

Legislative session in an attempt to curb telemarketing calls to consumers who do not wish to receive those calls. The legislation requires the Kansas Corporation Commission, by July 1, 2001, to implement rules and regulations.

Janet Buchanan, Chief of Telecommunications, Kansas Corporation Commission, brief the Committee on the "Activities Update of the Kansas Corporation Commission", (a copy is on file in the office of Legislative Research). Ms. Buchanan testified that in the Telecommunications arena, the Commission had 985 dockets in the last fiscal year. She gave a summary that includes pending dockets and dockets completed during 2000 as follows:

Docket No. 97-SCCC-149-GIT was initiated at the request of Sprint to establish SWB's rates for interconnection, unbundled network elements and resale.

Docket No. 97-SWBT-411-GIT proceeding was initiated to investigate SWBT's compliance with section 271 of the Federal Telecommunications Act. (Fourteen point checklist). SWB provided evidence on the 14-point checklist. The Federal Communications Commission (FCC) must consult with the state commission to determine if SWBT has complied with section 271.

Docket No. 99-GCCZ-156-ETC:

Docket No. and 99-SSLC-173-ETC

The Commission is considering applications by Western Wireless and Sprint PCS to be designated as eligible telecommunications carrier. That status would give them the ability to receive both state and federal universal service funds. The Commission granted status in non-rural areas of the state and held a hearing regarding whether it's in the public's interest to grant that status in rural areas. After the hearing, the Commission decided that there would be a rebuttal presumption that it is in the public's interest to allow competitors and grant them ETC status in the rural areas. Currently the Commission is hearing specific information from the rural companies about whether or not in their specific territory this would have an impact that is not in the public's interest.

Docket No. 99-GIMT-326-GIT: This docket was initiated to determine how the KUSF should be modified into a cost-based fund. The Commission has determined a cost-based fund for SWBT and Sprint. The Commission delayed review of the support provided to rural telephone companies until the FCC issues its order on federal universal service support for rural companies. The Commission is also considering whether the KUSF should support more than one line per residence and targeting support in rural areas by defining zones that would specify the amount of support available. This would get support to the more rural areas.

Docket No. 99-GIMT-706-GIT: The Commission opened this docket to investigate the effect of long-term contracts on the development of competition. The Commission requested comments regarding fresh look contract termination liability and the resale of long-term contracts. A fresh period provides the customer with long-term contracts the ability to negotiate a new contract with a competitive provider that has limited or no termination liabilities imposed for early termination of the contract.

Docket No. 00-GIMT-236-GIT: This docket was opened to determine the assessment for year four of the KUSF. The assessment surcharge was 4.92% for wireline and 4.66% for wireless carriers. The Commission is currently looking at year five assessment. The assessment started in the range of 9.9%.

Docket No. 00-GIMT-401-GIT: This docket was to consider the exhaust of the 316 area code. The docket was opened in October, 1999. The Commission received comments from both industry and consumers. On October 9, 2000 the Commission issued an order establishing the following time frame for implementing a change of area code from 316 to 620 for the southern half of Kansas except for the area of the Wichita exchange and some surrounding exchanges.

Docket No. 00-UTDT-455-GIT: The Commission opened a docket to review Sprint's costs to provide local service. Sprint's KUSF draw was modified as a result of the Commission's determination in Docket No. 99-GIMT-326-GIT. The Commission issued an Order dated January 7, 2000 opening the investigation into Sprint's costs to provide local service and to determine whether rate rebalancing or transitional support is justified as a result of the decrease in Sprint's KUSF draw.

Docket No. 00-GIMT-910-GIT: The Commission considered the effectiveness of Lifeline service and level of awareness. The Commission previously expressed concern with the low level of subscriber ship to the Lifeline program and asked Staff to convene a forum. The Lifeline program provides assistance to lower income subscribers so that they have access to telephone service.

Docket No. 00-GIMT-1054-GIT: The Commission opened a general investigation to determine whether reciprocal compensation should be paid for internet bound traffic. Currently SWB and many of the other providers were not paying reciprocal compensation on traffic-bound to an ISP.

Docket No. 01-GIMT-032-GIT: The Commission is investigating the conditions, terms and rates for digital subscriber line (DSL) unbundled network elements, loop conditioning and line sharing. The Commission had a hearing on the issue but decided they needed more information from the parties. Another hearing will be held February 13 and 14, 2001.

Docket No. 01-GIMT-081-GIT: The Commission initiated this proceeding on August 10, 2000 to investigate the reduction of intrastate access charges for rural telephone companies in compliance with K.S.A. 66-2005(c).

Docket No. 01-GIMT-082-GIT: On September 21, 2000, Staff filed a motion to initiate an investigation of intrastate access charges.

Docket No. 01-SWBT-444-TAR: This docket filed an application for price deregulation and customer specific pricing for Plexar services, Speed Calling and Auto Redial. SWBT filed evidence to support a finding that there is sufficient competition for the provision of these services throughout the state and price regulation is no longer necessary for those services. The Commission issued an order approving the application on December, 2000.

Chairperson Brownlee opened the meeting for questions from committee members.

Senator Steineger moved, seconded by Senator Brungardt, that the Minutes of January 10 be approved. The vote was unanimous in favor of the motion.

The meeting was adjourned at 9:30 a.m.

The next meeting is scheduled January 24, 2001 at 8:30 a.m.

SENATE COMMERCE COMMITTEE

GUEST LIST

DATE: JANUARY 23, 2001

NAME	REPRESENTING
Colleen Harrell	KCC
JANET BUCHANAN	KCC
Bill Sneed	SW Bell
Sam Sellers	KS Assoc. Ins. AGENTS
Doug Smith	Dehart & Darr Associates
TOM DAY	KCC
Erik Santortus	K.C. Regional Assoc. of Realtors
Pat Hubbell	SW Bell
Roger Trauzae	KGC
Shirley Allen	Botterby & Assoc.
Bernie Koch	Wichita Area Chamber
Patricia Cannon	SWB
DENNY KOCH	sw B
Gail Bright	A.G.
STEW LARICK	ATTORNEY GENERAL
Kristy Hiebert	"
Teresa Salts	"
Nancy Lindberg	"
LARRY MAGILL	KS. ASSN OF INS. AGENTS



Kansas Corporation Commission

Bill Graves, Governor John Wine, Chair Cynthia L. Claus, Commissioner Brian J. Moline, Commissioner

Testimony of
Colleen R. Harrell, Assistant General Counsel
Kansas Corporation Commission
Before the Senate Commerce Committee
RE: Progress report on 2000 HB 2580 - drafting rules and regulations
January 23, 2001

Chairperson Brownlee and Members of the Committee:

Thank you for allowing the Corporation Commission to report to you this morning on the progress we are making drafting rules and regulations to implement 2000 Legislative Session House Bill 2580. My name is Colleen Harrell. I am an Assistant General Counsel to the Commission and the legal staff member assigned to this issue.

I have attached a copy of House Bill 2580 to this testimony and I have also attached a detailed timeline of events which have occurred so far in this docket. As you can tell, although we have made progress, we have some concerns about implementation of portions of the legislation.

House Bill 2580 was passed during the 2000 legislative session in an attempt to curb telemarketing calls to consumers who do not wish to receive those calls. This legislation requires the Corporation Commission, by July 1, 2001, to implement rules and regulations. Initially, the Commission will draft a regulation which requires all local exchange carriers and telecommunications carriers to meet and collectively develop a method or methods for annually notifying consumers of rights and remedies available under the Kansas consumer protection act and two federal acts - the telephone consumer protection act and the telemarketing and consumer fraud and abuse prevention act. Further, through these methods, consumers are to be informed of the Direct Marketing Association's (DMA's) telephone preference service, as required by section (b).

It is our understanding that the telephone preference service works this way - consumers interested in reducing the number of telemarketing calls that they receive would subscribe to the DMA's service. Then, telemarketers purchase from the DMA lists of consumers who subscribe to the service and do not wish to receive calls. Telemarketers are then supposed to use those lists to delete consumers from their telemarketing call lists. The DMA is a private organization and telemarketers are not required to purchase the consumer lists.

Section (b) of the legislation specifies information which, at a minimum, is to be provided to residential subscribers, in addition to the information required in section (a). Included is the method to register with the DMA's telephone preference service, the types of calls consumer subscribers to the service can still expect to receive, the duration of the registration and the procedures for registration renewal. The last piece of information that is required to be provided to consumers is "the remedies available to registered subscribers if they receive unsolicited consumer telephone calls pursuant to K.S.A. 1999 Supp. 50-670, and amendments thereto." The difficulty that

we are having with this provision, however, is that under the telemarketing sections of the Kansas consumer protection act, there is no more relief available to DMA-registered subscribers than non-DMA-registered subscribers. The DMA does not impose penalties on telemarketers who purchase the lists but call those consumers, anyway.

Finally, section (c) of the legislation requires the Corporation Commission to “[e]stablish guidelines to inform all telephone solicitors in Kansas of . . .” DMA membership requirements and charges to access the DMA’s database. The Corporation Commission does not regulate telemarketers. We do not know how to identify all telemarketers, whether they be Kansas-based or non-Kansas-based. Another concern that we have is that the legislation does not indicate who is required to inform all telephone solicitors in Kansas of the DMA information and who is going to pay for transmitting the information.

The Commission opened a docket, or proceeding, on August 2, 2000, to solicit comments from interested parties regarding the content of the eventual rules and regulations. Most comments focused on the actual form the information required to be presented to consumers should take, however, Verizon Wireless filed comments which indicated that it believed the legislation did not apply to wireless service providers. Comments on the form the information should take ranged from a simple message printed on the customer’s bill, to a free-standing bill insert, to a page in the telephone directory. Southwestern Bell Telephone, in addressing the directory page method, questioned whether it, alone, would be required to pay for the directory page since it publishes a telephone directory. Comments did not address sections (b) or (c) of the legislation.

At this point the Commission staff is drafting rules and regulations to attempt to implement this legislation. We met with representatives of the DMA on Friday, January 19, to obtain their input, so final versions are not available. Once we have drafted final versions, we anticipate that we will, in the interest of time, combine the normal docket comment process on the final version of the rules and regulations with the statutory 60-day comment period and public hearing, instead of holding two separate procedures.

We do anticipate that regulations implementing sections (a) and (b) would require all interested local exchange carriers and telecommunications carriers to meet in an industry-wide forum, to be coordinated by major industry participants, to collectively develop the method(s) for informing residential subscribers, and then submit the actual text and method(s) to the Corporation Commission for ultimate approval. We anticipate that we would require the industry-wide forum to be on or before September 1, 2001, with reporting to the Commission within a couple of weeks from that date. Section (c) of the legislation may require a little more work, and we anticipate a cooperative effort with the DMA to achieve optimal end results.

Thank you for the opportunity to brief the committee on the Commission’s progress. I would be happy to take any questions that you might have.

receipt of a qualifying gift under section 2 and amendments thereto, the director of accounts and reports shall transfer from the state general fund an amount determined by the director of accounts and reports to be the earnings equivalent award for such qualifying gift for the period of time between the date of certification of the qualifying gift and the first day of the ensuing state fiscal year to either (1) the endowed professorship account of the faculty of distinction matching fund of the eligible educational institution, in the case of a certification of a qualifying gift to an eligible educational institution that is a state educational institution, or (2) the faculty of distinction program fund of the state board of regents, in the case of a certification of a qualifying gift to an eligible institution that is not a state educational institution. Subject to the other provisions of this act, on each July 1 thereafter, the director of accounts and reports shall make such transfer from the state general fund of the earnings equivalent award for such qualifying gift for the period of the preceding state fiscal year. All transfers made in accordance with the provisions of this subsection shall be considered demand transfers from the state general fund.

(b) There is hereby established in the state treasury the faculty of distinction program fund which shall be administered by the state board of regents. All moneys transferred under this section to the faculty of distinction program fund of the state board of regents shall be paid to eligible educational institutions that are not state educational institutions for earnings equivalent awards for qualifying gifts to such eligible educational institutions. The state board of regents shall pay from the faculty of distinction program fund the amount of each such transfer to the eligible educational institution for the earnings equivalent award for which such transfer was made under this section.

(c) The earnings equivalent award for an endowed professorship shall be determined by the director of accounts and reports and shall be the amount of interest earnings that the amount of the qualifying gift certified by the state board of regents would have earned at the average net earnings rate of the pooled money investment board portfolio for the period for which the determination is being made.

(d) The total amount of new qualifying gifts which may be certified to the director of accounts and reports under this act during any state fiscal year for all eligible educational institutions shall not exceed \$30,000,000. The total amount of new qualifying gifts which may be certified to the director of accounts and reports under this act during any state fiscal year for any individual eligible educational institution shall not exceed \$10,000,000. No additional qualifying gifts shall be certified by the state board of regents under this act when the total of all transfers from the state general fund for earnings equivalent awards for qualifying gifts pursuant to section 3 and amendments thereto for a fiscal year is equal to or greater than \$5,000,000.

Sec. 4. (a) The chancellor, president, director or other chief executive officer of an eligible educational institution for which a qualifying gift has been received by the endowment association shall provide from the eligible educational institution's operating budget a salary and full-time position for the endowed professorship. In the manner prescribed by policies adopted by the state board of regents, the chancellor, president, director or other chief executive officer of an eligible educational institution having an endowed professorship under this program shall report annually to the state board of regents a full accounting of the amounts and purposes of all expenditures of the moneys transferred to the faculty of distinction matching fund of the eligible educational institution under this act and the moneys realized from the interest earned on the qualifying gift held in trust by the endowment association for such endowed professorship during the preceding state fiscal year.

(b) The state board of regents shall develop and conduct an ongoing assessment of the Kansas partnership for faculty of distinction program which shall be commenced on or before the first day of the first state fiscal year during which the total of all transfers from the state general fund for earnings equivalent awards for qualifying gifts pursuant to section 3 and amendments thereto is equal to or greater than \$4,000,000. The assessment shall include evaluations of (1) the effectiveness of the program to increase private gifts and to attract and retain professors of distinction for eligible educational institutions, (2) the economic impact of the program on eligible educational institutions and the state, and (3) other appropriate factors specified by the state board of regents. After commencing the assessment of the program, the state board of regents shall annually present a report on the assessment to the legislature at the beginning of each regular session.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 16, 2000.

CHAPTER 91

HOUSE BILL No. 2580

AN ACT concerning consumer protection; relating to unsolicited consumer telephone calls; amending K.S.A. 1999 Supp. 50-670 and repealing the existing section.

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

New Section 1. No later than July 1, 2001, the state corporation commission shall adopt rules and regulations that:

(a) Require all local exchange carriers and telecommunications car-

riers to collectively develop a method or methods for annually notifying residential subscribers of their rights and remedies available to them under the Kansas consumer protection act, the telephone consumer protection act and the telemarketing and consumer fraud and abuse prevention act and the availability of the direct marketing association's telephone preference service.

(b) Require the information provided to residential subscribers in subsection (a) to specify, at a minimum, the following: The method of registering with the telephone preference service at no cost to the subscribers; the frequency with which the data base maintained by the telephone preference service is updated; the types of calls registered subscribers should still expect to receive; the measures subscribers must take to register if they move or receive a new telephone number; the duration for registration and the procedures for registration renewals; and the remedies available to registered subscribers if they receive unsolicited consumer telephone calls pursuant to K.S.A. 1999 Supp. 50-670, and amendments thereto.

(c) Establish guidelines for acceptable methods to inform all telephone solicitors in Kansas of: The requirements for membership in the direct marketing association; charges for members and nonmembers of the direct marketing association to access the data base of the telephone preference service; and options available to telephone solicitors for accessing Kansas-specific portions of the data base.

Sec. 2. K.S.A. 1999 Supp. 50-670 is hereby amended to read as follows: 50-670. (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; or

(C) to any person with whom the telephone solicitor or the telephone solicitor's predecessor in interest had an existing business relationship 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;

(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.

(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; and

(6) *a live operator or an automated dialing-announcing device shall answer the line within five seconds of the beginning of the call. If answered by automated dialing-announcing device, the message provided shall include only the information required in subsection (b)(1) and (2), but shall not contain any unsolicited advertisement.*

(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 profession, delivery, courier or other pickup service receipt or possession of a con-



Kansas Corporation Commission

Bill Graves, Governor John Wine, Chair Cynthia L. Claus, Commissioner Brian J. Moline, Commissioner

History of KCC activities to develop rules and regulations as required by 2000 Legislature HB 2580.

August 3, 2000

Order opening docket and soliciting comments. Comments were to be filed by September 15, 2000, and Reply comments by October 2, 2000.

Entries of appearances filed by Citizens' Utility Ratepayer Board ("CURB"), Sprint, Ionex Telecommunications, Inc., Southwestern Bell Telephone ("SWBT"), AT&T Communications of the Southwest, Inc. ("AT&T"), MCI WorldCom ("MCI"), the Attorney General's office, Verizon Wireless, and Dehart and Darr, Associates, representing the Direct Marketing Association.

Comments:

MCI WorldCom - supports directing the information required to be provided to consumers to be included in local directories.

SWBT - Recommends notification of a consumer's rights and remedies under the enumerated acts through a bill message unless the message exceeds fifty lines in which SWBT would have to utilize a bill insert. A bill message would require only 45 days "lead time." A bill insert would require a minimum of 120 days "lead time."

Attorney General - Opposes a bill message statement as easily overlooked by consumers and, instead, advocates a bill insert and placement of prominent notices in telephone directories. Supports requiring additional language to encourage consumers to report suspected violations to the Attorney General's Consumer Protection Division. Also supports emphasis that participation in the Direct Marketing Association's ("DMA") telephone preference service will not eliminate all telemarketing calls, and that there does not exist an enforcement mechanism to address telemarketers who call consumers on the DMA list.

Reply Comments:

AT&T - Agrees with MCI and Attorney General regarding placement of required information in telephone directories. States that bill messages or bill inserts are often overlooked by subscribers, are expensive for most carriers, and to often have little room for all of the information required to be presented.

Verizon Wireless - States that the order issued by the Commission August 3, 2000, should not extend to wireless telecommunications service providers, discussing a legislative history of the process leading to HB 2580 and prior bills which did include wireless telecommunications service providers.

Senate Commerce Committee
Attachment 1-5
January 23, 2001

SWBT - Concerned that proponents of inclusion of information in local telephone directories, published by SWBT, did not address allocation of the costs of publication of that information. SWBT is not opposed to inclusion of language in local telephone directories, but does not believe that it alone should bear the costs of such inclusion. Requested further clarification from the Attorney General's office as to the criteria which will accomplish her requirements - i.e., a single page for such information or could it be included in another section on "rights of a consumer?"

November 20, 2000

Meeting at the KCC with Gail Bright, Assistant Attorney General, to discuss implementation of the legislation.

November 20, 2000

Email exchange with Doug Smith, Dehart and Darr Associates. Mr. Smith indicated that Dehart and Darr, on behalf of the DMA, would be entering an appearance through attorney Bob Storey and would be filing comments. Colleen Harrell, Assistant Attorney General, Kansas Corporation Commission, requested their comments to address Verizon's comments that the legislation does not apply to wireless telecommunications service providers, and the mechanics to implement the third section of the legislation - specifically, how to identify "all telemarketers in Kansas" of the requirements for membership in the DMA. Mr. Smith responds that DMA members make up approximately 80% of solicitors and that he did not know that anyone could identify all the telephone solicitors that contact consumers in Kansas.

December 27, 2000

Telephone conversation between Bob Storey and Colleen Harrell. Ms. Harrell requested that Mr. Storey file comments on behalf of Dehart and Darr in order to address KCC concerns regarding the content of the legislation, specifically, Verizon comments, specifics required to be presented to consumers in subsection (b) of the legislation, and the notification of "all telephone solicitors in Kansas" in subsection (c) of the legislation and who was expected to bear the costs of such notification.

December 28, 2000

Followup letter to Bob Storey requesting Dehart and Darr comments be filed as soon as possible, so that Colleen Harrell could begin drafting of the implementing rules and regulations. Letter included specific points that Ms. Harrell had requested be address in order to assist her in drafting appropriate regulations.

December 29, 2000

Phone message left by Mr. Storey on Ms. Harrell's voice mail

stating that he would forward Ms. Harrell's letter to Dehart and Darr to assist him in getting comments filed but that he did not know if comments could be filed by January 5 as he would be out of the office for a week.

January 11, 2001

Ms. Harrell phoned Mr. Storey's office and was informed that he would not return to the office until January 15.

January 12, 2001

Ms. Harrell faxed a letter to Mr. Storey's office informing him that the Senate Commerce Committee would be reviewing progress on this legislation on January 23, 2001, and requested that Dehart and Darr file its comments as early in the week as possible so that the KCC and Dehart and Darr representatives could meet later the week of the 15th or on the 22nd to discuss possible regulations to implement section (c) of the legislation.

January 19, 2001

Meeting at the KCC with Bob Storey and Dehart and Darr representatives. Discussion regarding comments filed by docket participants on methods to inform residential subscribers and how to inform telephone solicitors of the requirements for membership in the DMA.