

Approved: April 2, 2003 Carl D. Holmes
Date

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:18 a.m. on February 24, 2003 in Room 526-S of the Capitol.

All members were present except: Representative Eric Carter
Representative Nile Dillmore
Representative Bonnie Huy
Representative Carl Krehbiel
Representative Annie Kuether
Representative Peggy Long
Representative Don Myers
Representative Jim Ward
Representative Jerry Williams

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

Conferees appearing before the committee: Joseph Molina, Office of the Attorney General

Others attending: See Attached List

Representative Sloan moved to introduce a committee bill that would address certificated services territory areas service providers and price cap carriers. Representative Svaty seconded the motion. The motion carried. Chairman Holmes announced that the Joint Rules allowed for bills to be introduced, however, it cannot be worked until next year.

Chairman Holmes welcomed Joseph Molina, Assistant Attorney General for the Consumer Protection Division of the Attorney General's office, to the committee. Mr. Molina provided an update on the Kansas No-Call Act (Attachment 1). He told the committee that, as of February 14, 482,096 Kansans had registered for the Kansas No-Call list. Mr. Molina said that they had received a total of 2,180 complaints with 593 closure during the first four months of enforcement. He also distributed information sheets on Solicitor Information and Consumer Information for the Kansas No-Call Act (Attachments 2 and 3).

Mr. Molina responded to questions from the committee.

The meeting adjourned at 9:50 a.m.

The next meeting will be Tuesday, February 25, 2003 at 9:00

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 24, 2003

NAME	REPRESENTING
Nelson Krueger	Everest Connections
Joe Molina + Shelley King	KS Atty. Gen.'s Ofc.
Steve Montgomery	MCI Worldcom
Susan Mahoney	SBC
Bob Jayroe	SBC
Steve Johnson	Ks. Gas Service
Tom Day	KCC
Nick Murray	Sprink
Anne Spiess	KTIA - Ks Telecom Ind. Assn.



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State of Kansas

Office of the Attorney General

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Testimony of
Joseph N. Molina, Assistant Attorney General
Consumer Protection Division
Office of the Attorney General Phill Kline
Before the House Utilities Committee
RE: Kansas No-Call Report
February 24, 2003

Chairperson Holmes and Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Phill Kline today to provide this committee with an updated Kansas No-Call Act report. My name is Joseph Molina and I am an Assistant Attorney General for the Consumer Protection/Antitrust Division.

IMPLEMENTATION

Kansans overwhelmingly supported the enactment of a "no-call" law and this support lead to the passage of the Kansas No-Call Act, ch. 179, § 1-2 (2002 Session Laws). Following the passage of the No-Call Act, the Office of the Attorney General commenced negotiations with the Direct Marketing Association (DMA), seeking to conclude negotiations in time to implement the law by July 1, 2002. Unfortunately, negotiations with the DMA were terminated on July 5, 2002, due primarily to the DMA's inability to meet the 30-day registration deadline required by the No-Call Act. Members of the Senate Judiciary Committee and the House Utilities Committee were contacted and advised of the termination of contract negotiations with the DMA.

The Office of the Attorney General then began taking bids from other vendors pursuant to the Act, to effectuate a seamless transition from DMA to a new vendor. On July 7, 2002, a contract was reached with GovConnect to maintain the Kansas No-Call list. The one-year contract provides free consumer registration by phone and the Internet. Consumer registration was implemented on August 12, 2002, with a deadline of September 23, 2002, to be included on the first published list on October 1, 2002.

HOUSE UTILITIES

DATE: **2-24-03**

ATTACHMENT **1**

The contract with GovConnect further provided telephone solicitors with access to the list via email or CD Rom. The cost to access the list is as follows:

- complete list with e-mail distribution, \$359.00
- complete list with CD Rom distribution \$399.00
- one area code with e-mail distribution, \$149.00; \$149.00 for each additional area code
- one area code with CD Rom distribution, \$189.00; \$189.00 for each additional area code

CONSUMER REGISTRATION

The registration period for the October 1, 2002, list commenced on August 12, 2002, and ended on September 23, 2002. In those six short weeks 397,697 Kansas residential telephone numbers were registered on the Kansas No-Call list. An additional 73,840 residential telephone numbers were registered on the Kansas No-Call list before the December 23, 2002, deadline for the next published list that became available on January 1, 2003. As of February 14, 2003, an extra 10,559 residential telephone numbers have been registered on the Kansas No-Call list for the April 1, 2003, list, bringing the total registrations to 482,096.

REQUEST FOR THE KANSAS NO-CALL LIST

556 individual telephone solicitors have purchased copies of the Kansas No-Call list. In addition one company purchased 324 copies of the list for independent agents of the company under the multiple list purchase discount rate. As a result, 880 telephone solicitors have access to the Kansas No-Call list.

COMPLAINTS RECEIVED

The October 1, 2002, No-Call list became enforceable on November 1, 2002. In November the Consumer Protection/Antitrust Division received 1521 No-Call complaints. Of the 1521 complaints received 361 were closed as not in violation of the Kansas No-Call Act. In December, 2002, the Consumer Protection/Antitrust Division received 772 No-Call complaints with 102 complaints closed as not in violation of the Kansas No-Call Act. In January, 2003, the Consumer Protection/Antitrust Division received 272 No-Call complaints with 27 closed for not violating the Kansas No-Call Act. As of February 21, 2003, the Consumer Protection/Antitrust Division has received 245 complaints with 23 closures for not violating the Kansas No-Call Act. The total number of No-Call complaints for the first four months of enforcement is 2810 complaints with 593 closures.

A daily average of the number of No-Call complaints received in November comes to 84.5 complaints per day. In December the Consumer Protection/Antitrust Division recorded an average

of 36.76 No-Call complaints per day. In January the per day complaint average is 14.24 No-Call complaints per day. As of February 17, 2003, the per day complaint average is 16.33 No-Call complaints per day.

ENFORCEMENT ACTION

As a matter of enforcement policy, the No-Call Task Force calls the telephone solicitor within a day of obtaining or ascertaining the telephone number of the telephone solicitor to advise the solicitor a complaint has been received. At that time, the telephone solicitor is advised orally to cease and desist making unsolicited consumer telephone calls to residential telephone numbers registered on the Kansas No-Call list. Written cease and desist letters are also sent shortly after obtaining the telephone solicitor's contact information. These two notification methods are intended to give the telephone solicitor more than sufficient notice that it is in violation of the Kansas No-Call Act and to encourage compliance to avoid additional violations and civil penalties. The decrease in complaints received from November through January indicates our efforts have been successful.

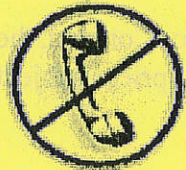
This office has set a threshold of three complaints before a telephone solicitor is required to pay a civil penalty for violating the No-Call Act. Once a telephone solicitor has four or more complaints, however, a recommendation is made to prosecute the company responsible.

CIVIL PENALTIES COLLECTED

To date, the Attorney General has filed Consent Judgments worth \$30,000.00 against four companies for violations to the Kansas No-Call Act. Four additional cases have been verbally settled, and \$33,500.00 in penalties and fees have been agreed to be paid. Furthermore, 47 companies have four (4) or more violations. Authorization has been given to negotiate a settlement or file suit against 21 of these 47 companies.

CONCLUSION

In closing, I would like to point out that the Kansas No-Call Act is a top priority of the new administration. The goal of the new administration is to protect consumers from deceptive and unconscionable business practices through a combination of firm but fair enforcement. This position will allow the continued pursuit of justice in the privacy law arena.



KANSAS NO-CALL ACT

SOLICITOR INFORMATION

What is the Kansas No-Call Act?

This Kansas law prohibits unsolicited "consumer telephone calls" by "telephone solicitors" to numbers appearing on the Kansas No-Call list. If a consumer's phone number is registered and appears on the list, it is a violation of the Act for a telephone solicitor to call that number unless the solicitor fits into one of the exemptions.

When is the No-Call list published, and how often is it updated?

The Kansas No-Call list will first be published on October 1, 2002. Thereafter it will be updated quarterly as indicated in the table below. Telephone solicitors will have up to 30 days after publication of the quarterly list to remove new registrations from their call lists.

<u>Consumer registration deadline:</u>	<u>Quarterly list published:</u>	<u>List enforcement date:</u>
September 23, 2002	October 1, 2002	November 1, 2002
December 24, 2002	January 1, 2003	February 1, 2003
March 24, 2003	April 1, 2003	May 2, 2003
June 23, 2003	July 1, 2003	August 1, 2003

How does the law define a consumer telephone call?

"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;
- Ⓒ soliciting an extension of credit for property or services to the person called; or
- Ⓒ obtaining information that will or may be used for either of the first two purposes.

How does the law define a telephone solicitor?

"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 devices. The law applies to all telephone solicitors who call Kansas residents, regardless of whether the solicitor is located in Kansas.

What exemptions are in the No-Call Act?

The law provides that a telephone solicitor may call a consumer if that consumer expressly requests the call. Also, telephone solicitors may call consumers with which they have had an "established business relationship" within the preceding 36 months.

Additionally, organizations soliciting for charitable donations, calls concerning political candidates or issues, or other calls unrelated to the sale of property or services do not fall within the scope of the Act. Organizations calling for those purposes would not be prohibited from calling persons registered on the No-Call list.

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HOUSE UTILITIES

DATE: 2-24-03

ATTACHMENT 2

How does a telephone solicitor obtain the Kansas No-Call list?

Telephone solicitors must submit the appropriate fee and complete a subscription agreement with GovConnect, the private vendor that maintains the Kansas No-Call list. Annual subscriptions are available as follows (prices subject to change):

- Ⓒ complete list with electronic distribution (e-mail or electronic download), \$359
- Ⓒ complete list with distribution on CD-Rom, \$399
- Ⓒ one area code with electronic distribution, \$149 (add \$149 for each additional area code)
- Ⓒ one area code with distribution on CD-Rom, \$189 (add \$189 for each additional area code)

Telephone solicitors may also purchase multiple copies of the Kansas No-Call list. This option is only available to a telephone solicitor that purchases the list by electronic distribution on behalf of independent contractors/agents that sell the telephone solicitor's products or services. Each independent contractor/agent that receives a copy of the list from the Multiple List Purchaser (MLP) must complete a subscription agreement and is prohibited from copying, transferring, or distributing the list. In return for purchasing multiple copies of the list, the MLP receives a reduced rate. MLP pricing information can be found when placing a subscription order.

Subscription orders can be placed 24 hours a day through the on-line telemarketer registration at www.ink.org/public/ksag, or by calling 1-888-774-1476 from 8 am to 5 pm CT Monday through Friday.

If a telephone solicitor starts doing business between two quarterly list publication dates, how long does that solicitor have to remove names from its calling lists?

The Kansas No-Call Act is clear that solicitors have 30 days "from the time of publication of the current quarterly update" to remove consumers from their call list. Thus, the list is enforceable 30 days after publication, without regard to the actual date that a telemarketer obtained the list or started doing business.

Can a telephone solicitor make copies of the No-Call list and distribute them?

With the exception of Multiple List Purchasers, the written subscription agreement prohibits the transfer of the copy of the No-Call list. Any business that wants to obtain a copy of the list must apply to GovConnect, complete the subscription agreement, and pay the appropriate fee.

What are the penalties for violating the No-Call Act?

Any violation of the Kansas No-Call Act is an unconscionable act or practice under the Kansas Consumer Protection Act (KCPA), and can result in penalties of up to \$10,000 per violation.

IMPORTANT: The information provided in this flyer is for informational purposes only. The Attorney General does not provide private legal advice. Any individual or business engaging in activity subject to the Kansas No-Call Act should consult the statutory language and seek private legal counsel regarding compliance. No representation made herein concerning the application or interpretation of the Act that is inconsistent with current Kansas law shall be binding upon the Attorney General or any other officer or person enforcing a violation of the Act.

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2-2



KANSAS NO-CALL ACT

CONSUMER INFORMATION

What is the Kansas No-Call Act?

This Kansas law creates a list that must be used by any person or business that intends to call any residential phone number in Kansas for any of the following purposes:

- Ⓒ soliciting a sale of any property or services to the person called
- Ⓒ soliciting an extension of credit for property or services to the person called
- Ⓒ obtaining information that will or may be used for either of the first two purposes

If your phone number is registered and appears on the No-Call list and someone calls that number for any of these purposes, it is a violation of the Act unless the company fits into one of the exemptions. If a person or business calls for any purpose other than as listed above, that call is not a violation of the No-Call Act.

Who is prohibited from calling me if I register?

The No-Call Act is aimed at persons or businesses who are trying to sell you something. Organizations soliciting charitable donations, calls concerning political candidates or issues, or other calls unrelated to the sale of property or services do not fall within the scope of the Act. Organizations calling for those purposes would not be prohibited from calling persons registered on the No-Call list.

What companies may still call me?

The law provides that, even if you sign up on the No-Call list, a company may call you if you expressly request it. Remember this when you are asked to fill out information at fairs or other public events. If you give a company your name or other personal information, the form you use to do that may contain language that expressly authorizes that company to contact you by telephone. Also, if you have an established business relationship with a company within the preceding 36 months, it is permitted to contact you. However, you have the right to tell the company to stop making consumer telephone calls under federal law.

How do I register for the No-Call list and what will it cost?

You may register for free by accessing the Attorney General's website at www.ksag.org or by calling toll-free, 1-866-362-4160. Mail-in registration is not available. If any individual or company offers to register your number on the list for a fee, contact the Attorney General's Consumer Protection Division. This type of offer may be a scam.

Do I need to register every person in my household?

No, telemarketers are prohibited from dialing the phone number that appears on the list. Be sure to register all of your home phone numbers if you have more than one line.

Can I register my business phone also?

The Act applies to residential telephone numbers only. Some people use their home phone for business purposes, and this by itself will not prevent the registering of that number. However, it is a defense to an alleged violation if the telemarketer can prove that (1) the number was listed or held out to the public as a business number, (2) the telemarketer knew of that listing or holding out at the time of the call, and (3) that the purpose of the telemarketing call was directly related to the consumer's business.

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HOUSE UTILITIES

DATE: 2-24-03

ATTACHMENT 3

How soon after I register will telemarketers be prohibited from calling me?

It could be up to 130 days. This is because the law requires that the vendor maintaining the list needs to publish updated No-Call lists on or before the first of January, April, July, and October of each calendar year. Once your name appears on a list, telemarketers have a 30-day grace period within which to remove your name from their own internal call lists. Registrations submitted according to the table below will be enforceable on the date indicated.

No-Call Act Deadlines

Register on or before:

September 23, 2002
December 23, 2002
March 24, 2003
June 23, 2003

Quarterly list published:

October 1, 2002
January 1, 2003
April 1, 2003
July 1, 2003

List Enforcement Date:

November 1, 2002
February 1, 2003
May 2, 2003
August 1, 2003

What prevents telemarketers from using my information for some other purpose besides removing me from their call list?

The Act prohibits telemarketers from using the list for any other purpose. Any violation of the Kansas No-Call Act is an unconscionable act or practice under the Kansas Consumer Protection Act (KCPA), and can result in penalties of up to \$10,000 per violation.

How long does my registration last?

Under the Act, a consumer's No-Call registration is valid for five years. The consumer is responsible for re-registering when that time has elapsed.

If my phone number changes, how can I remain on the No-Call list?

You will need to submit a new registration using your new phone number.

What if I get a call I believe is in violation of the Act?

First, you should obtain whatever information you can about the telemarketer. Request the telemarketer's name and on whose behalf the call is being made. Get a phone number and address if you can. Without this information, it will be difficult to take any action against the telemarketer. You can then contact the Attorney General's office to file a complaint.

Do I have to re-register my information if I've already signed up for another no-call list?

There is only one official Kansas No-Call list. Unless you have registered online through the Attorney General website, or by calling the free telephone registration number at 1-866-362-4160, your number has not been registered. Some entities offer voluntary lists for certain telemarketers to use, but those lists are not enforceable under Kansas law.

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3-2
23