

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Senator Karin Brownlee at 8:30 a.m. on February 28, 2001 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: April Holman, Legislative Research Department  
Bob Nugent, Revisor of Statutes  
Lea Gerard, Secretary

Conferees appearing before the committee: April Holman, Legislative Research Department  
Steve Rarrick, Deputy Attorney General  
Rob Hodges, President, Kansas Tele. Industry Assoc.  
Dr. Ernest C. "Ernie" Pogge, AARP  
Scott Killingsworth, Pekanitor Productions

Others attending: See attachment list.

Steve Rarrick, Deputy Attorney General, Consumer Protection Division, testified on behalf of the Attorney General in support of **HB 2099** stating the Attorney General, Kansas Corporation Commission and members of the telecommunications industry have been working together over the past two sessions to amend the current slamming law that was passed in 1998. This bill includes clean-up language and also includes a private slamming cause of action for non-consumers entities but does not contain the controversial cramming provisions that permitted this bill from passing last session. This bill will allow organizations that have no protection under Kansas law currently to bring their own private cause of action for slamming (Attachment 1).

Dr. Ernest Pogge, Volunteer member of the AARP State Legislative Committee testified in support of **HB 2099** stating that slamming and cramming are two of the most frequent problems cited by older telephone consumers. Slamming takes place in the context of high-pressure telephone contacts or as part of a contest in which participants are not fully informed that they have authorized a change in their long distance carrier. Cramming occurs when an elderly consumer is charged for subscription services without proper authorization to do so (Attachment 2).

Scott Killingsworth, Pekanitor Productions testified in support of **HB 2099** stating slamming is a real problem in that his business brings in a lot of dollars through their 800 number. The business publishes a comic book that reaches out nation-wide, world-wide with subscribers in Canada and Italy. This is an extremely important bill to his business to be protected from slamming. Mr. Killingsworth summarized the history his business has had in the past without his authorization to change the company's long distance carrier. In one instance, his business lost their 800 number service for 19 days. This bill would give their company a cause of action for slamming (Attachment 3).

Rob Hodges, President of the Kansas Telecommunications Industry Association testified in support of **HB 2099** (Attachment 4).

Senator Steineger moved, seconded by Senator Emler that **HB 2099** be recommended favorably for passage and placed on the consent calendar. The voice vote was in favor of the motion. Senator Steineger will carry the bill.

The Chair requested that April Holman, Legislative Research Department and Bob Nugent, Revisor of Statutes provide information regarding the changes on **HB 2004**.

April Holman, Legislative Research Department briefed the committee on **SB 298** and **HB 2034** that deal with emergency wireless 911 service. Comparison of E911 bills attached (Attachment 5).

Senator Emler requested information on the fiscal notes for both bills and why the difference. **SB 298** has a fiscal note of 6 million dollars and **HB 2034** is a 10 million dollar positive note.

Meeting adjourned.

Next meeting scheduled March 01, 2001 at 8:30 a.m.

**SENATE COMMERCE COMMITTEE**

**GUEST LIST**

**DATE: FEBRUARY 28, 2001**

NAME	REPRESENTING
Steve Rarrick	Attorney General
Teresa Salts	Attorney General
Kristy Hiebert	Attorney General
Judy Moler	Ks. Assoc of Counties
Kim Gulley	ICM
Sandy Braden	Angular Wireless
Jim Kang	City of Garden City
John J. Dow	Federico Consulting
JANET BUCHANAN	KCC
Jason White	Kansas EMS Assn.
Michael Pegoan	Sedgwick County
Ernest C. Pogue	AARP
Kevin Bazzone	Hein/Weir chrt'd
John Peterson	Ks Governmental Consulting
Jim Yonally	Verizon Wireless
John S. Pingan	State Independent Tele. Assn.
Mike Murray	Sprint
Mike Reecht	AT&T
Katrina Hull	AD
Nelson Krueger	Western Wireless
Rob Hodges	KTIA
Tom Gleason	Independent Telecom Group





CARLA J. STOVALL  
ATTORNEY GENERAL

State of Kansas

## Office of the Attorney General

CONSUMER PROTECTION/ANTITRUST DIVISION

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Testimony of  
Steve Rarrick, Deputy Attorney General  
Consumer Protection Division  
Office of Attorney General Carla J. Stovall  
Before the Senate Commerce Committee  
HB 2099  
February 27, 2001

Chairperson Brownlee and Members of the Committee:

Thank you for the opportunity to appear before you this morning on behalf of Attorney General Carla J. Stovall to testify in support of HB 2099. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

The Attorney General, the Kansas Corporation Commission (KCC), and members of the telecommunications industry have been working together over the past two sessions to amend K.S.A. 50-6,103, the statute enacted in 1998 to prohibit slamming (the unauthorized switching of a consumer's local or long distance telephone service without a consumer's express authorization). House Bill 2099 includes cleanup language and a private slamming cause of action for non-consumer entities, but does not contain the controversial cramming (adding unauthorized charges to a consumer's telephone bill) prohibitions contained in 1999 HB 2343 and 2000 SB 431. The Attorney General is hopeful that these amendments, which have been agreed upon by members of the industry and the KCC, will pass this year.

The current slamming provisions contained in K.S.A. 50-6,103 were passed in 1998 to eliminate slamming in Kansas and to resolve the inherent difficulty of proving what actually transpires in conversations between telemarketers and consumers. This statute:

- Places the burden of proof on the alleged unauthorized carrier to provide evidence that the consumer affirmatively ordered a switch in service.
- Prohibits any activity, conduct, or representation during the solicitation or verification that would mislead, deceive or confuse the consumer.
- Prohibits the use of sweepstakes drop boxes to collect authorizations from consumers to switch their carrier or to add other telecommunications services to their accounts.
- Provides civil penalties at a minimum of \$5,000 and a maximum of \$20,000 for each violation.

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Attachment 1-1

Kansas has taken a firm stance against slamming with the passage of this law. Although prosecutions for slamming violations occurring prior to the passage of the 1998 slamming law were much more difficult to prove, we prosecuted seven companies for slamming and cramming for a total of \$258,500 from 1996 to 1999. In 2000, we concluded the first two prosecutions under the 1998 slamming law with Consent Judgments for \$350,000 and \$75,000. This year we have obtained another Consent Judgment for slamming in the amount of \$200,000. As a result of the 1998 slamming law, our prosecutions, and efforts of industry, our slamming complaints have decreased from 500 in 1998 and 415 in 1999, to 178 in 2000.

Prior to the passage of the slamming law in 1998, both the Attorney General and the KCC received and processed slamming complaints. Since the spring of 1998, following passage of the slamming law, the KCC began forwarding consumer (individual and sole proprietor) complaints to the Attorney General's office for resolution. At the same time, the Attorney General would refer non-consumer complaints, such as those from partnerships, corporations or churches, to the KCC for assistance because those entities are not consumers as defined by the Kansas Consumer Protection Act.

In April 2000, the Federal Communications Commission (FCC) adopted rules designed to assist consumers with slamming complaints by providing a streamlined resolution process administered by one agency within each state. The FCC rules provide that consumers who have alleged slamming are not responsible to the alleged unauthorized carrier for any charges incurred during the first thirty days after the switch occurred. Upon contacting the local exchange carrier, the authorized carrier or the alleged slammer, consumers are to be informed of this thirty-day absolution period and advised that they may file a complaint with the FCC or their state-designated administrator.

The FCC slamming liability rules, which became effective on November 28, 2000, also provide that the state-designated administrator or state commission would provide a "neutral forum for the resolution of slamming disputes" and that each such commission should notify the FCC that it will be the primary administrator of the rules for that state's citizens. The state-designated administrator would also arbitrate disputes between carriers, a function traditionally handled by public utility agencies and not Attorneys General.

The Attorney General, after careful consideration, determined that the FCC procedure was more consistent with the administrative functions of the KCC. Ultimately, after staff with both agencies conferred on the issue, the KCC notified the FCC that it had elected to be the administrator of the FCC rules in resolving slamming complaints for Kansas consumers.

As a result, the Attorney General is now forwarding consumer complaints in which consumers deny that their authorization was obtained prior to a switch to the KCC for resolution under these new FCC procedures. The Attorney General will continue to receive and investigate complaints involving instances where consumers allege that misrepresentations were made to cause the consumer to give approval to switch. More importantly, the Attorney General will continue to

enforce the Kansas slamming law through enforcement actions against violators, with the KCC providing necessary complaint information to allow us to determine when enforcement actions should be pursued.

Briefly summarized, the provisions in HB 2099 would:

- Define “supplemental telecommunications services” at page 1, lines 19-28, and insert it in the existing provision prohibiting cramming by use of sweepstakes drop boxes in section (c)(2) at page 2, line 10. This will clarify that cramming services such as psychic and dating services using sweepstakes drop boxes is prohibited.
- Replace the phrases “local exchange carrier” and “telecommunications carrier” with the term “supplier” to allow the Attorney General to pursue all entities involved in a slamming scheme (page 1, lines 41-43; page 2, lines 17, 28-29).
- Allow organizations and businesses to bring their own private cause of action for slamming (page 2, lines 38-42). Currently, the slamming law does not protect anyone other than a consumer as defined by the Consumer Protection Act (an individual or sole proprietor) from slamming. This amendment would not expand the authority of the Attorney General, but merely give these entities a private cause of action for slamming.
- Provide that the Attorney General and the Kansas Corporation Commission will enter into a memorandum of understanding to share information necessary to accomplish the purposes of state and federal law, including this statute (page 2, line 43; page 3, lines 1-3). This provision was added this year at the request of the Chair of the House Utilities Committee.

On behalf of Attorney General Stovall, I urge your favorable consideration of House Bill 2099. I would be happy to answer any questions of the chair or the members. Thank you.



# in Kansas

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Topeka, KS 66614  
(785) 228-2557  
(785) 228-2531 Fax

February 27, 2001

Good morning Senator Brownlee and Members of the Senate Commerce Committee. My name is Dr. Ernest Pogge and I am a volunteer member of the AARP State Legislative Committee. The AARP State Legislative Committee represents the views of our more than 350,000 members in the state of Kansas. I am also the coordinator of our Capital City Task Force, which is the lobbying arm of the AARP State Legislative Committee. Thank you for this opportunity to express our views in *support* of House Bill 2099.

Slamming and cramming are two of the most frequent problems cited by older telephone consumers. Slamming often happens in the context of high-pressure and deceptive marketing telephone contacts or as part of "contest" in which participants are not fully informed that they have authorized a change in their carrier. Many of these firms charge rates far higher than the major carriers and consumers see their monthly bills skyrocket.

Cramming occurs when an elderly consumer is charged for subscription services without proper authorization to do so. It occurs when a long distance company sends inaccurate billing information to the local telephone company and that company, acting as a billing agent for these providers, bills consumers for call and services.

Although these practices are illegal, slamming and cramming still persist. The National Fraud Information Center reports that among more than 50 types of telephone-related scams, cramming and slamming are the two issues that consumers complain about most. Congress estimates that consumers of all ages, ethnic groups, educational backgrounds and income levels lose \$40 billion each year to fraudulent telemarketers.

AARP promotes consumer protection legislation that protects citizens from slamming, cramming and telemarketing fraud. Therefore AARP supports legislation that:

- Fully enforces existing laws and regulations against slamming, cramming and other deceptive telecommunications marketing practices.
- Requires telephone companies to obtain verifiable and written authorization before they change a consumer's telephone service provider.
- Ensures that telephone bills contain complete, clear and truthful descriptions of all charges listed and clearly identifies the service provider.

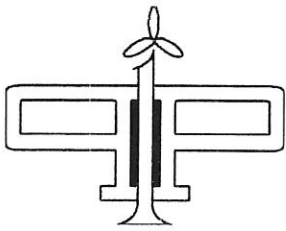


- Imposes substantial penalties on carriers that engage in slamming, and cramming and other deceptive practices.
- Ensures that consumers who have been a victim of cramming or slamming do not have to pay for any of the resulting charges and receive full refunds if they have paid for unwanted services.

Therefore AARP *supports* House Bill 2099.

Thank you again for this opportunity. I stand ready to answer questions.





## PEKANITER Productions, Inc.

Home of "*Cosmo, The Cosmic Cat*"™

431 NW Independence Ave., Topeka, KS 66608  
(785) 232-7400 Fax: (785) 232-7604

### Summary of PEKANITER Productions, Inc. Contacts with Birch Telecom.

July 3, 2000

Greg, Southwestern Bell representative, 1-800-499-7928 service order #N407727. Set up phone service.

July 14, 2000

Southwestern Bell turned on phone. We agreed to have Southwestern Bell as our local carrier with Birch as the long distance carrier.

July 17, 2000

Birch took over our local service. As a result Southwestern Bell turned off our phones. Birch did not turn any service on until July 21, 2001. We were without any service for four days.

August 17, 2000

We paid one thousand one hundred eighty-two dollars and five cents (\$1,182.05) to Birch to cover website and phone use.

September 08, 2000

We returned our phone service to Southwestern Bell for local and long distance.

September 13, 2000

Birch sent final payment due of two dollars no cents (\$2.00), which was paid.

September 14, 2000

Birch Representative (Reletta) confirmed Southwestern Bell as our local carrier.

September 19, 2000

We paid Birch four hundred sixty-one dollars and forty-seven cents (\$461.47) for August.

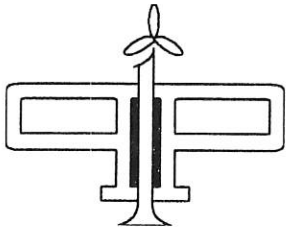
October 14, 2000

We paid September billing of three hundred eighty-four dollars and seventy-two cents (\$384.72) to Birch.

Senate Commerce Committee

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Attachment 3-1



## PEKANITER Productions, Inc.

Home of "Cosmo, The Cosmic Cat"™

431 NW Independence Ave., Topeka, KS 66608  
(785) 232-7400 Fax: (785) 232-7604

October 19, 2000

We were having some difficulties with our local phone lines. When we contacted Southwestern Bell representative Roseada we were informed Birch was our local carrier. This was ordered by Birch on October 2, 2000. We did not authorize this change. We contacted Birch and spoke with their representative Ted who said we never switched from Birch on September 8, 2000. We contacted Southwestern Bell who confirmed that service was returned to them on September 8, 2000. Birch slammed us back to their service on October 2, 2000 without authorization.

October 25, 2000

Shelly from Birch confirmed that we had deactivated service with them. She would not confirm Southwestern Bell as our carrier for local. She did confirm AT&T as our long distance carrier AT&T and Southwestern Bell did confirm the switch to their service

January 23, 2001

A customer informed us that our toll free number was not working.

AT&T representative (Nathifa) said that on January 9, 2001 our toll free number was switched to Birch. (We did not authorize this) Birch then disconnected the number.

Amanda at Birch said the toll free number is theirs, that they have the right to shut it off. She spoke with her supervisor Cora Lee. According to Amanda's records, our toll free number never made the switch with all the other numbers on October 30, 2000.

We spoke with Robin Shaw at AT&T, the toll free representative for AT&T She put in paperwork to Birch to switch it back to AT&T The confirmation on that is T-567. Third party confirmation is 2SYR.

January 31, 2001

We still did not have toll free number. Called AT&T representative Eric, Birch has still not released our toll free number. Eric faxed us a Responsible Organization Designation and Agreement of Agency, which Terry Busy, signed and faxed back. At 10:47a.m. Eric called back and said he faxed Birch our confirmation agreement, and that our toll free number should be released from Birch in forty-eight hours.

February 2, 2001

9:00am called AT&T (1-800-222-0400), to find out status of toll free number, spoke with Sharon who verified that AT&T has control of our toll free number (1-877-982-6766), she then had the number activated. Toll free number is now working, but we are left wondering how long it will last until another incident occurs.



# Legislative Testimony

Kansas Telecommunications Industry Association 700 SW Jackson St., Suite 704, Topeka, KS 66603-3758 V/TTY 785-234-0307 FAX 785-234-2304

## Before the Senate Committee on Commerce

HB 2099

February 27, 2001

Chairman Brownlee, members of the committee, I am Rob Hodges, President of the Kansas Telecommunications Industry Association. Our membership is made up of local telephone companies, long distance companies, wireless telecommunications companies, and firms and individuals that provide service to and support for the telecommunications industry in Kansas.

KTIA members, and indeed the industry as a whole, have worked with and supported the Kansas Attorney General for the past several years to find solutions to protect Kansas consumers from the unscrupulous practices of firms and individuals commonly referred to as "slamming."

In the 1999 session and again in the 2000 session, we joined representatives from the Attorney General's Consumer Protection Division to support refinement of the slamming laws that are offering more-and-more protection for our customers and your constituents.

I appear today to support HB 2099, another step in eliminating the practice of slamming in Kansas.

HB 2099 will extend the protections of the Kansas Consumer Protection Act to more Kansas consumers, enabling them to protect themselves from "slammers." The bill also will help make clear the relationship between the KCC and the AG's office in regard to slamming. Recent FCC rules made it important that this working relationship be reviewed and formalized to benefit Kansas consumers.

We are pleased that slamming complaints are down. We believe that cooperation between the industry and those in the Consumer Protection Division has played a role in this. We pledge our continued cooperation and support.

We ask that you report HB 2099, as introduced, favorably for passage.

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Feb. 28, 2001  
Attachment 4-1

**COMPARISON OF E911 BILLS****SB 298****HB 2034 (HCOW)****Centralized Approach**

- Creates new enhanced wireless 911 statutes. Does not address cable telephony.
- Subscriber surcharge of not more than \$0.50/month/subscriber account as determined by the administrator (Section 2).
- Definition of "wireless carrier" differs in two bills.
- Surcharge must be separate line item on bill (Section 2).
- Surcharge jurisdiction is subscriber's billing address (Section 2).
- Carrier collects surcharge and may retain up to 2% of surcharge as administrative collection fee (Section 3).
- Audits of wireless carrier's books may be required (Section 3).
- No specific provision.
- Creates Advisory Board to advise wireless 911 fund administrator (11 member board.) (Section 4).
- Advisory Board composition different in each bill.

**Decentralized Approach**

- Amends existing 911 service statutes to include wireless and cable telephony service.
- Tax of up to \$0.75/month/wireless connection or cable telephony access line as determined by the governing body (city or county) (Section 2).
- Definition of "wireless carrier" expressly excludes connections involving remote control purposes and access of only one number (Section 2(i)).
- Tax may be separate line item on bill (Section 2(f)).
- Same (Section 2(d)(2)).
- Supplier collects tax and may retain an amount of tax proceeds equal to 2% as an administrative fee (Section 3 (b)).
- Audits of supplier's books may be required at governing body's expense (Section 3(c)).
- Specific provision not precluding a supplier from contracting with another entity to collect and remit taxes (Section 3 (d)).
- Creates Advisory Board to provide assistance to local governments (14 member board.) (New Section 6).
- Advisory Board composition different in each bill.

**SB 298**

**HB 2034 (HCOW)**

**Centralized Approach**

- Creates enhanced wireless 911 fund (Section 6). Administered by administrator appointed by the Governor and housed in the Kansas Highway Patrol (Section 1(a)).
- Administrator determines disbursement from enhanced 911 wireless fund upon receipt of PSAP and wireless applications (Section 9). Based on standards and criteria established in consultation with advisory board (Section 8 (b)).
- PSAP recoverable costs are outlined in both bills—provisions are not identical costs must be used for enhanced wireless 911 services. New or expanded capital improvements or facilities are expressly excluded (Section 8 (b) (1-2)).
- Wireless recoverable costs are costs necessary to implement enhanced 911 service as outlined in bill and subject to service agreement with or request for service from PSAP (Section 8 (b)(3)).
- No specific provision
- Information provided by wireless carriers may be treated as proprietary records (Section 10).
- Liability protection applied to administrator, each public agency, each governing body, each wireless carrier and their employees and agents for installing, maintaining, or providing enhanced wireless 911 service (Section 11).

**Decentralized Approach**

- No new fund is created. Tax proceeds go to local governing body.
- PSAP determines how tax proceeds are to be used for its activities (Section 4 (b)).
- PSAP recoverable costs are outlined in both bills—provisions are not identical. Funds could be commingled for wireline and wireless use and costs could be used for broader applications (Section 4(b)).
- Wireless recoverable costs are subject to negotiation with the governing body and are not outlined in the bill (Section 3 (b)).
- Provision for wireless tax to be suspended if Phase 1 of wireless enhanced 911 service is not implemented by specified dates (Sec. 4 (d)).
- Information provided by wireless carriers shall be treated as proprietary unless otherwise authorized (Section 3 (e)).
- Liability protection applies to public agency or supplier for failure to transmit emergency telephone service or, in the case of the supplier, for the release of subscriber information (Section 5 (b)).