

Approved: March 22, 2000

Date

Carl Dean Holmes

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:12 a.m. on March 2, 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: Janette Luehring, KCC
Steve Rarrick, Assistant Attorney General
Ann Mah, Southwestern Bell

Others attending: See Attached Guest List

SB 455 - Late payment fees on KUSF assessments.

Chairman Holmes welcomed Janette Luehring, Chief of Telecommunications for the Kansas Corporation Commission, who testified in support of **SB 455** (Attachment 1). Ms. Luehring provided information to the committee about the background on the late payment fees assessments from the original 1996 docket and the 1997 order.

Ms. Luehring responded to questions from Rep. Sloan, Rep. Alldritt, Rep. Long, Rep. Loyd, Rep. McClure, Rep. Kuether, Rep. Vining, Rep. Holmes, and Rep. Krehbiel.

SB 431 - Addition of unwanted charges to telephone bills prohibited

Mr. Steve Rarrick, Deputy Attorney General for the Consumer Protection Division of the office of Attorney General Carla Stovall, testified in support of **SB 431** (Attachment 2). Mr. Rarrick explained that the bill would amend the statute that prohibits slamming (the unauthorized switching of a consumer's local or long distance phone service without express authorization) to include the prohibition on cramming (the adding of unauthorized charges to a consumer's phone bill). It does exempt the consumer's existing local or long distance carrier.

Mr. Rarrick responded to questions from Rep. Alldritt, Rep. Vining, Rep. McClure, Rep. Krehbiel, Rep. Toelkes and Rep. Holmes.

Ms. Ann Mah, Area Manager in Regulatory Affairs for Southwestern Bell, testified as an opponent to **SB 431** (Attachment 3). Ms. Mah stated that Southwestern Bell had supported the original draft of the bill. However, the amended language that requires them to obtain express authorization for services sold through their subsidiaries was not supportable.

Ms. Mah responded to questions from Rep. Dahl, Rep. Alldritt, Rep. Loyd, Rep. Krehbiel, and Rep. Klein.

Additionally, Chairman Holmes allowed the Kansas Corporation Commission representatives to respond to questions from Rep. Myers, Rep. Morrison and Rep. Krehbiel.

Meeting adjourned at 10:34 a.m.

Next meeting is scheduled for March 6, 2000 at 9:00 a.m.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 2, 2000

NAME	REPRESENTING
Dave Holthaus	Western Resources
Mike Kern	Heim & Werner
Roger Trautve	KGC
Ernest C. Fogge	AARP
ED SCHAUB	WESTERN RESOURCES
Doug Lawrence	SW Bell
Ann Mah	SW Bell
Shelly Welch	Attorney General's office
Kristy Hiebert	"
Teresa Salts	"
Steve Rarrick	"
Christine Aarnes	KCC
Janette Luehring	KCC
Beck LAWSON	KCC
TOM DAY	KCC
Carole N. Snoden	NA
Valerie L. GARCIA	guest of Laura McClure

House Utilities Committee
Comments of Kansas Corporation Commission Staff
March 2, 2000

Establishment of fund and assessment method - Docket 190,492-U, December 27, 1996 Order (reconsideration order February 3, 1997)

- contributions to the KUSF required to be on an equitable and non-discriminatory basis (K.S.A. 66-2008(b))
- all telecommunications service providers assessed a percentage of intrastate revenues (for year four of the KUSF the assessment percentage is 4.92); commission has evaluated and clarified what constitutes intrastate revenues

Establishment of late fee for assessments - February 18, 1997 Order

- the commission authorized the imposition of a late payment fee for delinquent KUSF payments
- the late payment fee is 1% per month (12% APR)
- the commission stated that a late payment fee may be necessary to encourage prompt payment and to assure the integrity of the fund; commission noted that it is a standard business practice

Carriers submit worksheets to NECA stating intrastate revenues for the month and demonstrating the calculation of their KUSF assessment

- late payment fee assessed if carrier fails to make timely, complete payment
- when a company is 90 days past due a certified letter is sent by the commission (NECA sends a late payment notification letter at 30 and 60 days)
- commission pursuing collection proceedings through the courts and the commission may show cause to cancel a company's certificate if company continues to fail to pay KUSF
- attachment demonstrates number of carriers delinquent for each year of the KUSF and the number of days delinquent; for example in current year (year 3), 56 carriers are 270 days past due
- for example in January of 1999, 9 carriers remitted \$29,349.69 in late KUSF payments and \$1,334.25 in late payment fees

The purpose of the modification of the statute as set forth in the bill would be to reinforce the commission's authority to assess a late payment fee for delinquent KUSF payments; one carrier currently challenging commission's authority because its not specifically set forth in the statute (company owes late payment charge of \$17,427 - commission pursuing legal action)

HOUSE UTILITIES

DATE: 3-2-00

ATTACHMENT |

DELINQUENT CARRIERS TO THE KUSF

DAYS	<u>YEAR 1</u>	<u>YEAR 2</u>	<u>YEAR 3</u>
30	0	5	52
60	2	7	11
90	1	7	14
120	3	3	13
150	0	1	16
180	1	0	4
210	2	1	7
240	1	0	8
270	1	1	56
300	5	1	
330	25	2	
360	<u>0</u>	<u>48</u>	<u> </u>
TOTAL	41	76	181



CARLA J. STOVALL
ATTORNEY GENERAL

State of Kansas

Office of the Attorney General

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Testimony of
Steve Rarrick, Deputy Attorney General
Consumer Protection Division
Office of Attorney General Carla J. Stovall
Before the House Utilities Committee
SB 431 as amended by Senate Committee of the Whole
March 2, 2000

Chairperson Holmes and Members of the Committee:

Thank you for asking me to appear before you this morning on behalf of Attorney General Carla J. Stovall to testify in support of SB 431 as amended by the Senate Committee of the Whole. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

Cramming is the unauthorized submittal of additional charges to a consumer's telephone bill and usually results in much higher damages to consumers than slamming. Cramming charges range from \$5.00 to \$50.00 on monthly telephone bills. Examples of unauthorized charges include voice mail, personal 800#'s and Internet access/web page design. As you can imagine, consumers are not happy when these charges appear on their telephone bill without their authorization.

We did not begin tracking cramming complaints until April of 1998. We received 121 cramming complaints through the end of 1998. In 1999, we received 59 cramming complaints. As with all areas of consumer violations, the number of complaints we receive in our office on cramming reflects only a small percentage of actual consumer violations. Southwestern Bell advises that in 1998, they received an average of 496 cramming complaints per month from Kansas customers. This decreased in 1999 to an average of 221 cramming complaints per month, or approximately 2,650 in 1999.

We believe the decrease in cramming complaints in 1999 is attributable to both the 1998 prohibition against using sweepstake/prize drop boxes to add telecommunication services and the increased effort by the telecommunication industry to protect their customers from this abusive practice. However, unauthorized Internet-related charges are currently the most common cramming complaint. With the increased use and popularity of the Internet, we anticipate similar complaints in the future.

Senate Bill 431 seeks to amend K.S.A. 50-6,103, the statute enacted in 1998 which prohibits slamming (the unauthorized switching of a consumer's local or long distance telephone service without a consumer's express authorization), to also prohibit cramming (adding unauthorized

HOUSE UTILITIES

DATE: 3-2-00

ATTACHMENT 2

charges to a consumer's telephone bill). Since 1998, we have worked with industry in drafting SB 431, and believe these new provisions on cramming and slamming will further our joint effort to stop these practices.

Briefly summarized, the provisions in SB 431 would:

- Include cramming as a prohibited practice by:
 - prohibiting the addition of any supplemental telecommunications services or billing or collecting for such services without the consumer's express authorization and placing the burden of proving the express authorization on the supplier (page 2, lines 6-19);
 - defining "supplemental telecommunications services" to include the types of items that are often crammed onto consumers' phone bills, including: personal 800 numbers, calling card plans, Internet advertisement and website services, voice mail services, paging services, psychic services, dating services or memberships, travel club memberships, Internet access services and service maintenance plans (page 1, lines 27-36);
 - prohibiting deceptive, misleading or confusing conduct when soliciting a consumer to add any supplemental telecommunications services (page 2, lines 23-29); and
 - imposing civil penalties of \$5,000 to \$20,000 against crammers or third-party billing companies for cramming violations (page 2, line 43, page 3, lines 1-4).
- Replace the phrase "local exchange carrier or telecommunications carrier" with the term "supplier" to allow the Attorney General to pursue all entities involved in a cramming or slamming scheme when such company knew or had reason to know the express authorization had not been obtained, such as the companies' demanding payment from consumers (page 2, lines 20-22, 43, page 3, lines 1, 11-12).
- Exempt a consumer's existing local or long distance carrier from the cramming provisions (page 2, lines 6-7). Our complaint history demonstrates that existing companies are not a problem in the cramming area. These existing carriers would still be liable for any deceptive acts and practices under general consumer protection provisions, and would certainly lose existing customers if they bill their customers for unauthorized services. An amendment added on the Senate floor provides that the phrase "existing local exchange carrier or telecommunications carrier" does not include an affiliate or subsidiary thereof (page 1, lines 19-21).

- Allow organizations and businesses to bring their own private cause of action for slamming and cramming (page 3, lines 21-25). Currently, the slamming law does not protect anyone other than a consumer as defined by the Act (an individual or sole proprietor) from slamming or cramming. This amendment would not expand the authority of the Attorney General, but merely give these entities a private cause of action for slamming and cramming.

On behalf of Attorney General Stovall, I urge your favorable consideration of Senate Bill 431. I would be happy to answer any questions of the chair or the members. Thank you.

House Utilities Committee

March 2, 2000

Review of SB 431

Chairman Holmes, members of the committee, I am Ann Mah, area manager in regulatory affairs for Southwestern Bell. I am a subject matter expert for the company on issues including slamming and cramming for the state of Kansas. I thank you for allowing me time to discuss issues involved in Senate Bill 431 before you today.

First, let me say that Southwestern Bell supports the concept of the original draft of SB 431. Southwestern Bell worked with the Attorney General's office and the industry to develop that language. We still support that original bill.

Southwestern Bell must, by federal law, bill for telecommunications providers on a non-discriminatory basis. The vast majority of charges submitted to SWBT for billing are legitimate. However, some unscrupulous providers continue to "cram" onto our customers' bills charges for services not authorized, and sometimes not even received. Dealing with cramming complaints has cost Southwestern Bell considerable expense in handling time and an invaluable loss of good will with our customers.

Therefore, Southwestern Bell has taken significant steps toward reducing instances of cramming through changes in its billing and collection practices. Southwestern Bell also took a leadership role in 1998 in helping the industry develop a set of "best practices" designed to eliminate offending providers. In short, Southwestern Bell has:

- educated its customers about how to prevent cramming
- stopped billing for 40 providers
- stopped billing for the services most likely to be the source of cramming problems, such as monthly fees for calling cards, prepaid calling cards, and debit calling cards
- put in place a plan to put offending providers on a "moratorium" when the provider reaches a threshold level of adjustments or complaints

These efforts have had a positive impact on the cramming problem. From May through December 1998, we averaged 496 cramming complaints per month in Kansas. In 1999 we averaged 221 complaints per month, a reduction of over 50% in just one year. Southwestern Bell believes the industry's continuing efforts combined with the provisions proposed in the original SB 431 will continue to bring positive results.

However, we cannot support this bill with language that requires Southwestern Bell to obtain express authorization for services we sell for our subsidiaries. The original bill provided an exemption for existing local exchange carriers from obtaining "express authorization". That exemption was supported by the Attorney General's office and the industry because local exchange carriers are not causing the problem.

The new language that specifically removes subsidiaries and affiliates from the definition of local exchange carrier essentially removes the local carrier exemption for Southwestern Bell, as we may sell many services (voice mail, cellular, among others) for our subsidiaries. Customers do not distinguish those subsidiaries from the "telephone" company and expect to business with us for all our products. The fact is, we have been selling services for those subsidiaries, and by the Attorney General's office's testimony, this has not caused a problem. We propose that the original language of SB 431 be restored in this regard.

HOUSE UTILITIES

DATE: 3-2-00

ATTACHMENT 3