

Approved: April 5, 2002
Date

Carl D. Holmes

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:14 a.m. on March 7, 2002 in Room 526-S of the Capitol.

All members were present

Committee staff present: Robert Chapman, Legislative Research
Dennis Hodgins, Legislative Research
Mary Torrence, Revisor of Statutes
Jo Cook, Administrative Assistant

Conferees appearing before the committee: Walker Hendrix, Citizens' Utility Ratepayer Board
Doug Smith, Direct Marketing Association
Mike Murray, Sprint
George Barbee, Kansas Association of Financial Services
Steve Montgomery, MCI Worldcom
Jim Gartner, Southwestern Bell Company

Others attending: See Attached List

Representative Dreher moved to approve the minutes of the January 22, January 23, and January 24 meetings. Representative Loyd seconded the motion. Motion carried.

Chairman Holmes announced that a tour of the Lawrence and Tecumseh power plants would be the following day and asked for a count of those in the committee planning to attend.

HB 2100 - Unsolicited consumer telephone calls; do-not call list

HB 2903 - Telemarketer no-call list

The hearing on **HB 2100** and **HB 2903** continued.

Walker Hendrix, Consumer Counsel for the Citizens' Utility Ratepayer Board, appeared in support of do not call legislation (Attachment 1). Mr. Hendrix stated that the language in **HB 2767** and **SB 538** was the most complete form of legislation that could be passed this session.

Doug Smith, appearing on behalf of the Direct Marketing Association (DMA), addressed the committee in support of a do not call list created by the industry (Attachment 2). They believe using the DMA's list would form a perfect public/private partnership. Mr. Smith urged the committee to consider the industry's proposal and provided a chart comparing different aspects of each piece of legislation.

Mike Murray, Director of Governmental Affairs for Sprint, spoke as a proponent of no call legislation, endorsing the industry language (Attachment 3). Mr. Murray provided a history of proposed no call legislation. Additionally, he included a copy of the Corporation Commission's order on telephone directory messages informing the consumer about the DMA list. Mr. Murray provided a current Sprint telephone directory showing that information.

George Barbee, Executive Director of Kansas Association of Financial Services, addressed the committee on no call legislation (Attachment 4). Mr. Barbee stated they were neither a proponent or an opponent of any of the bills, and were not opposed to the concept of a no call list. He stated their concern was with the subsidiary operations and their ability to offer services through telemarketing activities.

Steve Montgomery, appearing on behalf of MCIWorld com, spoke in support of the general concept of do not call legislation, but was opposed to specific proposals in **HB 2100** and **HB 2903** (Attachment 5). He stated they support one central list and that diverting from the current DMA listing would confuse consumers. He also addressed some concerns about the Missouri legislation that appears to have incurred costs of \$1.2 million.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 526-S Statehouse, at 9:14 a.m. on March 7, 2002.

Jim Gartner, representing SBC Southwestern Bell, appeared before the committee regarding the no call legislation (Attachment 6). Mr. Gartner stated that the industry's proposal would be a public/private effort that avoids creating a new state bureaucracy, it is already in operation and is free for those who mail in their registration.

The conferees responded to questions from the committee.

The hearing on HB 2100 and HB 2903 will continue on March 11.

Chairman Holmes announced that the hearing on HB 2754 would be reopened on Monday. The hearing on SB 480 would also be on Monday.

The meeting adjourned at 10:54 a.m.

The next meeting will be March 8, 2002.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 7, 2002

NAME	REPRESENTING
MARY PETERS	Sprint
WADE HARGOOD	SPRINT
Robert Collins	Kearney Law Office
George Barber	KAFS
Walker Hendrix	CURB
Colleen Harrell	KCC
Whitney Jamron	KS Information Consortium
Neil Worman	KS Atty Gen.
Lisa Counts	INK
Matt Bergmann	Pat Hubbell Assoc.
Doug Smith	Delwitt & Davis
JANET BUCHANAN	KCC
ERNEST Kutzky	AARP
MATT FLETCHER	INTERHAB
Steve Montgomery	MCI Worldcom
Susan Mahoney	Gov's Office
Tim Pickering	SBC Southwestern Bell
Nathaniel Dawson	" "
Jim Grabner	" " "
LOM DAY	KCC

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: March 7, 2002

NAME	REPRESENTING
<i>Steve Larrick</i>	<i>Attorney General</i>

Citizens' Utility Ratepayer Board

Board Members:

Gene Merry, Chair
A.W. Dirks, Vice-Chair
Frank Weimer, Member
Francis X. Thorne, Member
Nancy Wilkens, Member
Walker Hendrix, Consumer Counsel



State of Kansas
Bill Graves: Governor

1500 S.W. Arrowhead Road
Topeka, Kansas 66604-4027
Phone: (785) 271-3200
Fax: (785) 271-3116

H.B. 2100, 2767, 2903 AND S.B. 538

Testimony by The Citizens' Utility Ratepayer Board

Walker Hendrix, Consumer Counsel

March 6, 2002

The Citizens' Utility Ratepayer Board (CURB) supports "do not call" legislation.

Our Board was very please to see the House pass H.B. 2767. From our perspective, H.B. 2767 is the most complete form of legislation that could be passed this session.

H.B. 2767 contains language identical to S.B. 538. The most positive aspect of these two bills is free registration. There should be no charge for being placed on a no call list. Pure and simple, Kansans should not have to pay for privacy in their homes. They should not have to pay the state or a vendor for being free form unwanted telemarketing calls. Accordingly, CURB urges the committee to establish a policy that requires telemarketers to be charged to defray the costs of supporting a no call list. H.B. 2767 does this by assessing telemarketers seeking a no call list. The charge to be assessed is \$25.00 quarterly for each area code in which no call information is sought.

CURB also favors the provisions in H.B. 2767, which allows a person to register by phone. H.B. 2767 also permits registration by internet enrollment. This committee

HOUSE UTILITIES

DATE: 3-7-02

ATTACHMENT 1

should adopt the policies previously approved by the House and make enrollment as easy as possible. Enrollment should be user friendly.

Should the cost of maintaining the system require more revenue, CURB supports assessing telemarketers higher fees. However, CURB believes that a system can be maintained with the \$25.00 fee for each no call list and the penalties that will be assessed against those parties who choose to violate the no call law.

CURB favors strict penalties for violating the no call provisions. Rather than providing, as H.B. 2903 does at section 6(i), that a defense to an action for violating the no call provisions is a "reasonable" effort to comply, a party should be liable for calling anyone who has been on the list for more than 90 days. This would simplify enforcement and would discourage protracted litigation over whether a company's compliance efforts were "reasonable" or "effective." Quite simply, if all companies know they must update the no call list every 90 days, there should be no excuse for failure to keep their lists current. The internet and computer systems available now could provide for instantaneous updating of the lists.

CURB urges the committee to beware of making exceptions to the no call rules that will take all the teeth out of the bill. Kentucky, for example, has created so many exceptions to the rules that they might as well not have a "do not call" policy. Missouri, apparently, has learned that some of the exceptions that they allowed in their legislation

have become such big loopholes that the legislation has failed, in many ways, to solve the problem it was created to address.

Please don't water down this legislation to satisfy special interests. The people of this state do not want a weak law. They want to join their neighbors to the east and west in securing strong protections from unwanted telemarketing calls.

DIRECT MARKETING ASSOCIATION

**House Utilities Committee
"Do Not Call" Legislation**

March 7, 2002

Chairman Holmes and Members of the House Utilities Committee:

Thank you for the opportunity to appear before you this morning. I appear on behalf of the Direct Marketing Association (DMA), which serves as a professional trade association with over 4,700 members. The DMA is the oldest and largest national trade association, serving the direct marketing industry since 1917. DMA members operate in the United States and in over 53 nations on six continents. Our representative membership includes such businesses as IBM, AOL Time Warner, Prudential Insurance, Proctor & Gamble, Microsoft and many others.

The DMA has 20 member companies headquartered in Kansas and 27 member companies with operations in Kansas. The employment opportunities and financial impact generated by this industry is important to the Kansas economy.

We are here to support the "do not call" list created by the industry proposal to be presented to you today. We feel that the other legislation, which has recently been adopted, contains inconsistencies in the application of the provisions, may actually require state funds to see them implemented and other issues that have never been discussed in a public hearing.

We know that there are consumers in Kansas who need and require the goods and services marketed by our members. Yet, we are aware of consumers who do not want to have telephone solicitations in their home. If they tell us not to call we won't call.

The Direct Marketing Association sponsors, at no cost to consumers, three national name removal services - the Mail Preference Service for direct mail marketers, an Email Preference Service and the Telephone Preference Service (TPS). This TPS list is just one of two free options available to consumers wanting to reduce the number of telemarketing calls they receive. The other option is the in-house suppression list, which is maintained by telephone solicitors as required by FCC rules. (We should also note that new advances in technology are also making strides in providing consumers with other methods to eliminate telemarketing calls.) The TPS list is voluntary, nationwide effort offered by the industry, for the past 20 years, providing consumers with a method for reducing the number of telemarketing calls they receive in their homes. Some will say that the DMA list does not work, or that not all telemarketers use the list. Both statements may be true for the same reason - the use of the TPS is not required by Kansas law. But consumers that have registered with this service have seen results.

For years the Office of Attorney General has promoted the TPS to consumers as a method of reducing telemarketing calls. In 2000, the Kansas Legislature adopted House Bill No. 2580 which required the telephone companies, through Kansas Corporation Commission oversight, to develop an informational page in the telephone directories to provide consumers with information on state and federal consumer protection laws regarding telemarketing. In addition, these directory pages are required to inform consumers of the DMA's TPS and how to register their telephone numbers. The KCC issued their order (KCC Docket # 01-GIMT-049 LEG) in October of 2001 and the information started appearing in the recent 2002 telephone directories.

HOUSE UTILITIES

DATE: 3-7-02

ATTACHMENT 2

The industry proposal requires all telemarketers to use the DMA's TPS. This bill takes the TPS from a voluntary industry effort to a mandated process that must be used prior to initiating unsolicited calls to consumers in Kansas. Telemarketers, whether located inside or outside Kansas, must comply. In fact any business or organization that use the telephone to offer goods or services must obtain a copy of the list and delete these telephone numbers from their calling lists. Regardless if the organization is for-profit or not-for-profit.

We believe that designating the DMA's TPS as the "do not call" list for Kansas forms a perfect public/private partnership. State government should be working with the consumers and industry to create and implement a workable list without competing against private business. Use of the DMA's TPS offers consumers relief via a service administered through the efficiencies and experience of private business. The DMA has been providing the TPS for more than 20 years. We have developed an efficient method for the maintenance and distribution of a "do not call" database that exceeds 4 million records.

Opponents may argue about the integrity of the list that we maintain and that the State would have no control over the records contained on that list. I asked one supporter of the state run method what makes a state compiled database better than one compiled by the private sector. Their response was "because it was state government". If such concerns exist we would offer that the Attorney General compile the consumer registrations submitted and forward them to the DMA to be integrated with the TPS. These registrations would be submitted to the DMA without charge and would remain on the TPS for a period of 5 years. The Attorney General's Office may charge consumers a registration fee to offset any costs the State incurs.

It seems that many of the measures considered by this Legislature have delayed implementation. Most require RFPs to be developed, contracts negotiated and rules and regulation adopted. The DMA's TPS is ready now for consumers to use. It is, and has been, promoted by the State of Kansas as an effective tool for consumers to use. The industry proposal is consistent with the State's public policy and provides consumers with the relief that they want now, without delay and confusion.

However, merely having a do not call list "on the books" is not enough. The Direct Marketing Association feels very strongly that all states should expand their consumer protection education programs - to include informing consumers of federal and state law and promoting the availability of this list is very important. Increased educational services are of much greater benefit to the public, than creating a new process. Consumers must be able to protect themselves, but they can only do so when they know their rights and they have to know when to exercise their rights. An educated consumer is the best tool to eliminate the dishonest characters.

The simple fact is - that right now fraudulent telemarketers don't play by the rules, nor do they follow the law. Will they do so later? Because of this fact, whatever legislative direction you take, the impact is felt by those businesses operating in an ethical manner and in compliance with the law. Not those who discredit the industry, and in the end you and I, as consumers, pay higher prices as the cost of doing business in Kansas goes up to offset the harm created by fraudulent businesses.

We encourage you to support industry proposals. Thank you for your time and consideration of this matter.

Testimony presented by Douglas E. Smith

2-3

"Do Not Call" legislation comparison

	Industry Proposal	SB 538	HB 2100	HB 2767	HB 2903																														
List Administrator	Public/private collaboration	State Government	State Government bid contract out	State Government	State Government bid contract out																														
Registration accepted by:	Direct Marketing Assn. Attorney General	Attorney General/INK	Administrator	Attorney General/INK	To Be Determined by Rules & Regulations																														
Registration Methods	US Mail Online AG could establish others	US Mail Online toll-free telephone	US Mail - -	US Mail Online 800 telephone	TBD TBD TBD																														
Registration Cost	<table border="0"> <tr> <td><i>Mail</i></td> <td>\$0</td> </tr> <tr> <td><i>Online</i></td> <td>\$5</td> </tr> <tr> <td><i>Other</i></td> <td>- -</td> </tr> </table>	<i>Mail</i>	\$0	<i>Online</i>	\$5	<i>Other</i>	- -	<table border="0"> <tr> <td></td> <td>\$0</td> </tr> <tr> <td></td> <td>\$0</td> </tr> <tr> <td></td> <td>\$0</td> </tr> </table>		\$0		\$0		\$0	<table border="0"> <tr> <td></td> <td>\$10</td> </tr> <tr> <td></td> <td>-</td> </tr> <tr> <td></td> <td>-</td> </tr> </table>		\$10		-		-	<table border="0"> <tr> <td></td> <td>\$0</td> </tr> <tr> <td></td> <td>\$0</td> </tr> <tr> <td></td> <td>\$0</td> </tr> </table>		\$0		\$0		\$0	<table border="0"> <tr> <td></td> <td>TBD</td> </tr> <tr> <td></td> <td>TBD</td> </tr> <tr> <td></td> <td>TBD</td> </tr> </table>		TBD		TBD		TBD
<i>Mail</i>	\$0																																		
<i>Online</i>	\$5																																		
<i>Other</i>	- -																																		
	\$0																																		
	\$0																																		
	\$0																																		
	\$10																																		
	-																																		
	-																																		
	\$0																																		
	\$0																																		
	\$0																																		
	TBD																																		
	TBD																																		
	TBD																																		
Registration Period	5 years	2 years	1 year	2 years	TBD																														
Renewable at same cost for a period of	5 years	2 years	1 year	2 years	TBD																														
Database Format	Electronic	written or electronic as determined by administrator	written and electronic	written or electronic as determined by administrator	TBD																														
updated list available	January April July October (Also monthly)	January April July October	upon request	January April July October	TBD																														
Date list will be available	Currently available	July, 2003	Subject to negotiation	July, 2002 ?	July, 2001 or 2003																														

Years of experience operating list	20+	-	-	-	-
Cost for a copy of database	\$465 annually for entire nationwide database (additional \$370 for monthly update)	\$400 annually, or \$25 per area code per quarter	TBD	\$400 annually, or \$25 per area code per quarter	\$10 annually
Delivery Cost	Free	online service is free other formats are subject to fee	Free	online service is free other formats are subject to fee	TBD
Promotion of list to: Consumers Telemarketers	Attorney General Direct Marketing Assn.	- -	KCC -	- -	Telephone Companies
Civil penalties for violations go to	Attorney General	Attorney General	Attorney General	Attorney General	1st to Administrator then to Attorney General
Grace period for implementing update	60 days	None	15 days	None	TBD
Exemptions	Same as current state law, internal list required for existing relationships	new definition	As exist under current state law limited to 36 months	new definition	As exist under current state law
Guarantor for cost of list (revenue shortfalls)	Direct Marketing Assn.*	State of Kansas	negotiated in contract	State of Kansas	State of Kansas

* but not for costs associated with Attorney General compiling list



Before the House Utilities Committee
Michael R. Murray, Director of Governmental Affairs
March 7, 2002
Do Not Call Legislation

Thank you Mr. Chairman for the opportunity to visit with the Committee today as a proponent of do not call legislation.

I'd like to take a moment and review some history with you on this subject.

The 2000 Kansas Legislature passed HB 2580 which required the Kansas Corporation Commission to convene a meeting of telecommunications providers and other interested parties to develop rules and regulations as to how to inform consumers of their rights and remedies under state and federal consumer protection laws as it pertains to unsolicited telephone calls; and to inform consumers of the availability of the Direct Marketing Association's do not call list and how to register with it. This was done in August or September of 2001, and we are just now beginning to implement the rules from the KCC. The method of informing consumers is through pages in the telephone directories which contain the above information.

Over and above what is required by the KCC, in November of 2001, Sprint enclosed a bill insert in each residential local telephone customer's bill with the information on the Direct Marketing Association including a form with which to register. In addition, in April and October of this year we will print a bill message on each residential bill referring people to the pages in their phone directories dealing with unsolicited phone calls. Finally, as our directories are printed and distributed to the local exchanges, news releases are being sent to the local media outlets in those exchanges calling attention to the new pages in the directories and discussing the Direct Marketing Association list.

As has been mentioned, we have a proposal which we believe addresses the matter of unwanted telemarketing calls and which dovetails with the legislation you passed in 2000, and which we are just beginning to implement. This proposal allows the private sector to deal with the issue rather than creating additional governmental bureaucracy and cost to the taxpayers.

Our proposal would contain the following provisions:

- require use of the Direct Marketing Association Telephone Preference Service list for anyone making unsolicited telephone calls in Kansas.
- allow the attorney general to compile the Kansas list but require that it be submitted to the DMA for inclusion in its Telephone Preference Service list at no cost to the State of Kansas
- gives the attorney general control of the list for enforcement purposes

HOUSE UTILITIES

DATE: 3-7-02

ATTACHMENT 3

- requires the attorney general to convene a meeting or meetings with consumer groups and other interested parties to develop means and methods of informing consumers generally and group members specifically of the state do not call list and how to register with it
- allows one exemption for an established business relationship. We believe businesses should be allowed to contact their customers past and present, and upon their request, to cease contacting them.

Registration with the DMA is free to the consumer if done by mail. If done online, there is a \$5 charge. The registration is valid for five years. Any fines levied under this proposal would go to the attorney general. There is little or no cost to the State. Also, we recognize as you should, that no list is perfect. You and your constituents are still going to get some calls. Mistakes happen. And, the bad actors aren't going to respect any no call list. And, if you riddle a bill with numerous exemptions you are going to get proportionately more calls. We propose only one exemption for an established business relationship.

We hear a lot of talk about the Missouri no call list. That it is self-funding. That it has over 800,000 people who have signed up for it. According the attorney general's website there are over 924,000 signed up.

The self-funding part is misleading. In this legislative session, the Missouri Attorney General is asking for a supplemental appropriation of \$1,230,000 in addition to the over \$700,000 appropriated to implement the program. That's just to get the no call operation to June 30 of this year. Next year, for FY 2003, his budget calls for an appropriation of \$2,555,019. According to his website, he has collected only \$500,000 in fines.

Tomorrow, you are going to be hearing from the Consensus Estimating Group about the hole in the budget. Today it is \$426 million. It is rumored that tomorrow it will be over \$600 million. Do you really want to pass a do not call bill which contributes to that deficit?

Also, the Missouri attorney general has already raised the fees charged telemarketers to obtain the statewide no call list from \$100 per year to \$600 per year. The DMA list costs only \$465 per year for the statewide list.

As for the number of sign ups, you need to remember Missouri has more population than Kansas and therefore more residential access lines. In Kansas there are about 1.1 million residential access lines. It is doubtful we will have 924,000 people sign up.

There was comment yesterday that not all telemarketers use the DMA list. Of course they don't. Today using the list is voluntary. Under our proposal it would be mandatory, and the number of telemarketers using the list would increase dramatically or they wouldn't be telemarketing in Kansas very long.

There was also comment yesterday that "this issue is a clear cut political winner." Political expediency is no substitute for sound public policy.

As candidates for public office, you can make use of the DMA sign up form immediately in this election. Your constituents will appreciate you making it available through door hangers, inclusion in brochures or mailings.

The DMA list is available now, today. But, if you pass another kind of do not call bill it is unlikely that it could be implemented until next year. And think of the confusion such a move would create. Here we are just in the midst of printing new telephone directories promoting the DMA information pursuant to state law, and then the State creates another do not call list on top of that?

Finally, you should be aware that the private sector is also addressing the matter of unwanted telephone calls with technology.

Here is the telezapper. When a call comes in from an automatic dialer, it recognizes that and sends a signal back to the telemarketer that the phone is disconnected. Disconnected numbers are scrubbed from calling lists. Ask Rep. Jim Morrison about the telezapper. He uses it and says it works great. It costs \$49.99 at Radio Shack.

Second, the Wheat State Telephone Company, one of our fine rural independent telephone companies, has a service called STOMP—Stop Telemarketing On My Phone. It costs \$2.99 per month. It intercepts all incoming calls and a voice says if you are not a telemarketer, press 1 to complete the call. Wheat State says the service is selling like hotcakes.

Third, Sprint will begin offering in May of this year a service known as Privacy ID. It costs \$4.95 per month and requires that you have Caller ID. The service intercepts unidentified or blocked calls before the phone even rings. An announcement instructs the caller to identify themselves or the call will not be connected. Then the phone rings and a recording of the caller's identification is played. The customer then has the option of accepting the call, rejecting the call with a message they are unavailable, rejecting the call with a message asking the telemarketer to remove them from their calling lists, or sending the call to voice mail.

We respectfully urge the Committee to adopt our proposal. I'd be happy to respond to questions.



Michael R. Murray
Director - Governmental
and Public Affairs

Midwest Operations
800 SW Jackson, Suite 1108
Topeka, KS 66612-1242
Voice 785 232 3826
Fax 785 234 6420

January 2, 2002

Senator John Vratil
9534 Lee Blvd.
Leawood, KS 66206

RE: Do Not Call Legislation

Dear Senator Vratil:

With respect to the issue of "do not call" as it pertains to telemarketing phone calls, we understand that legislation may be introduced in the 2002 Session to establish a state-specific do not call list. Any such legislation is premature, and I wanted to call your attention to the current law and how its provisions are just beginning to be implemented.

The History

Two years ago, in the 2000 Legislative Session, **HB 2580** (copy enclosed) was passed which required the Kansas Corporation Commission to work with the telecommunications providers to promulgate rules and regulations to inform consumers of their rights under state and federal consumer protection laws. Second, consumers are to be informed as to how they might utilize the Direct Marketing Association's Telephone Preference Service list to reduce the number of unwanted telemarketing calls the consumer might receive. Included is a **copy of the KCC rules**.

In September, 2001, the KCC and the telecommunications providers met and agreed that pages in the telephone directories would be the required means by which to make the above notifications to consumers, and the KCC issued rules to that effect.

Sprint's "Do Not Call" Initiative

I have included **copies of the pages that will appear in Sprint's local telephone directories** beginning with the Northeast Kansas Regional and Burlington/Osage City directories which were published in December, 2001. All Sprint directories will contain these pages once the 2002 printing cycle is completed.

In addition, **Sprint is going beyond what was required by the KCC to inform consumers of their rights and remedies.**

First, in November, 2001, every Sprint residential local telephone customer received the enclosed **bill insert** explaining the procedure for registering with the Direct Marketing Association including a registration form. **The information contained in this**

3-4

Page 2.

bill insert might be of use in your communications with constituents advising them how to reduce unwanted telemarketing phone calls.

Second, in April and October of 2002, Sprint will include a **bill message**, printed on each residential local telephone customer's bill, directing the consumer to the pages in the telephone book which inform them of their rights and remedies, and how to sign up with the Direct Marketing Association's Telephone Preference Service list. A copy of that bill message is also enclosed.

Third, as our new telephone directories are distributed to the various Sprint local telephone exchanges, the enclosed **news release** will be sent to the local media outlets for those exchanges further explaining the procedure for registering with the Direct Marketing Association's Telephone Preference Service list.

As you can see, Sprint is making a concerted effort to give its customers the necessary information they need to help reduce unwanted telemarketing phone calls.

Conclusion

It is our hope that the Legislature will refrain from passage of any additional "do not call" legislation establishing a state-specific do not call list. The provisions of HB 2580 and the recently issued KCC rules should be given a chance to work.

The provisions of HB 2580 cost the consumers nothing. There is no cost to the consumer to register with the DMA, and no cost to the taxpayer for administration. On the other hand, a state-specific do not call list would have to be paid for with taxpayer funds or registration fees. That is an especially important consideration during these difficult financial times for the State.

Finally, HB 2580 strikes an appropriate balance by requiring the telecommunications companies to notify and inform consumers of their rights and remedies, and by giving the responsibility to the individual consumer to take action.

I hope yours was a joyous holiday season, and that the New Year holds much promise and opportunity for all Kansans.

Yours very truly,

Michael R. Murray

3-5

HOUSE BILL No. 2580

By Representative Johnston

8-5

12 AN ACT concerning consumer protection; relating to ~~automated an-~~
13 ~~nouncing devices~~ **unsolicited consumer telephone calls**; amending
14 K.S.A. 1999 Supp. 50-670 and repealing the existing section.
15

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

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

19 *(a) Require all local exchange carriers and telecommunications*
20 *carriers to collectively develop a method or methods for annually*
21 *notifying residential subscribers of their rights and remedies avail-*
22 *able to them under the Kansas consumer protection act, the tele-*
23 *phone consumer protection act and the telemarketing and consumer*
24 *fraud and abuse prevention act and the availability of the direct*
25 *marketing association's telephone preference service.*

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

38 *(c) Establish guidelines for acceptable methods to inform all tel-*
39 *ephone solicitors in Kansas of: The requirements for membership in*
40 *the direct marketing association; charges for members and nonmem-*
41 *bers of the direct marketing association to access the data base of*
42 *the telephone preference service; and options available to telephone*
43 *solicitors for accessing Kansas-specific portions of the data base.*

3-6

~~Section 1~~ **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;

(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;

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

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

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

8 (6) *a live operator or an automated dialing-announcing device shall*
9 *answer the line within 15 seconds of the beginning of the call. five sec-*
10 *onds of the beginning of the call ~~when the telephone solicitor's~~*
11 *~~service or equipment is able to provide a live operator or an au-~~*
12 *~~tomated dialing-announcing device within five seconds of the be-~~*
13 *~~ginning of the call. If answered by automated dialing-announcing~~*
14 *~~device, the message provided shall include only the information re-~~*
15 *~~quired in subsection (b)(1) and (2), but shall not contain any un-~~*
16 *~~solicited advertisement.~~*

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

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

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

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

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

33 (h) This section shall be part of and supplemental to the Kansas con-
34 sumer protection act.

35 Sec. 3. K.S.A. 1999 Supp. 50-670 is hereby repealed.

36 Sec. 4. This act shall take effect and be in force from and after its
37 publication in the statute book.

THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS

Before Commissioners: John Wine, Chair
 Cynthia L. Claus
 Brian J. Moline

In the Matter of a General Investigation to)
Comply with Legislation Requiring the) Docket No. 01-GIMT-049-LEG
Commission to Adopt Rules and Regulations)
Regarding Unsolicited Telephone Calls.)

ORDER APPROVING TELEPHONE DIRECTORY MESSAGES

NOW, the above-captioned matter comes on before the State Corporation Commission of the State of Kansas ("Commission"). Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

1. On August 21, 2001, the parties to this docket held an industry forum at the offices of Southwestern Bell Telephone Company in Topeka to discuss implementing K.S.A. 2000 Supp. 50-675a as required by K.A.R. 82-1-250, adopted by the Commission on May 28, 2001.
2. On September 5, 2001, the Commission's Staff filed a report on the industry forum and proposed two "messages" to disseminate information required by K.S.A. 2000 Supp. 50-675a and K.A.R. 82-1-250. One message is designed to inform consumers of their rights and responsibilities as they relate to telemarketing, or unsolicited telephone calls, under the Kansas Consumer Protection Act, the Federal Telephone Consumer Protection Act of 1991, and the Federal Telemarketing and Consumer Fraud and Abuse Prevention Act. The other message is designed to inform consumers of the Direct Marketing Association's Telephone Preference Service and other information required by K.S.A. 2000 Supp. 50-675a(b) and K.A.R. 82-1-250(b). The report indicates that the parties to the forum have agreed that the information should be disseminated by

3-8

means of publishing the information in the telephone directory.

3. Staff's report indicates that Sprint, Staff, CURB and the Attorney General's office had reached agreement on the language contained in the messages. Staff's report further indicates that MCI had some concerns about two pieces of information contained in the messages: including legal citations to state and federal acts pertaining to telemarketing may be confusing to consumers, and; concerns about including language that registering for the Direct Marketing Association's Telephone Preference Service would give consumers no additional legal rights.

4. On September 18, 2001, Sprint filed comments on Staff's report. Sprint indicates that, although it "fully supports the comments" in Staff's report and recommends approval by the Commission, Sprint also indicates that directory publishers should be allowed discretion to modify the messages, either as to typesetting or as to "word changes, as necessary to fit the directory format without altering the meaning and purpose of the message and making the type of sufficient size to be legible and readable."

5. The Commission commends the participants to the industry forum and appreciates the work put in by all attendees to reach the conclusions presented in Staff's report. The Commission believes the method chosen by the forum will reach the most consumers, however, the Commission reminds the industry that the method chosen by the forum is not an exclusive method of informing consumers of their rights and remedies with regards to telemarketing. The Commission urges the industry to be proactive and use any additional means, such as a bill message or a bill insert, a company may deem necessary in order to assist its customers in avoiding unwanted telemarketing calls.

6. Although the Commission acknowledges MCI's concerns, the Commission agrees

3-9

with Staff that the statutory cites should be left in the messages to be readily available to consumers who wish to view the text of the legislation. The Commission does not wish to place an additional burden on the Attorney General's office by using the language suggested by MCI. Further, the Commission believes that it is important to stress to consumers that registering with the DMA's Telephone Preference Service will not give a consumer any additional legal rights under the Kansas Consumer Protection Act over that of a non-DMA-registered subscriber. The Commission is concerned with the publicity from the state of Missouri regarding Missouri's state-sponsored "do not call" list and does not wish to lead consumers in Kansas into believing that the DMA's telephone preference service list is similar to the Missouri "do not call" list. The Commission finds that the language currently in the messages is necessary and shall be left in the messages.

7. The Commission further accepts Staff's recommendation in Staff's report that companies should be allowed to modify the typesetting of the messages as necessary to fit the directory format. This may mean utilizing a different type style, a different type size, or lower case letters instead of all caps. However, the Commission believes that the language should be consistent and that directory publishers should not have discretion to change the language. The Commission is concerned that allowing such textual changes could alter the meaning of the messages such that erroneous information is unintentionally disseminated. Thus, telephone directories shall be published using, verbatim, the language contained in the attached messages.

8. The Commission instructs local exchange carriers publishing directories to publish this information in the next printing cycle of directories. The Commission is aware that some rural companies just issued directories and will not have another directory printing for a full year. For those companies, in the meantime, the Commission urges that information be disseminated to

3-10

consumers via other means.

9. The Commission is also aware that the companies attending the forum were concerned about sharing the costs of printing the directories and that there was discussion on that issue but no resolution. Southwestern Bell Telephone Company had indicated in its previous comments that an additional page in its directories would cost about \$9,000. The Commission instructs LECs publishing telephone directories to move ahead with printing the information in directories. Once actual costs are known, the Commission urges the LECs to attempt to work out cost-sharing with interexchange carriers such as MCI or AT&T among the companies without involving the Commission or Commission Staff. If, however, an agreement for cost sharing cannot be reached, then the Commission urges any parties attempting such an agreement to contact Staff for assistance in reaching an agreement.

10. The Commission finds that all local exchange carriers in Kansas publishing telephone directories shall, in the next cycle of directories, publish the two messages attached to this order concerning consumer rights and responsibilities as to telemarketing, and the existence and method for registering with the Direct Marketing Association's Telephone Preference Service.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. All local exchange carriers in Kansas publishing telephone directories shall, in the next cycle of directories, publish the two messages attached to this order concerning consumer rights and responsibilities as to telemarketing, and the existence and method for registering with the Direct Marketing Association's Telephone Preference Service. The messages may be altered as to typesetting, but the wording of the messages are to remain unchanged.

B. Any party may file a petition for reconsideration of this Order within fifteen (15) days

of the date this Order is served. If service is by mail, service is complete upon mailing and three 93) days may be added to the above time frame.

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order or orders as it may deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED.

Wine, Chr.; Claus, Com.; Moline, Com.

Dated: OCT 01 2001

ORDER MAILED

OCT 01 2001

Jeffrey S. Wagaman Executive Director

Jeffrey S. Wagaman
Executive Director

CH

3-12

Reduce unwanted telemarketing calls

To limit calls from telemarketers, residential consumers may register with the Direct Marketing Associations (DMA) Telephone Preference Service. Information about how to register your telephone number(s) and your rights as a consumer is published in the General Information section of your Sprint telephone directory under "Rights and Responsibilities".

THE HOLTON RECORDER

www.holtonrecorder.com

Vol. 135, Issue 2

Serving the Jackson County community for 135 years

HOLTON, KANSAS • JANUARY 7, 2002

10 Pages

75 Cents Tax Included

Tired of telemarketers? Sprint tells how to sign up for the No Call List

By BRIAN SANDERS
Recorder Staff

Sprint's telephone customers in Jackson County will get more than just the numbers for calling people and businesses when they receive their new Sprint Yellow Pages.

The 2002 Yellow Pages is scheduled to arrive soon in the Holton, Circleville, Hoyt and Mayetta areas. According to Sprint's Carolyn Gaston, the new books will include information on how consumers can cut the number of telemarketing calls they receive by registering for the No Call List, managed by the Direct Marketing Association (DMA).

Residential telephone customers can register for free by sending their full names, full addresses, signatures and up to two residential telephone numbers to the DMA's Telephone Preference Service. In addition, customers may register online at www.the-dma.org/cgi/offtelephonedave, but there is a \$5 charge for Internet registration.

Because the DMA's list is updated quarterly, it may take a few months to note a decrease in unwanted telemarketer calls. But once the registration is completed, customers' names and numbers are removed from calling lists of all DMA member businesses for five years. Telephone customers who move or change their numbers within that five-year period, however, are required to re-register for the No Call List.

Another potential downside of the list is that not all telemarketing companies are registered with the DMA. Non-profit or charitable organizations, political groups, non-DMA telemarketers or any groups or businesses that have established relationships with their customers may still contact them.

Also unaffected through registration with the DMA are calls of a business-to-business nature, as business names, addresses and telephone numbers are not accepted for registration; FAX numbers also are not accepted. In addition, sequentially-dialed, automated recorded message (computerized) calls will not be affected by registration.

The DMA also has an e-Mail preference service available for consumers who indicate that they wish to reduce the amount of unsolicited commercial e-mail they receive. Those interested may register at www.e-mps.org/en

To register for the No Call List, contact DMA Telephone Preference Service, P.O. Box 9014, Farmingdale, N.Y. 11735-9014.

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

Section 1 K.S.A. 2001 Supp. 50-670 is hereby amended to read as follows: 50-670. (a) As used in this section and section 2, and amendments thereto:

(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 has an existing established~~ business relationship ~~if the solicitor is not an employee, a contract employee or an independent contractor of a provider of telecommunication services.~~ *Unless the consumer has objected to such consumer telephone calls and requested that the telephone solicitor cease making consumer telephone calls. The telephone solicitor must maintain a record of the consumer's request not to receive future consumer telephone calls and shall honor the consumer's request for 10 years from the time the request is made;* or

(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.

(6) *"established business relationship" means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and consumer with or without an exchange of consideration, on a basis of an inquiry, application, purchase or transaction by the consumer regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party.*

(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;

3-15

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

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

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

New Section 2. (a) Prior to making unsolicited consumer telephone calls in this state and quarterly thereafter, a telephone solicitor shall consult the national do-not call list maintained by the telephone preference service of the direct marketing association, and delete from such telephone solicitor's calling list all state residents who have registered with such service. The direct marketing association shall offer to consumers at least one method of registration at no cost and such registration shall be for a period of five years. Consumers desiring to register for such service may contact the direct marketing association or the attorney general. Membership to the direct marketing association shall not be a requirement for telephone solicitors to obtain the telephone preference service list and telephone solicitors shall have access to the list. The direct marketing association shall make available the attorney general, in an electronic format, the telephone preference service list to and all quarterly updates of the telephone preference service list at no cost. The attorney general may inform a Kansas consumer whether the consumer's telephone number appears on the current list. The attorney general may compile a list of telephone numbers from consumers desiring to register for such service. The attorney general shall forward the list to the direct marketing association in an electronic format no less than 15 days prior to the date of the next quarterly update. No registration fee shall be imposed on the attorney general for submission of such list to the direct marketing association.

(b) Telephone solicitors shall have a period of not more than 60 days from the time of receipt of the current quarterly update to remove a consumer's telephone number from the telephone solicitors calling lists.

(c) No telephone solicitor may make or cause to be made any unsolicited consumer telephone calls to any consumer if the consumer's telephone number or numbers appear in the current quarterly list of consumers registered with the telephone preference service maintained by the

direct marketing association. A telephone solicitor shall not use the telephone preference service list for any other purpose than to remove consumers' telephone numbers from calling lists.

(d) A telephone solicitor shall be liable for violations of subsection (b) if such telephone solicitor makes or causes to be made an unsolicited telephone call to a state resident whose telephone number appears on the telephone preference service current quarterly list or uses the list for any unauthorized purpose.

(e) As used in this section, "telephone solicitor" and "unsolicited consumer telephone calls" shall mean the same as provided in K.S.A. 50-670, and amendments thereto.

(f) It shall be a defense in any action or proceeding brought under this section that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent unsolicited consumer telephone calls in violation of this act

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

(h) No later than December 31, 2002 the attorney general shall convene a meeting or meetings with consumer advocacy groups to collectively develop a method or methods to notify the consumer advocacy group's membership and educate and promote to Kansas consumers generally the availability of the direct marketing association's telephone preference service, and of a telephone solicitor's obligations under this act.

(i) If the federal trade commission establishes a single national do not call list the attorney general may designate the list established by the federal trade commission as the Kansas do not call list.

(j) The attorney general may promulgate rules and regulations to carry out the provisions of this section.

(k) The provisions of this section shall be a part of and supplemental to the Kansas consumer protection act.

New Section 3. This act shall take effect and be in force from and after its publication in the statute book.

3-17



The DMA Telephone Preference Service

If you want to reduce the number of unsolicited national telemarketing calls you receive, at home, you may register with TPS, a free service, by printing out this form, filling it in and mailing it to:

TELEPHONE PREFERENCE SERVICE
DIRECT MARKETING ASSOCIATION
P. O. BOX 9014
FARMINGDALE, NY 11735-9014

The DMA does not provide marketers with consumer telemarketing lists. The TPS file is available to companies for the sole purpose of removing your name, address and home telephone number from their calling lists. Your information will remain on TPS for 5 years. This service does not apply to telemarketing calls coming to your business phone.

After several months you will begin receiving fewer telemarketing calls. Local businesses and organizations usually do not use this program. You will continue to receive calls from companies with which you already do business.

Not all companies use TPS to purge their calling lists, therefore, you may continue to receive some companies calls. If you are sure you do not want to do business with the company now or in the near future, ask to be placed on the company's do-not-call file.

PLEASE REGISTER MY NAME WITH TELEPHONE PREFERENCE SERVICE.

NAME: _____

STREET: _____ APT #: _____

CITY: _____

STATE: _____ ZIP CODE: _____ - _____

TELEPHONE NUMBER: _____

SIGNATURE: _____

3-18

Kansas Association of Financial Services

George Barbee, Executive Director

300 SW Eighth Street, Third Floor

Topeka, KS 66603-3912

785/233-4512

Fax: 785/233-2206

Statement on Telemarketing Legislation

Mr. Chairman, member of the committee, my name is George Barbee. I am appearing today on behalf of the Kansas Association of Financial Services (KAFS). The members of KAFS are consumer credit lenders and credit card issuer such as Wells Fargo, Household International, American General, and CitiCorp. All of these companies are engaged in the marketing of their financial, insurance and credit card services through telemarketing to their customers.

KAFS can not appear today as a proponent of these bills or as an opponent. There are five active bills in the Kansas Legislature and we are not sure of the final language you will arrive at on the subject of "No Call" Legislation. I can tell you we are not opposed to the concept of "No Call" list. The companies are very much in accord with not telephoning those people that do not wish to hear the benefits of the services being marketed. However, these companies do desire to be permitted to market services to their prior and existing customers.

It is also important to realize that these companies are very diverse in their organizational structure. They have subsidiary operations that knit together the various financial services, other products and insurance. We must be able to market to our customers in a manner which includes these subsidiary operations.

Please know that we stand ready to work with you in this effort to craft fair and reasonable legislation to develop and implement "No Call Legislation".

STEVEN C. MONTGOMERY, Chartered

Attorney at Law

US Bank Tower, Suite 808
800 SW Jackson Avenue
Topeka, Kansas 66612-2220

Telephone 785.235.2422
Facsimile 785.234.3687
Email smont@nomb.com

TO: House Utilities Committee

FROM: Steve Montgomery, MCIWorldcom

RE: Do Not Call Legislation

DATE: March 7, 2002

On behalf of MCIWorldcom, thank you for the opportunity to appear in support of the general concept of Do Not Call legislation, but in opposition to the specific proposals advanced in HB 2100 and 2903. A number of bills have been proposed which would pursue markedly different Do Not Call strategies. MCIW supports the Do Not Call proposal detailed in SB 296, which would continue to recognize the one existing Do Not Call list for the state of Kansas and enhance enforcement of violations by illegitimate telemarketers. As SB 296 is not currently before this committee, MCIW supports the substitute draft offered by the telecommunications industry.

MCIW Supports One Central Do Not Call List, Not Multiple Lists

MCIW supports the concept of one central Do Not Call list of national scope, rather than multiple piecemeal lists which are confusing and overly burdensome for customers and telemarketers. Like many other legitimate telemarketers, MCIW

conducts business in many states and does not want to call prospective customers who do not want us to call them. Such contacts alienate business prospects. However, when conducting business operations across the country, the creation of different Do Not Call lists in different states is unduly burdensome for legitimate telemarketers, which initiate such calls from central "calling centers", such as we operate within the state of Kansas. MCIW is a member of the Direct Marketing Association (DMA) and our policies include compliance with the nationally recognized DMA Do Not Call list. MCIW respectfully suggests continued reliance upon the national DMA list as the sole Kansas list, rather than creating additional lists and creating confusion for the telemarketers which attempt to operate with respect for the customer.

Kansas Presently Has a Do Not Call List

At the present time, there is a Do Not Call list in Kansas administered by the DMA. However, too few Kansans know how to use it or to enforce its provisions. Pursuant to 2000 HB 2580, the KCC adopted regulations last October, commencing an educational effort in Kansas to instruct people how to enroll and how to file complaints against violators. The industry proposal would enhance the 2000 legislation without adopting a new approach before present efforts are given an opportunity to be successful.

Diverting from the DMA List Would Confuse Consumers

Telephone directories currently being distributed for the first time contain detailed information on how to enroll in the DMA national Do Not Call list, which list was endorsed by HB 2580. Unfortunately, all of the pending Do Not Call proposals other than SB 296, would depart from the promotion of the DMA national list and create a

new exclusive Kansas state Do Not Call list. If one of these bills becomes law, it is likely that confusion will be the order of the day. The information being distributed in telephone directories on Do Not Call enrollment will conflict with any newly adopted strategy.

State Do Not Call Lists Place the General Fund at Risk

State Do Not Call lists have the potential to require unexpected appropriations. Missouri created such a scheme, which was funded to the extent recommended by the Missouri Governor. Now, however, the Governor has recommended a supplemental appropriation of \$1.2 million due to unexpected expenses incurred by the program. [See attached 2002 Missouri Budget documents] In the current budgetary climate, it seems fiscally prudent to rely upon a privately operated Do Not Call list. This is particularly true considering that the recently enacted program has not yet been afforded the opportunity to be successful.

Focus on Education and Enforcement, Rather than Creating a New Bureaucracy

Regardless of how many lists exist or who administers them, there will be telephone solicitors which will conduct their activities without regard to Do Not Call lists. For those who cannot simply say "NO" or hang up the telephone upon receiving an undesirable call, education efforts are recently underway on how to avoid such calls in the first place. The concept envisioned by SB 296 would promote enforcement by sharing the DMA list with the Attorney General's Office, thereby allowing the Attorney General additional tools to protect Kansas consumers without overly confusing consumers with multiple Do Not Call lists and unduly burdening legitimate telemarketers.

5-3

SUPPLEMENTAL APPROPRIATION
DEPARTMENT OF SOCIAL SERVICES
DIVISION OF MEDICAL SERVICES
MEDICAID SUPPLEMENTAL POOL

H.B. Sec. 15.185	GOVERNOR'S ORIGINAL RECOMMENDATION	ORIGINAL APPROPRIATION	CURRENT REQUEST	GOVERNOR RECOMMENDS
PROGRAM SPECIFIC DISTRIBUTION				
General Revenue Fund	\$ 1,077,986	\$ 0	\$ 0	\$ 0
Federal Funds	34,890,516E	209,880,516	93,000,000	93,000,000
Uncompensated Care Fund	6,099,899E	6,100,000	0	0
Pharmacy Rebates Fund	2,330,000E	2,330,000	0	0
Third-Party Liability Collections Fund	6,130,000E	24,130,000	0	0
Federal Reimbursement Allowance Fund	2,033,333E	2,033,333	0	0
Intergovernmental Transfer Fund	1,880,001E	183,957,966	0	0
TOTAL	\$ 54,291,815	\$ 438,431,815	\$ 93,000,000	\$ 93,000,000

The Governor recommends \$93,000,000 federal funds in the Medicaid supplemental pool for anticipated costs of existing Medicaid programs.

ELECTED OFFICIALS
OFFICE OF THE GOVERNOR
HOMELAND SECURITY

H.B. Sec. 15.200	GOVERNOR'S ORIGINAL RECOMMENDATION	ORIGINAL APPROPRIATION	CURRENT REQUEST	GOVERNOR RECOMMENDS
EXPENSE AND EQUIPMENT				
Federal Funds	\$ 0	\$ 0	\$ 0	\$ 1E

The Governor recommends \$1 federal funds on an open-ended basis to implement homeland security measures in Missouri.

ELECTED OFFICIALS
ATTORNEY GENERAL
NO CALL UNIT

H.B. Sec. 15.205	GOVERNOR'S ORIGINAL RECOMMENDATION	ORIGINAL APPROPRIATION	CURRENT REQUEST	GOVERNOR RECOMMENDS
PERSONAL SERVICE	\$ 244,500	\$ 244,500	\$ 0	\$ 0
EXPENSE AND EQUIPMENT	468,400	468,400	1,230,000	1,230,000
TOTAL				
Merchandising Practices Revolving Fund	\$ 712,900	\$ 712,900	\$ 1,230,000	\$ 1,230,000

The Governor recommends \$1,230,000 merchandising practices revolving fund for the no call unit.

ATTORNEY GENERAL

The Attorney General takes legal action to protect the rights and interests of the state, defends or prosecutes appeals to which the state is a party, provides opinions regarding state law, and assists prosecuting attorneys in the prosecution of cases. The Office of the Attorney General has several responsibilities for which specific funds have been established by law.

Section 27.080, RSMo, established the Attorney General's court costs fund to receive deposits and make payments of court costs in litigation requiring the appearance of the Attorney General. This fund is supplemented by a transfer from general revenue.

Section 416.081, RSMo, created the antitrust revolving fund which is made up of deposits of ten percent of any court settlement of antitrust litigation involving the Attorney General. This fund is supplemented by a transfer from general revenue.

Chapter 287, RSMo, provides for the Attorney General to charge the second injury fund for the cost of defending the fund.

Section 58.750, RSMo, establishes the Missouri Office of Prosecution Services within the Attorney General's office. The Prosecution Services office is funded through fees assessed as court costs in criminal cases. The office was established to develop uniform training and procedures for Missouri's prosecuting attorneys.

Sections 407.1070 to 407.1085, RSMo, established a no-call database to be maintained by the Attorney General for citizens who object to receiving telephone solicitations at home.

Fiscal Year 2003 Attorney General's Office

- **\$1,230,000** merchandising practices revolving fund to continue services provided by the no-call unit.
- **\$139,950** and two staff to carry out the provisions of Section 547.035, RSMo, which outlines the procedures by which convicted offenders may challenge their convictions based on DNA evidence.
- **\$127,500** to hire outside experts to establish that an offender is a sexually violent predator.
- **\$105,625** and 0.25 staff to carry out the provisions of Sections 262.800 to 262.810, RSMo, related to representation of property owners subject to the farmland protection act.
- **\$88,450** and 1.5 staff to strengthen and maintain tobacco settlement enforcement efforts pursuant to Sections 196.1000 to 196.1003, RSMo.
- **\$70,000** Missouri office of prosecution services revolving fund on an open-ended basis to more accurately reflect the pass-through of registration fees for training conferences.
- **\$61,475** second injury fund and one staff to collect second injury fund surcharges pursuant to Section 287.715, RSMo.
- **(\$82,250)** core reduction for one-time expenditures, including **(\$52,475)** general revenue.

5-5

ATTORNEY GENERAL (Continued)

	FY 2001 EXPENDITURE	FY 2002 APPROPRIATION	FY 2003
Administration	\$ 17,552,109	\$ 20,887,632	\$ 22,598,157
Missouri Office of Prosecution Services	539,679	1,399,391	1,459,616
TOTAL	\$ 18,091,788	\$ 22,287,023	\$ 24,057,773
PERSONAL SERVICE			
General Revenue Fund	9,896,411	10,730,185	10,869,310
Federal Funds	544,576	1,180,616	1,180,616
Gaming Commission Fund	94,523	95,065	95,065
Merchandising Practices Revolving Fund	437,327	592,539	592,539
Workers' Compensation Fund	210,762	229,150	229,150
Second Injury Fund	1,474,834	1,518,924	1,558,924
Missouri Office of Prosecution Services Fund	102,286	116,452	116,452
Hazardous Waste Remedial Fund	214,608	216,529	216,529
Other Funds	247,345	285,301	285,301
EXPENSE AND EQUIPMENT			
General Revenue Fund	2,591,382	2,738,563	3,018,488
Federal Funds	246,658	2,235,556	2,225,781
Gaming Commission Fund	20,408	30,747	30,747
Attorney General's Court Costs Fund	149,701	187,000	187,000
Merchandising Practices Revolving Fund	763,715	732,480	1,962,480
Workers' Compensation Fund	149,803	225,121	225,121
Second Injury Fund	463,922	483,832	505,107
Missouri Office of Prosecution Services Fund	61,223	139,844	139,844
Hazardous Waste Remedial Fund	10,165	10,165	10,165
Missouri Office of Prosecution Services Revolving Fund	78,999	80,000	150,000
Other Funds	28,140	54,154	54,154
PROGRAM SPECIFIC DISTRIBUTION			
Federal Funds	0	100,000	100,000
GRAND TRANSFERS			
General Revenue Fund	305,000	305,000	305,000
TOTAL	\$ 18,091,788	\$ 22,287,023	\$ 24,057,773
General Revenue Fund	12,792,793	13,773,748	14,192,798
Federal Funds	791,234	3,516,172	3,506,397
Gaming Commission Fund	114,931	125,812	125,812
Attorney General's Court Costs Fund	149,701	187,000	187,000
Merchandising Practices Revolving Fund	1,201,042	1,325,019	2,555,019
Workers' Compensation Fund	360,565	454,271	454,271
Second Injury Fund	1,938,756	2,002,556	2,064,031
Missouri Office of Prosecution Services Fund	163,509	256,296	256,296
Hazardous Waste Remedial Fund	224,773	226,694	226,694
Missouri Office of Prosecution Services Revolving Fund	78,999	80,000	150,000
Other Funds	275,485	339,455	339,455
Full-time equivalent employees	331.22	394.05	398.80

Does not include \$1,230,000 recommended in the Fiscal Year 2002 Supplemental Appropriations. See the Supplemental section of the Missouri Budget for details regarding Attorney General supplemental appropriations.

5-4

House Utilities Committee
March 7, 2002

Testimony of Jim Gartner
Representing SBC Southwestern Bell

Thank you, Chairman Holmes and members of the Committee. I am Jim Gartner and am here representing SBC Southwestern Bell. I appreciate the opportunity to speak to you today on the proposals being considered regarding telemarketing protections.

Southwestern Bell strongly supports the right of consumers to be protected from unwanted telemarketing calls. In fact, in order to ensure that our customers do not receive unwanted calls from our own company, Southwestern Bell maintains an internal do not call list, so that if a customer asks not to receive future calls, we note this and honor their request. It is simply in our best interest to take care of our customers. In our industry, consumers have a choice of services and providers and we do not wish to drive our valued customers to our competitors.

As a supplement to this internal procedure, Southwestern Bell subscribes to the Direct Marketing Association's (DMA) Telephone Preference Service, to further ensure that we do not make unwanted calls to consumers. We believe the DMA's Telephone Preference Service, if given the support and backing of Kansas law, would provide the best form of protection for citizens of Kansas. The DMA already has signed up 48,000 Kansans for its Telephone Preference Service. We can attest that it works for Southwestern Bell, and it would work even better if Kansas law required that all telemarketers subscribe to the DMA's Service and were prohibited from calling those on the list.

However, there are many differences between utilizing an existing, nationwide service like the DMA's Telephone Preference Service, and creating a new, state-run list like other bills propose. For example, DMA's Telephone Preference Service:

- ✓ Would be a public/private effort, and would not create a new state bureaucracy.
- ✓ Is already in operation, so participation can be mandated immediately, as opposed to developing a program that will take time and money to implement.
- ✓ Is free to Kansans who register by mail, and would never be funded by Kansas taxpayers, as is happening now in Missouri to prop up that state's faltering program.

In conclusion, Kansas further strengthened telemarketing rules during the 2000 Session with the passage of HB 2580. The provisions of the industry compromise proposal, presented to you today, when added to HB 2580, provide the best protection against unwanted telemarketing calls for Kansas consumers.

I encourage you to support the industry compromise proposal.

Thank you.

HOUSE UTILITIES

DATE: 3-7-02

ATTACHMENT 6