You have issues of pricing that inevitably get drawn into these issues of nondiscrimination...And then once you write all these rules, you have to have a means to enforce them in a meaningful way. I have been there. I have been there on the telephone side and it is more than a notion. So, if we have the hope of facilitating a market-based solution here, we should do it, because the alternative is to go to the telephone world, a world that we are trying to deregulate and just pick up this whole morass of regulation and dump it wholesale on the cable pipe. That is not good for America.*

Why then, if it is not good for America, are local phone giants, spending vast legal, political, and financial capital to force cumbersome regulations on cable operators? Why are these companies pursuing this agenda when they are building their own competing facilities, are not dependent upon cable, and are seeking deregulation of their own data businesses back in Washington?

The answer is simple: to slow the competition. Phone companies want to stave off cable's deployment of a competitive alternative to their data services. While DSL as a technology was available for perhaps the last eight to ten years, it took competition from cable over the last year to get incumbent telephone companies to roll out DSL service

To date no state has passed legislation imposing forced access. The FCC has twice rejected forced access, and a recent staff report recommends the Commission continue its hands off policy. Moreover the report urges other governmental entities, including state and local governments, to pursue a hands-off policy. Even the White House has said the market should be allowed to work to bring consumers choice. Around the country, public policy groups, including the Heartland Institute in Chicago, the Allegheny Institute in Pennsylvania, the Mackinac Center in Michigan, the Heritage Institute in Washington, and NetAction in San Francisco have all written white papers offering strong condemnations of forced access. Groups of high-tech companies including the Telecommunications Industry Association, the Information Technology Industry Council and the Digital Coast Roundtable have written letters opposing forced access. Well over 1,500 cities have approved cable system transfers in the last year without imposing forced access conditions. The National Governor's Association and the County Executives of America have both adopted policy statements opposing government regulation of broadband deployment.

This debate really boils down to whether one believes in government regulation of a competitive market, where there is no evidence of market failure, or whether one believes the competitive marketplace itself is the best way to encourage broadband deployment, and meet the needs of consumers by offering them choice, lower prices, and new and innovative services.

Attachment

State Forced Access Requirements Are Prohibited by Federal Law

Imposing forced access obligations on cable operators would violate federal law. Under federal law, which establishes national policy on cable regulation, cable Internet services are cable services. The Federal Telecommunications Act of 1996 expanded the definition of "cable service" to include "interactive services," including information services and enhanced services. This change reflects the evolution of cable services from the traditional one-way provision of video programming to include interactive services.

Congress long ago made clear that cable operators cannot be regulated like utilities or common carriers when they offer cable services.[1] Congress wanted to prevent the imposition of complex, telephone-like regulation on cable operators. Numerous courts,[2] as well as Congress[3] and the FCC,[4] have held that requirements that cable systems provide access to third parties constitutes prohibited "common carrier" regulation. House Bill 2704 would require cable operators to provide nondiscriminatory access to their cable facilities indiscriminately to all ISPs. Cable operators would be unable to make individual decisions about whether and on what terms they would share capacity on their cable systems with any ISP. This is the very definition of "common carrier" regulation forbidden by federal law.

Even apart from the bar on common carrier regulation, federal law prohibits any franchising authority from requiring a cable operator to provide any telecommunications service or facilities as a condition of the grant or renewal of a cable franchise.[5] Congress enacted this prohibition because "some local franchising authorities ha[d] attempted to

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1 47 U.S.C. § 541(c).

2 *See, e.g., FCC* v. *Midwest Video Corp.*, 440 U.S. 689 (1979) (holding that Commission rules that required cable operators to set aside four channels for use by particular programmers "plainly impose[d] common-carrier obligations on cable operators"); *ValueVision Int'l, Inc.* v. *FCC*, 149 F.3d 1204, 1206 (D.C. Cir. 1998) (leased access requirements place the cable operator "in the position of a common carrier"); *Alliance for Community Media* v. *FCC*, 56 F.3d 105, 123 (D.C. Cir. 1995) (*en banc*) *rev'd on other grounds sub nom. Denver Area Educ. Telecomms. Consortium, Inc.* v. *FCC*, 518 U.S. 727 (1996) (requirements for access by public, educational, local governmental, and nonaffiliated commercial users impose "'common-carrier obligations on cable operators'"); *National Ass'n of Regulatory Util. Comm'rs* v. *FCC*, 525 F.2d 630, 640-41 (D.C. Cir. 1976).

3 *See, e.g., Columbia Broad. Sys., Inc.* v. *Democratic Nat'l Comm.*, 412 U.S. 94, 105-110 (1973) (setting forth legislative history in which Congress recognized that requiring a broadcast station to provide nondiscriminatory access to its facilities by political candidates would render it a common carrier).

4 *See, e.g., AT&T-TCI* ¶ 29 ("Commenters advocating [access by multichannel video programming distributors to cable capacity] rely on the open access rules applicable to common carriers and seek to expand those requirements beyond traditional common carrier functions. We continue to recognize and adhere to the distinctions Congress drew between cable and common carrier regulation" and deny the request).

5 47 U.S.C. § 541(b)(3)(D).

expand their authority over the provision of cable service to include telecommunications service" and Congress wanted to preclude local franchising authorities from requiring cable systems to provide transmission facilities for use by any third party.[6] Under House Bill 2704, cable operators would be required to make basic transmission facilities -- telecommunications facilities -- available to ISPs. Because cable operators would have to comply with House Bill 2704 in order to operate in Kansas, this requirement is no different than a condition on the grant or renewal of a cable franchise. As such it is prohibited by federal law.

There are sound reasons for Congress's decision not to apply common carrier or utility regulation to cable operators. Unlike common carriers, cable operators are "speakers," and their "speech," including their exercise of editorial discretion concerning the content, information, programming, and services offered over their networks, is protected by the First Amendment. Whether the programming offered by cable operators is CNN, HBO, or an interactive online cable service that includes Internet access, the cable operator purchases rights to the programming (or produces it itself) and then sells it as a cable service to its subscribers at prices determined by the cable operator.

Congress has recognized the historic role of cable operators as editors and creators of content, and not mere conduits for third party speakers. While cable operators may be subject to certain "access" obligations under federal law, these obligations are exceptions to the general rule that cable operators are First Amendment speakers with First Amendment rights. Courts have upheld such access requirements only when they were specifically mandated by the Communications Act and proven to be necessary to further some substantial national policy, and have invalidated efforts to impose similar requirements in the absence of legislation. None of these rules authorize the type of "open access" requirements sought here.

The access obligations imposed on telephone companies under federal law provide no guidance for the appropriate treatment of cable Internet services. An entirely different federal statutory regime applies to telephone systems. Telephone companies were established not to engage in speech, but to serve as conduits for the unedited speech of others and to provide point-to-point communications to any member of the public. Local telephone companies are therefore regulated separately, and are generally required to offer service under tariff to all who request it on rates, terms and conditions that are just, reasonable, and nondiscriminatory.

The FCC has recognized that "Congress, when it enacted the [1996] Act, created or retained these models [for separate cable and telephony regulatory schemes] and thereby endorsed their continued use." The forced access obligations that would be imposed under this bill are fundamentally inconsistent with the separate statutory scheme established by Congress.

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[6] *See* House Rep. No. 104-204, p. 93 (1995).

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TESTIMONY BY MIKE REECHT ON BEHALF OF AT&T BEFORE THE HOUSE UTILITIES COMMITTEE REGARDING HB 2704

FEBRUARY 18, 2000

Mr. Chairman and members of the committee,

AT&T opposes HB 2704. HB 2704 would force cable providers to open their networks to ISPs through a mandatory government regulatory scheme. Through public documents filed with the FCC, AT&T has indicated that it does not oppose opening its cable networks through negotiated agreements in the open marketplace, but rejects the necessity of any government mandate or regulatory regime to do so.

To mandate forced access for cable companies would serve to slow down the deployment of much needed competitive infrastructure in Kansas, including rural areas. Time Warner and Cox Cable are investing millions in the latest technologies for high speed delivery of new services to Kansas residential customers. These investments are being made without one penny of subsidized KUSF support.

Multiple technologies including cable, DSL, satellite, fixed wireless are poised to engage in a high-stakes, fast-paced competition that will equip Kansas for the "broadband" future. It is important that the legislative policy in Kansas foster this kind of dynamic competition, and the deployment of infrastructure that accompanies it. To mandate forced access of the cable network through a complicated system of regulatory rules will discourage the continued investment levels we have witnessed in Kansas.

The Kansas Telecommunication Act passed in 1996 encouraged telecommunications carriers to build or install telecommunications facilities. The rationale behind such a provision in statute was to provide customers with a facility-based competitive alternative to the existing local telephone company. The deployment of cable technology which will support telephone service is fulfilling that vision of the 1996 statute. Approval of HB 2704 would actually undermine that vision and hinder the development of new competitive telephone services.

During the telecom debate in 1996, and to some extent in 1994, the local telephone companies advocated legislation that would decrease government regulation. They were distrusting of the KCC to oversee the transition to a competition marketplace. The Local Exchange Companies argued for and got provisions for Price Cap regulation which is designed to allow those companies to be more responsive in a competitive marketplace. **They argued that less regulation would provide them with the incentives to invest in Kansas.**

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And yet now, when cable companies are attempting to invest in Kansas and bring the benefits of a competitive marketplace, LEC are arguing for more regulation and more government intervention. Regulating the Internet and broadband technology will slow investment in Kansas, and perpetuate the lack of real customer choice for telecommunication, internet and high speed data services.

You likely have heard or will hear from Internet Service Providers (ISP) that there is a need for government mandated forced access to cable systems. They will likely argue that customers will be limited in their choice of an ISP absent government intervention. Nothing is further from the truth. AT&T has committed to providing its customers the ability to choose among ISPs when using AT&T's cable network for Internet access. Time Warner has assured consumers the same choice. Today, consumers using cable modems can access the ISP of their choice with a mere click of their mouse.

The future holds the probability of head-to-head competition between cable, DSL, fixed wireless, satellite, and maybe other technologies we don't even know about yet that will provide broadband access to the Internet. ISPs will have a plethora of choices of networks to utilize to reach their customers. The competitive marketplace will insure that choice among technologies increases.

The broadband network is exploding. But according to "The Internet Data Service Report" by Morgan Stanley Dean Witter Research dated August 11, 1999, only about 7% of subscribers will access the internet through cable modem service in 2000, while 85% will continue to use traditional dial-up service provided by local exchange companies. This percentage hardly warrants mandated government intervention in this market.

William Kennard, Chairman of the FCC, has indicated that regulation at this time is unnecessary and could slow the deployment of broadband technology. I quote from his remarks of December 23, 1999,

> "There are clear indications that our policy of regulatory restraint is working. The deployment of cable modems has hastened the deployment of digital subscriber lines and the development and deployment of other broadband technologies. Further, we are taking steps to encourage the development and deployment of wireless and satellite-based broadband technologies to provide consumers with additional choices in the broadband market."

Further, FCC Commissioner Gloria Tristone on November 10, 1999, said:

> "Our review of the broadband marketplace has indicated that multiple sources are vying for customers. Cable broadband is a nascent industry, and I do not want to do anything that could jeopardize investment . . . If cable broadband pipe proves to be a bottleneck, we can deal with the problem at that time . . . Let's not regulate unless we know what we're regulating and why we're doing it."

Enacting government mandated forced access legislation on the cable industry would be moving contrary to the direction taken in the 1996 act of reducing regulation in the telecommunication marketplace. It would slow down investment in cable technology that will provide customers with faster internet speeds and a competitive telephone marketplace in Kansas.

If we have learned one lesson from the Internet, it is its ability to expand exponentially without government intervention. The broadband market is poised to experience the same growth with multiple providers in a competitive marketplace. The regulation that would be mandated by HB 2704 would slow down this process in Kansas, and that is not good for consumers.

AT&T strongly opposes the provisions of HB 2704, and requests the committee's support in opposing the bill.

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VICE CHAIRMAN: UTILITIES
MEMBER: ENVIRONMENT
KANSAS 2000

HB 2634 – Green Power --- Amendments to Address Committee and Conferee Concerns

1. Out-of-State power being sold to Kansas customers (Retail Wheeling) – It was never my intent to permit retail wheeling of power generated from renewable sources (though KEPCO purchases such power from the Pacific NW on the wholesale market) –

   A proposed amendment requires the electric power generated from renewable resources be placed **DIRECTLY** into the certificated utility company's distribution line --- power from out-of-state must come through the transmission system

   Testimony by Stephen Hill, owner of the Bowersock hydro power plant, said that his generation plant is connected to KPL's local substation which is located only a couple of hundred feet from the generating unit

2. Can anyone in Kansas sell power from renewable energy to customers – I recognize that the certificated utilities will have increased expenses and system management problems if every potential provider with a little wind generator (wind mill), bio-mass, or solar collector has the right to directly sell power –

   A proposed amendment establishes a threshold of 2 MWs before the provisions of this bill take effect. Only the Bowersock mill in Lawrence qualifies under this provision according to testimony from Mr. Hill, Ms. Lori Forster (KCC alternative energy staff person who testified as an individual), and the utility company representatives (in response to questions)

3. Marketing the green power – Western Resources and Utilicorp currently directly market green power from the two wind turbines at Jeffrey Energy Center –

   A proposed amendment requires the green power generator (Bowersock Mill) and the certificated utility (KPL) to negotiate the terms and conditions by which the green power generator may use the utility company's distribution system, billing services, etc. If an agreement cannot be reached, either side may appeal to the KCC for resolution. If either party is unsatisfied with the KCC's proposed resolution, an appeal to District Court is permitted.

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Thus, the existing certificated utility can negotiate appropriate fees to cover their expenses and inconvenience AND the KCC, which is traditionally the protector of utility company and consumer interests can resolve differences of opinion. Because rural electric cooperatives and municipal electric systems are not regulated by the KCC, the proposed amendment directs the parties to District Court if they are unable to resolve their differences – but the threshold of 2 MWs of electric production means that currently no Kansas green power generator is eligible for such negotiations

4. "Exclusively" provide green power to customers – Testimony from Western Resources, Mr. Hill, and others stated that no power producer can guarantee power will be available 100 percent of the time from any power plant (not Jeffrey Energy Center, not Wolf Creek Nuclear Generating Station, and not Bowersock Mill).

   A proposed amendment requires that power from the green power generator be available for at least 75 percent of the time. Remember, Western Resources and Utilicorp are already marketing green power directly to customers.

5. Conferees testified that under existing state laws, existing utilities must purchase green power from Kansas generators at their avoided cost (1.5 – 2.4 cents per kwh). Mr. Hill testified that he sells his power to KPL for 2.4 cents per kwh and purchases power for his home at approximately 7 cents per kwh. Western Resources currently is marketing their wind power for 12 cents per kwh. Mr. Hill testified that he could serve possibly 1,000 customers and is quoted in a newspaper article that he would hope to sell his power in Lawrence for 8 cents per kwh – 1 cent more than KPL and 4 cents less than Western Resources' wind power. Western Resources serves customers in Lawrence, Topeka, Wichita, Hutchinson, Manhattan, etc. The Bowersock Dam generating plant will not affect Western Resources' financial condition.

6. Growth of Lawrence electric market – Lawrence and Douglas County grant more than 650 building permits each year – that is for single family houses, multi-family units, businesses, schools, etc. Many of the permits are for multi-family apartment buildings. If Bowersock Mill can serve 1,000 customers, this is less than Lawrence/Douglas County's growth for one year. This will not result in load loss for KPL/Western Resources. It may slow their load growth.

Summary: With the proposed amendments, HB2634 will apply only to one green power generator, who already connects to KPL's Lawrence distribution system. The certificated utilities and the KCC control the negotiations for access to customers AND out-of-state electric generators still do not have access to Kansas residential and commercial customers. **Because of the proposed requirement that the green power be placed directly into the existing utility's distribution line, this bill does not approve retail wheeling.**

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I have made a good faith effort to address the reasonable concerns of Kansas utilities by telling them several days ago what amendments I propose to offer, and including language revisions to meet as many of their concerns as possible.

Reasons for Encouraging Merchant Plants in Kansas

1. Merchant plants being built in 42 other states – all competitive "fears" of Kansas utilities would appear unfounded. "Traditional utilities" that have subsidiaries building merchant plants include – Utilicorp, Duke Power, Pacific Gas & Electric, Southern Companies, Carolina Power & Light, El Paso Gas & Electric, Columbia Electric, **Old Dominion Electric Coop** --- remember, Utilicorp testified they have 19 merchant plants and 11 regulated ones

2. Western Resources – building generation in Missouri with Empire Electric; **building a merchant plant in Oklahoma with ONEOK** , building two small peaking units in Kansas

3. Utilities Committee is addressing existing utilities competitive issues –
   a. removed plant siting act requirements
   b. will address transmission line impediments in Sub. for SB 257
   c. addressing inclusion of construction work in progress in rate base

   All things the utilities requested -- existing utilities are doing quite well in 2000

4. John Hays, former CEO, President, and Chairman of the Board of Western Resources publicly spoke and wrote that: competition is inevitable, competition results in lower prices and more service choices for customers than occur in regulated industries. Dick Rohlfes testified on 2/10/00 that at Western Resources "We would be happy to have competition."

5. KCPL testified that they have subsidiaries already, a new one to take advantage of tax benefits available for merchant plants will not be difficult, Western Resources testified on the construction work in progress bill that they also have subsidiaries and creating new ones is neither difficult nor unusual

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6. Utilicorp testified that construction of significant generation in Kansas was unlikely because of the generation siting issue (already addressed) and higher Kansas taxes. No Kansas utility testifying before us believes that the State Constitution will be changed in the foreseeable future to reduce property taxes on their existing generation plants

7. KCC testified that no utility will take generating plants out of rate base because they already have a "guaranteed" recovery of investments and profit through the KCC approved rates customers pay. However, to reassure committee members and local governments that no tax dollars will be lost, a proposed amendment stipulates that existing generation may not be converted to merchant plant status.

8. Kansas utilities testified that surplus generating capacity will be gone in 2003-2005. They are building plants in Missouri and Oklahoma. Either new generation is built in Kansas or out-of-state generators will provide the power necessary.

9. Economic benefits
    a. Counties getting merchant plants will receive new tax revenues
    b. Good jobs will be created
    c. Utilicorp's new Missouri generation plant investment is $250 million plus

10. Attorney General Stovall has issued an opinion that merchant plants should be assessed and taxed as commercial/industrial property instead of as a utility because:
    a. Power from merchant plants may only be sold in the wholesale market
    b. Competition exists in the wholesale market that does not exist in the certificated service territories of vertically integrated utilities

If this legislation passes, lawsuits may be filed. This is frequently true of legislation related to abortion, other taxes, etc.and is not a reason to oppose encouraging investment in merchant plants in Kansas

11. Kansas citizens will benefit:
    a. Competition means lower energy costs
    b. Lower assessments on merchant plants means lower taxes, lower taxes means lower energy prices on the electricity that they may sell to Kansas utilities
    c. New investments in generation will mean new tax revenues and additional funding for school finance and other programs

12. Kansas utilities may build merchant plants under this proposed legislation or they may continue to build traditional regulated "utility plants" in Kansas or elsewhere – the choice is theirs

13. Merchant plant electric generation – investors assume all risks (there are no retail customers or regulatory agencies to "guarantee" a return on investment). Under the Federal Regulatory Commission (FERC) requirements – all sales of electricity from merchant plants are wholesale (sold only to regulated utilities)

Summary: I am not doing anything to hurt our State's existing utilities. I am trying to ensure that Kansas electric customers benefit, taxpayers benefit, and utilities can choose the best investment option for themselves – build "utility" generation, build merchant plants, or purchase wholesale power

This bill has nothing to do with retail wheeling – it does not increase the probability that retail wheeling will ever occur in Kansas – it is our best chance to increase electric generation investment in our state

Building an electric generator one block east of the Kansas/Missouri state line does nothing to help job or tax developments in our state. Neither does building a merchant plant in Oklahoma.

Enron Corp.
400 Metro Place North
Dublin, OH 43017-3375

February 17, 2000

The Honorable Tom Sloan
State Representative
Statehouse, Room 446-N
Topeka, Kansas 66612

Dear Representative Sloan:

As a result of our discussion last week, I have reviewed House Bill 2779. The legislation would allow entities that are otherwise classified as public utilities to exclude from the designation of public utility any activity as to the generation, marketing and sale of electricity that is generated by a non-nuclear electricity plant and is not included in the ratebase of a public utility, a cooperative or a municipally owned utility. The measure also allows such taxpayers to classify this property as commercial and industrial property for purposes of the real and tangible personal property tax. This would result in a twenty-five per cent assessment rate as opposed to a thirty-three per cent assessment rate.

Currently Enron has peaking plants in operation in Mississippi and Tennessee. We expect to have more plants online in Tennessee, Indiana and Illinois later this year. Enron also owns numerous generating facilities across the United States. At this point in time, Enron has not announced plans to construct an electric generation plant in Kansas. Therefore, Enron currently does not have a direct interest in this legislation. However, I did want to respond to your request for input on the policy issues at hand.

Generally speaking, HB2779 will improve the economic and regulatory climate for power supply within Kansas' borders. The removal of public utility status will reduce regulatory oversight and the steps in the process prior to plant construction. This change in status, however, will not decrease environmental or safety regulations that all power plants must follow. The different tax rate also improves the economics of plant construction by lowering its overall fixed costs.

As we read the HB2779, it is not clear that a non-utility power plant owner would receive the same tax benefit as a public utility. The legislation should be clarified in Section 1(e) to read "At the option or an otherwise jurisdictional entity, or for an

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independent power producer constructing a merchant generating facility. . ." This new language explicitly applies tax treatment in a uniform manner.

Since numerous peaking and merchant power plants are being built to serve increasing demand across the country, states with favorable site locations (transmission interconnection points, proximity to load and proximity/cost of fuel supply) and favorable business environments will increase their chances of power plants being built within their borders. Regulatory hurdles and tax climate are two key issues used in determining whether or not a preferred geographic site is truly viable.

Due to the shortness of time, I have not compared Kansas' treatment of generating plants to those of neighboring states. I believe the Department of Revenue compiled this information in 1998 for the region.

I appreciate your recognition of the rapid changes occurring in the energy industry and your efforts to make sure that state policy accurately addresses the changing regulatory and economic needs of the electric industry. This law basically deregulates non-nuclear generation that is built on a going forward basis which is a good step towards creating a viable wholesale market. The next step for Kansas is to deregulate all generation and other competitive services to create a vibrant retail market.

Thank you for this opportunity to submit comments on behalf of HB2779. Should you need further information, please do not hesitate to contact me at (614) 760-7472.

Sincerely,

Barbara A. Hueter

Barbara A. Hueter
Director, US/Canada Government Affairs

/lck

cc: Representative Carl Holmes

Louisiana Law on Caller ID capability

(a) In the event the telephone solicitor originates calls from a private branch exchange (PBX), as defined by the commission, and such PBX does not pass the identifying telephone number to the telecommunications service provider, as defined by the commission, the telecommunications service provider delivering the call will be required to transmit a PBX trunk number which would identify the telephone solicitor. The telecommunications service provider will be exempt from this requirement only in the event such telephone trunk number delivery is not technically feasible via a signaling system seven (SS7), as defined by the commission, or other comparable network capable of transmitting calling party number identification.

(b) Any telecommunications service provider that cannot currently deliver calling party number identification must file with the commission upon commission request a detailed explanation of why their network is not capable of providing such information.

(c) The commission shall promulgate rules and regulations to ensure that no telephone solicitor may use any device which blocks a caller identification unit or otherwise conceals or misrepresents the identity of the telephone solicitor or the phone number where the solicitor can be reached during normal business hours.

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dictional authority of the city, in a justice or municipal court.

(2) If the action is commenced in a county other than that in which the offense was committed, at the request of the defendant the place of trial may be changed to the county in which the offense was committed. A request for a change of the place of trial shall be made prior to the date set for the trial and shall[, *if the action is commenced in a circuit court,*] be governed by the provisions of ORS 131.305 [*to*], **131.335, 131.345, 131.355, 131.363, 131.375, 131.385, 131.395, 131.405 and** 131.415. [*If the action is commenced in a justice court a request for change of the place of trial shall be governed by the provisions of ORS 156.100.*]

(3) When the state traffic offense is punishable as a crime, the action shall be commenced in the county in which the offense was committed.

Approved by the Governor July 8, 1999
Filed in the office of Secretary of State July 8, 1999
Effective date October 23, 1999

CHAPTER 564

AN ACT SB 915

Relating to telephone solicitation; creating new provisions; amending ORS 646.567, 646.569 and 646.571; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 646.569 is amended to read:

646.569. (1) A person [*is in violation of ORS 646.608 (1)(cc) if the person engages in the telephone solicitation of a party and that party is identified in the party's telephone directory as a party that does not wish to receive any telephone solicitation*] **shall not engage in the telephone solicitation of a party at a telephone number included on the then current list published by the administrator of the telephone solicitation program established under sections 3 and 4 of this 1999 Act.**

(2) For purposes of this section, "telephone solicitation" [*also*] does not include a person soliciting business from prospective purchasers who have previously purchased from the person making the solicitation or the business enterprise for which the person is calling.

SECTION 2. Sections 3 to 5 of this 1999 Act are added to and made a part of ORS 646.567 to 646.571.

SECTION 3. The Attorney General shall advertise for bids and enter into a contract with a person to act as the administrator of the telephone solicitation program described in section 4 of this 1999 Act. The contract may include any provision that the Attorney General determines is in the public interest.

SECTION 4. (1) The administrator referred to in section 3 of this 1999 Act shall create, maintain and distribute a database containing a list of telephone numbers of parties who do not wish to receive any telephone solicitation at the listed numbers. Beginning on the date specified in the contract between the administrator and the Attorney General and at least once each month thereafter, the administrator shall update the list by:

(a) Adding the numbers of parties who have filed notice and paid the fee as required in this section; and

(b) Removing the numbers of those parties who have requested that their numbers be removed or whose listing has expired without renewal.

(2) A party may file notice together with a fee of $10 per listed number, or such lesser amount as may be specified in the contract, with the administrator indicating the party's desire to place telephone numbers on the list described in subsection (1) of this section. The notice shall be filed in the form and manner specified in the contract between the administrator and the Attorney General. The notice shall be effective for the calendar year in which it is filed and may be renewed by the filing and payment of an additional notice and fee as specified in the contract.

(3) The administrator shall not furnish the list or any information about a party to any person, except as follows:

(a) Upon request of a person engaging or intending to engage in telephone solicitations and after payment of a fee in an amount specified in the contract between the administrator and the Attorney General, the administrator shall furnish the most recent copy of the list described in subsection (1) of this section to the person. The list shall be made available in printed and electronic form.

(b) Upon request of a qualified trade association and after payment of a fee in an amount specified in the contract between the administrator and the Attorney General, the administrator shall furnish the most recent copy of the list described in subsection (1) of this section to the qualified trade association. The list shall be made available in printed and electronic form. A qualified trade association receiving a list under this subsection may make the list available to its members on any terms the association and its members may impose.

(c) Upon request of the Attorney General for the purpose of enforcing ORS 646.569, the administrator shall furnish the Attorney General with all information requested by the Attorney General concerning a party or any person who the Attorney General believes has engaged in a solicitation prohibited by ORS 646.569. The administrator shall not charge any fee for fur-

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nishing the information to the Attorney General.

(d) Upon request of any party who has filed a notice and paid the fee as provided in subsection (2) of this section, the administrator shall furnish the party with all information requested by that party concerning the party or any person who the party believes has engaged in a solicitation prohibited by ORS 646.569. The administrator shall not charge any fee for furnishing the information to the party.

(e) The administrator shall comply with any lawful subpoena or court order directing disclosure of the list and of any other information.

(f) The administrator shall provide all information that may be requested by any successor administrator who may be selected by the Attorney General. The administrator shall not charge any fee for furnishing the information to the successor administrator.

(4) The administrator shall promptly forward any complaints concerning alleged violations of ORS 646.569 to the Attorney General.

(5) Fees paid to the administrator under this section shall be considered income to the administrator in the manner specified in the contract between the administrator and the Attorney General.

SECTION 5. In the manner provided by ORS 183.310 to 183.550, the Attorney General may adopt rules relating to any aspect of the establishment, operation or administration of the telephone solicitation program established under sections 3 and 4 of this 1999 Act.

SECTION 6. ORS 646.567 is amended to read:

646.567. As used in ORS 646.567 to 646.571, unless the context otherwise requires:

(1) "Charitable organization" means an organization organized for charitable purposes as defined in ORS 128.801.

(2) "Party" means a residential telephone customer of a telecommunications company.

(3) "Qualified trade association" means an organization with at least the following characteristics:

(a) Written bylaws or governing documents including a code of conduct for its members; and

(b) Criteria and procedures for expelling or suspending members who violate the association's bylaws or governing documents.

[(3)] **(4)** "Telephone solicitation" means the solicitation by telephone by any person of a party at the residence of the party for the purpose of encouraging the party to purchase property, goods or services, or make a donation. "Telephone solicitation" does not include:

(a) Calls made in response to a request or inquiry by the called party;

(b) Calls made by a charitable organization, a public agency or volunteers on behalf of the organization or agency to members of the organization or agency or to persons who have donated or expressed an interest in donating goods, services or real estate;

(c) Calls limited to polling or soliciting the expression of ideas, opinions or votes; or

(d) Business to business contacts.

SECTION 7. ORS 646.571 is amended to read:

646.571. *[(1)]* The Public Utility Commission shall by rule require that telecommunications companies inform parties of the provisions of ORS 646.567 to 646.571 and 646.608. Notification may be by:

[(a)] **(1)** Annual inserts in the billing statements mailed to parties; or

[(b)] **(2)** Conspicuous publication of the notice in the consumer information pages of local telephone directories.

[(2) Telecommunications companies may provide for the identification of those parties in a telephone directory who do not wish to receive telephone solicitations.]

SECTION 8. (1) Sections 3 to 5 of this 1999 Act and the amendments to ORS 646.567 by section 6 of this 1999 Act become operative November 1, 1999.

(2) The amendments to ORS 646.569 and 646.571 by sections 1 and 7 of this 1999 Act become operative January 1, 2000.

(3) The amendments to ORS 646.569 and 646.571 by sections 1 and 7 of this 1999 Act apply to telephone solicitations made on or after January 1, 2000.

(4) The Attorney General may take any action before any operative date set forth in this section that is necessary to enable the Attorney General to exercise, on and after any operative date set forth in this section, all the duties, functions and powers conferred on the Attorney General by sections 3 to 5 of this 1999 Act and ORS 646.567, 646.569 and 646.571, as amended by sections 1, 6 and 7 of this 1999 Act.

SECTION 9. The first contract described in section 3 of this 1999 Act shall be awarded not later than January 1, 2000.

SECTION 10. This 1999 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 1999 Act takes effect on its passage.

Approved by the Governor July 8, 1999
Filed in the office of Secretary of State July 8, 1999
Effective date July 8, 1999

10-2

"Do Not Call" Proposal Modeled on Oregon Law

50-670. Unsolicited consumer telephone calls; requirements and prohibitions; carriers not responsible for enforcement; unconscionable act or practice.

(a) As used in this section:

(1) "Consumer telephone call" means a call made by a telephone solicitor to the residence of a consumer for the purpose of soliciting a sale of any property or services to the person called, or for the purpose of soliciting an extension of credit for property or services to the person called, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of property or services to the person called or an extension of credit for such purposes;

(2) "unsolicited consumer telephone call" means a consumer telephone call other than a call made:

(A) In response to an express request of the person called;

(B) primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of such call;

(C) to any person with whom the telephone solicitor or the telephone solicitor's predecessor in interest had ~~an existing~~ *a* business relationship, *within the last thirty-six (36) months,* if the solicitor is not an employee, a contract employee or an independent contractor of a provider of telecommunications services; or

(D) by a newspaper publisher or such publisher's agent or employee in connection with such publisher's business;

(3) "telephone solicitor" means any natural person, firm, organization, partnership, association or corporation who makes or causes to be made a consumer telephone call, including, but not limited to, calls made by use of automatic dialing-announcing device;

(4) "automatic dialing-announcing device" means any user terminal equipment which:

(A) When connected to a telephone line can dial, with or without manual assistance, telephone numbers which have been stored or programmed in the device or are produced or selected by a random or sequential number generator; or

(B) when connected to a telephone line can disseminate a recorded message to the telephone number called, either with or without manual assistance;

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(5) "negative response" means a statement from a consumer indicating the consumer does not wish to listen to the sales presentation or participate in the solicitation presented in the consumer telephone call.

(6) "qualified trade association" means an organization with at least the following characteristics:

(a) written bylaws governing documents including a code of conduct for its members; and

(b) criteria and procedures for expelling or suspending members who violate the association's bylaws or governing documents.

(b) Any telephone solicitor who makes an unsolicited consumer telephone call to a residential telephone number shall:

(1) Identify themselves;

(2) identify the business on whose behalf such person is soliciting;

(3) identify the purpose of the call immediately upon making contact by telephone with the person who is the object of the telephone solicitation;

(4) promptly discontinue the solicitation if the person being solicited gives a negative response at any time during the consumer telephone call; and

(5) hang up the phone, or in the case of an automatic dialing-announcing device operator, disconnect the automatic dialing-announcing device from the telephone line within 25 seconds of the termination of the call by the person being called.

(c) A telephone solicitor shall not withhold the display of the telephone solicitor's telephone number from a caller identification service when that number is being used for telemarketing purposes and when the telephone solicitor's service or equipment is capable of allowing the display of such number.

(d) A telephone solicitor shall not transmit any written information by facsimile machine or computer to a consumer after the consumer requests orally or in writing that such transmissions cease.

(e) A telephone solicitor shall not obtain by use of any professional delivery, courier or other pickup service receipt or possession of a consumer's payment unless the goods are delivered with the opportunity to inspect before any payment is collected.

(f) *A telephone solicitor shall not engage in an unsolicited consumer telephone call of a consumer at a telephone number included on the then current list published by the administrator*

of the telephone solicitation program established under subparagraph (h) of this section. A telephone solicitor shall not be in violation of this section if the unsolicited consumer telephone call was made within fifteen (15) days of the distribution of the then current list immediately following the consumer's number being added to the list.

(g) *The attorney general shall advertise for bids and enter into a contract with an entity to act as the administrator of the telephone solicitation program described in subparagraph (h) of this section. The contract may include any provision that the attorney general determines is in the public interest.*

(h) *The administrator referred to in subparagraph (g) shall create, maintain and distribute a database containing a list of telephone numbers of consumers who do not wish to receive any unsolicited consumer telephone calls at the listed numbers. Beginning on the date specified in the contract between the administrator and the attorney general and at least once each month thereafter, the administrator shall update the list by:*

(1) Adding the numbers of consumers who have filed notice and paid the fee as required in subparagraph (i); and

(2) Removing the numbers of those consumers who have requested that their numbers be removed or whose listing has expired without renewal.

(i) A consumer may file a notice together with a fee of $10 per listed number, or such lesser amount as may be specified in the contract, with the administrator indicating the consumer's desire to place telephone number(s) on the list described in subparagraph (h) of this section. The notice shall be filed in the form and manner specified in the contract between the administrator and the attorney general. The notice shall be effective for the calendar year in which it is filed and may be renewed by the filing and payment of an additional notice and fee as specified in the contract.

(j) The administrator shall not furnish the list or any information about a consumer to any person except as follows:

(1) Upon request of a telephone solicitor engaging in or intending to engage in unsolicited consumer telephone calls and after payment of a fee in an amount specified in the contract between the administrator and the attorney general, the administrator shall furnish the most recent copy of the list described in subparagraph (h) of this section to the telephone solicitor. The list shall be made available in printed and electronic form.

(2) Upon request of a qualified trade association and after payment of a fee in an amount specified in the contract between the administrator and the attorney general, the administrator shall furnish the most recent copy of the list described in subparagraph (h) of this section to the qualified trade association. The list shall be made available in printed and electronic form. A qualified trade association receiving a list under this subparagraph may

make the list available to its members on any terms the association and its members may impose.

(3) Upon request of the attorney general for the purpose of enforcing the provisions of this section, the administrator shall furnish the attorney general with all information requested by the attorney general concerning a telephone solicitor or any person the attorney general believes has engaged in an unsolicited consumer telephone call prohibited by this section. The administrator shall not charge a fee for furnishing the information to the attorney general.

(4) Upon request of any consumer who has filed a notice and paid the fee as provided in subparagraph (i) of this section, the administrator shall furnish the consumer with all information requested by that consumer concerning the telephone solicitor or any person who the consumer believes has engaged in an unsolicited consumer telephone call prohibited by this section. The administrator shall not charge a fee for furnishing the information to the consumer.

(5) The administrator shall comply with any lawful subpoena or court order directing disclosure of the list and of any other information.

(6) The administrator shall provide all information that may be requested by any successor administrator who may be selected by the attorney general. The administrator shall not charge a fee for furnishing the information to the successor administrator.

(k) The administrator shall promptly forward any complaints concerning alleged violations of this section to the attorney general.

(l) Fees paid to the administrator under this section shall be considered income to the administrator in the manner specified in the contract between the administrator and the attorney general.

(m) The attorney general may adopt rules relating to any aspect of the establishment, operation or administration of the telephone solicitation program established under this section.

(n) The corporation commission shall by rule require that telecommunications carriers inform consumers of the provisions of this section. Notification may be by:

(1) annual inserts in billing statements mailed to consumers which shall contain the specified notice form; or

(2) conspicuous publication of the specified notice form in the consumer information pages of local telephone directories.

~~(f)~~*(o)* Local exchange carriers and telecommunications carriers shall not be responsible for the enforcement of the provisions of this section.

~~(g)~~ *(p)* Any violation of this section is an unconscionable act or practice under the Kansas consumer protection act.

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