

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on February 8, 2006 in Room 526-S of the Capitol.

Committee members absent:

Committee staff present: Athena Andaya, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Bruce Kinzie, Revisor of Statutes' Office
Ann McMorris, Committee Secretary

Conferees appearing before the committee:

Janet Buchanan, Kansas Corporation Commission
Mike Murray, Sprint
Leo Haynos, Kansas Corporation Commission

Others in attendance: See attached list

The Chairman opened the hearing on

S.B. 463 - Consumer protection, telemarketing local exchange carriers, requirements

Proponent: Janet Buchanan, chief of telecommunications, Kansas Corporation Commission, explained the proposed amendments to the portion of the consumer protection act related to telemarketing, would remove language that is no longer appropriate. (Attachment 1)

Opponent: Mike Murray, Sprint, provided a history of **SB 463** in the following documents: (1) Docket No. 01-GIMT-049 of State Corporation Commission Order approving telephone directory messages; (2) copy of House Substitute for Substitute for **SB 296** in 2002; (3) Federal Communications Commission CG Docket No. 02-278; and (3) notice to customers regarding National Do Not Call list. He also provided telephone directories with the page regarding do not call notice highlighted; and these books are on file in Senator Emler's office. Sprint requested that information on no call notices no longer be required in phone books. (Attachment 2)

The Chairman closed the hearing on **SB 463**.

The Chairman opened the hearing on

S.B. 464 - Kansas Underground utility damage protection act, rules and regulations

Proponent:

Leo Haynos, Chief of Pipeline Safety, Kansas Corporation Commission, gave a brief overview of the Kansas Underground Utility Damage Prevention Act. The KCC believes **SB 464** will allow the Commission to deliver more effective administration of the One Call law. (Attachment 3)

Closed hearing on **SB 464**.

The Chair opened for discussion and possible action on **SB 464**. Considerable discussion on the exclusion of water and sewer lines and the effect a change to include these would have on cities and municipalities.

Moved by Senator Apple, seconded by Senator Reitz, amend S.B. 464 to include the water supply in the language. Motion carried. 'No' vote by Francisco.

Moved by Senator Apple, seconded by Senator Reitz, S.B. 464 as amended be passed out favorably. Motion carried.

Adjournment.

Respectfully submitted,
Ann McMorris, Secretary
Attachments - 3

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: FEBRUARY 8, 2006

Name	Representing
- Leo Haynos	KCC
Don Low	"
Janet Buchanan	"
Jim Gardner	as of
Denny Koch	as of
Audy Shaw	as of
Anne Press	KTA
Sue Umoho	Sprint
Kristin Schmitt	Sprint
Mike Murray	Sprint
William Deen	Federico
JOHN BARR	SPRINT
Colleen Harrell	KCC
Matt Tome	KCC
Steve Johnson	Kansas Gas Service / ONEOK

KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR

BRIAN J. MOLINE, CHAIR

ROBERT E. KREHBIEL, COMMISSIONER

MICHAEL C. MOFFET, COMMISSIONER

Testimony of
Janet Buchanan, Chief of Telecommunications
Kansas Corporation Commission

Before the Senate Utilities Committee
Regarding SB 463
February 8, 2006

Chairperson Emler and Committee Members:

Thank you for allowing me to appear before you this morning on behalf of the Kansas Corporation Commission to support SB 463. My name is Janet Buchanan. I am the Commission's Chief of Telecommunications.

SB 463 amends a portion of the consumer protection act related to telemarketing, K.S.A. 50-675a, to remove language that is no longer appropriate. The Legislature enacted these provisions during the 2000 Legislative Session (HB 2580) to require the Commission to adopt rules and regulations requiring all local exchange carriers and telecommunications carriers to notify residential subscribers of the Kansas do not call registry by July 1, 2001.

The Commission opened a proceeding on August 3, 2000, and solicited comments from local exchange carriers and telecommunications carriers regarding how to implement the statute. After reviewing the comments of interested parties, Staff drafted regulations that were submitted to the Department of Administration and the Attorney General for approval. Notice of the regulation was provided, a 60 day public comment period permitted, and a public hearing was scheduled for March 22, 2001 as required for implementation of regulations. K.A.R. 82-1-250 was adopted by the Commission on May 28, 2001. The regulation required all interested local exchange carriers and telecommunications carriers to participate in a forum to develop the form, content and method or methods of providing notice of the Direct Marketing Association's telephone preference list. The parties agreed that information regarding the Direct Marketing Association's telephone preference list should be disseminated through the publishing of relevant information (as determined by the forum) in the telephone directories published by local exchange carriers.

In June 2003, the FCC and FTC agreed to jointly administer the national do not call registry and do not call regulations. Shortly thereafter, the Attorney General adopted the national do not call registry as the Kansas do not call registry. With this decision, the information published in telephone directories was inaccurate. However, the statute and K.A.R. 82-1-250 do not give the

Senate Utilities Committee
February 8, 2006
Attachment 1-1

Commission the flexibility to adjust the language in the telephone directories. SB 463, attempts to utilize general terms to provide flexibility in responding to any future changes in the provider of the Kansas do not call registry.

After receiving comment from the industry, the Commission proposes two amendments to SB 463. First, at page 1, line 31, insert “ and telecommunications carriers as defined in subsection (m) of K.S.A. 66-1,187, and amendments thereto,” prior to the proposed language. Some industry participants suggest that interexchange carriers and competitive local exchange carriers should continue to participate in the determination of message and method of notification. Additionally, The Commission recommends that the last sentence, beginning at page 1, line 41 through page 2, line 1, be stricken. The Commission will need to issue a new regulation and another forum will need be held to develop a new message and consider method or methods of notification.

If the Committee would permit the Commission even greater flexibility, the Commission suggests that at page 1, line 16, strike “adopt rules and regulations that”. This would permit the Commission to respond more easily to changes in the telecommunications industry that affect the method of notification and to quickly respond to any changes in the provider of the Kansas do not call registry.

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)
Commission to Adopt Rules and Regulations)
Regarding Unsolicited Telephone Calls.)

Docket No. 01-GIMT-049-LEG

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

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

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

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.

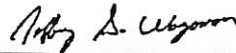
BY THE COMMISSION IT IS SO ORDERED.

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

Dated: OCT 01 2001

ORDER MAILED

OCT 01 2001

 Executive Director

Jeffrey S. Wagaman
Executive Director

CH

TELEMARKETERS MUST OBEY STATE AND FEDERAL LAWS WHEN CALLING KANSAS RESIDENTS. Violations can be enforced by the state Attorney General or through a private cause of action. Telemarketers, who make unsolicited calls to residential phone numbers MUST:

- ✓ Identify themselves, the business for whom they are calling and the purpose of the call immediately upon making contact with the person being called;
- ✓ Promptly discontinue the call if the person being called indicates a negative response or desire to not listen at any time during the call (i.e., "just say no");
- ✓ Have a live or recorded voice respond within 5 seconds of answering the call;
- ✓ Make their phone number accessible to caller i.d. services if technically possible;
- ✓ Maintain internal "do not call" lists and, if requested, place the person called on their internal "do not call" list and honor that request;
- ✓ Disclose whether the seller has a policy of not making refunds, cancellations, exchanges, or repurchases;

TELEMARKETERS MUST NOT:

- ✓ Use automatic telephone dialing systems or pre-recorded voice messages to call pagers, wireless phones or any service for which the party called is charged for the call.
- ✓ Send unsolicited advertisements to fax machines.
- ✓ Use threats, intimidation, profane or obscene language;
- ✓ Cause any phone to ring repeatedly or continuously for the purpose of annoying or harassing any person at the called number;
- ✓ Call before 8:00 a.m. or after 9:00 p.m. local time.

Exceptions are calls placed for non-commercial purposes, calls made for commercial purpose which do not include any unsolicited advertisements, calls to any person with whom the caller has an established business relationship, and calls from tax-exempt non-profit organizations.

For more information, or to file a complaint if you receive a call from a telemarketer that violates any of these rules, please contact the Kansas Attorney General's Office, Consumer Protection Hotline at 1-800-432-2310.

For further research on the laws summarized above, refer to **K.S.A. 50-670(b)**(part of the **KANSAS CONSUMER PROTECTION ACT**), **47 USC Section 227** and **47 CFR Part 64.1200** (**FEDERAL TELEPHONE CONSUMER PROTECTION ACT and REGULATIONS**) and **15 USC 6101-6108** and **16 CFR Part 310** (**FEDERAL TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT and REGULATIONS**).

Reducing Unwanted Telemarketing Calls

Register for the Direct Marketing Association's Telephone Preference Service

You may register your residential telephone number(s) with the Direct Marketing Association's (DMA) Telephone Preference Service to be placed on this private organization's "Do Not Call" list. The Do Not Call list will be used by DMA member telemarketing companies to remove your telephone number from their calling lists. Telemarketers who participate in this private, voluntary program do not want to waste their time, or yours, by contacting you if you do not want to receive telemarketing calls.

Registration is good for up to five years. If you move or change your phone number during the five-year period, you will need to reregister. Registrations must be made with the Telephone Preference Service directly; third party requests cannot be processed.

How to register your telephone number(s)

You may register for free by sending your full name, full address, signature and up to two telephone numbers to the following address:

DMA Telephone Preference Service

P.O. Box 9014

Farmingdale, NY 11735-9014

Alternatively, you may register with the Telephone Preference Service on-line for \$5. The web address is www.the-dma.org/cgi/offtelephonedave.

Registering with the Telephone Preference Service will not eliminate all telemarketing calls. Nonprofit/charitable organizations, political groups, nonDMA telemarketers or any groups that have established relationships with you may still contact you. Because the DMA's list is updated quarterly, it may take a few months before unwanted calls are noticeably reduced.

There are no penalties for telemarketers calling telephone numbers on the Do Not Call list. Also, registering for the list gives you no additional rights beyond those specified by the law.

For information about your legal rights regarding telemarketing, please see the section entitled "Telemarketing – Consumers' Rights and Remedies Under State and Federal Law."

2002

HOUSE Substitute for Substitute for SENATE BILL No. 296

AN ACT concerning consumer protection; relating to certain unsolicited telephone calls; prohibiting certain acts and providing penalties for violations; relating to profiteering from a disaster; amending K.S.A. 2001 Supp. 50-670 and repealing the existing section.

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 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 has an established business relationship, unless the consumer has objected to such consumer telephone calls and requested that the telephone solicitor cease making consumer telephone calls.

(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 application, purchase or transaction by the consumer, within the preceding 36 months, 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;

(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.

2-8

(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, *except that before January 1, 2005, a telephone solicitor's telephone number shall not be required to be displayed* when the telephone solicitor's service or equipment is *not* 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 Sec. 2. (a) The attorney general shall contract with the direct marketing association for the no-call list provided for by this section to be the national no-call list maintained by the telephone preference service of such association. The contract shall establish:

(1) The maximum fees that telephone solicitors may be charged for access to the no-call list;

(2) the maximum fees that consumers may be charged to register for inclusion on the no-call list;

(3) the schedule of dates by which consumers must register in order to appear on updates of the no-call list. Such schedule of dates shall provide that time period prior to the date of the next quarterly update in which consumers must submit their information in order to be included in the next quarterly update shall not exceed 30 days;

(4) the schedule of dates by which telephone solicitors will be provided updates of the no-call list. Such schedule of dates shall provide that the no-call list shall be updated no less frequently than on a quarterly basis, on January 1, April 1, July 1 and October 1;

(5) what information shall be furnished, without charge, upon request of a consumer, registered in accordance with this section, concerning a telephone solicitor or other person who the consumer believes has engaged in an unsolicited consumer telephone call prohibited by this section; and

(6) the consent of the direct marketing association to subject itself to the jurisdiction of the courts of this state for the purpose of enforcing the provisions of this section; the designation of a resident agent, who is a resident of Kansas, by the direct marketing association, for service of process, and who registers with the secretary of state pursuant to K.S.A. 60-306, and amendments thereto; and the agreement of the direct marketing association and its resident agent to comply with the provisions of this section.

If the direct marketing association does not agree to enter into the contract provided for by this subsection, the attorney general may contract, upon bids, with another vendor to establish and maintain the no-call list provided for by this section.

(b) Prior to making unsolicited consumer telephone calls in this state and quarterly thereafter, a telephone solicitor shall consult the no-call list provided for by this act, and shall delete from such telephone solicitor's calling list all state residents who have registered to be on such list. The direct marketing association, or other vendor maintaining the no-call list, 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 to be on the no-call list may contact the direct marketing association or other vendor maintaining the no-call list, or the attorney general. 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 or such other vendor in electronic format no less than 15 days prior to the date of the next quarterly update. No registration fee shall be imposed on the attor-

ney general for submission of such list to the direct marketing association or such other vendor. Membership in 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. A telephone solicitor prior to accessing the no-call list shall submit the appropriate fee and complete a subscription agreement that: (1) Restricts use of the no-call list exclusively for purposes authorized by this act; (2) provides the telephone solicitor's contact and mailing information; and (3) selects the method of updates required (monthly or quarterly). A consumer desiring to register shall submit to the direct marketing association, or other vendor, the consumer's name, address, city, state and zip code and the telephone numbers to be registered. The direct marketing association, or other vendor, shall make available to the attorney general, in an electronic format, the no-call list and all quarterly updates of such list at no cost.

(c) The attorney general and the direct marketing association, or other vendor, shall ensure that consumers are given clear notice that telephone numbers are not immediately added to the no-call list upon submission of a consumer's registration and that it may be as long as 120 days before telephone solicitors receive a new no-call list which includes the consumer's telephone number; that it may be as long as 30 days from the time of publication of the current quarterly update of the no-call list before the consumer's telephone number is removed from the telephone solicitor's calling lists; and that the consumer and the attorney general may not be able to enforce the provisions of this section until 150 days have passed since the consumer submitted the consumer's registration to be on the no-call list.

(d) Telephone solicitors shall have a period of not more than 30 days from the time of publication of the current quarterly update of the no-call list to remove a consumer's telephone number from the telephone solicitor's calling lists.

(e) 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 on the no-call list. A telephone solicitor shall not use the no-call list for any other purpose than to remove consumers' telephone numbers from calling lists.

(f) A telephone solicitor shall be liable for violations of subsections (d) and (e) if such telephone solicitor makes or causes to be made an unsolicited telephone call to a state resident whose telephone number appears on the current quarterly no-call list or uses the list for any unauthorized purpose.

(g) It shall be an affirmative defense to a violation of this section if the telephone solicitor can demonstrate, by clear and convincing evidence, that: (1) The telephone solicitor at the time of the alleged violation had: (A) Obtained a copy of the updated no-call list; (B) established and implemented, with due care, reasonable practices and procedures to effectively prevent unsolicited consumer telephone calls in violation of this section; (C) trained the telephone solicitor's personnel in the requirements of this section; and (D) maintained records demonstrating compliance with this section; and (2) the unsolicited consumer telephone call was the result of an error. Such defense shall not be exercised by a telephone solicitor more than once within the state of Kansas in any 12-month period. A telephone solicitor shall be deemed to have exercised such defense if asserted in response to any consumer complaint about a violation of this section, regardless of whether litigation has been initiated.

(h) It shall be an affirmative defense to a violation of this section if the telephone solicitor can demonstrate by clear and convincing evidence that: (1) The consumer affirmatively listed or held out to the public such consumer's residential number as a business number; (2) the telephone solicitor had knowledge of and relied upon such consumer's actions as provided in subsection (h)(1) at the time of the telephone solicitor's alleged violation; and (3) the purpose of the call was directly related to the consumer's business.

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

(j) (1) Upon request of the attorney general for the purpose of enforcing the provisions of this section, the direct marketing association, or

other vendor, shall furnish the attorney general with all information requested by the attorney general concerning a telephone solicitor or any person the attorney general believes has engaged in an unsolicited consumer telephone call prohibited by this section. The direct marketing association, or other vendor, shall not charge a fee for furnishing the information to the attorney general.

(2) The direct marketing association, or other vendor, shall comply with any lawful subpoena or court order directing disclosure of the list or any other information.

(k) The direct marketing association, or other vendor, shall promptly forward any complaints concerning alleged violations of this section to the attorney general.

(l) Except as directed by the attorney general, the direct marketing association shall be prohibited from disclosing or using, in any way, any and all addresses obtained from consumers in the course of registering such consumer's phone numbers on the no-call list.

(m) Penalties and fees recovered from prosecutions of violations of this section shall be paid to the attorney general to investigate and prosecute violations of this section.

(n) The attorney general may 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 no-call list, and of a telephone solicitor's obligations under this section.

(o) On or before the first day of each regular legislative session, the attorney general shall report to the standing committees of the house and senate which hear and act on legislation relating to telecommunications issues on the status of implementation of the provisions of this section, including, but not limited to, the number of consumers who have given notice of objection, the number of requests for the data base, state revenues received from the respective sources of revenue under this section, the number of complaints received alleging violations of this section and actions taken to enforce the provisions of this section.

(p) If the federal trade commission establishes a single national no-call list the attorney general may designate the list established by the federal trade commission as the Kansas no-call list.

(q) The attorney general may promulgate rules and regulations to carry out the provisions of the Kansas no-call act.

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

(s) The provisions of this section shall be known and may be cited as the Kansas no-call act.

New Sec. 3. (a) It shall be an unconscionable act within the meaning of K.S.A. 50-627, and amendments thereto, for any supplier to profiteer from a disaster.

(b) As used in this section:

(1) "Profiteer from a disaster" means unjustifiably increasing during a time of disaster the price at which any necessary property or service is offered for sale to consumers. Actual sales at the increased price shall not be required for the increase to be considered unconscionable. In determining whether the price increase described in this subsection is unjustified, the court shall consider all relevant circumstances including, but not limited to, the following: (A) Whether the price charged by the supplier during the time of disaster grossly exceeded the price charged by the supplier for similar property or services on the business day before the disaster, and an increase of more than 25% shall be *prima facie* evidence of gross excess;

(B) whether the amount charged by the supplier during the time of disaster grossly exceeded the price at which the same or similar property or services were readily obtainable by other consumers in the trade area, and a price difference of more than 25% shall be *prima facie* evidence of gross excess; and

(C) whether the increase in the amount charged by the supplier during the time of disaster was attributable to additional costs incurred by the supplier in connection with the sale of the product or service, and proof the supplier incurred such additional costs shall be *prima facie* evidence that the price increase was justified when such additional costs

were actually incurred by the supplier during the period in which the substantially increased price was being charged;

(2) "time of disaster" means the period of time when a declaration of a state of emergency by the president of the United States or the governor is in effect; or 30 days after the occurrence of the event that constitutes the disaster, whichever is longer;

(3) "disaster" means natural or man-made events including, but not limited to, tornado or other severe storm, earthquake, flood, fire, riot, act of war, terrorism, civil disorder or other extraordinary adverse circumstance. The court shall find that an event constitutes a disaster if the event results in the declaration of a state of emergency by the president of the United States or the governor. The court may find that an event constitutes a disaster in the absence of a declared state of emergency; and

(4) "necessary property or service" means any necessary property or service for which consumer demand does, or is likely to, increase as a consequence of the disaster and includes, but is not limited to, consumer food items or property, property or services for emergency cleanup, emergency supplies, communication supplies and services, medical supplies and services, home heating fuel, building materials and services, freight, storage services, housing, lodging, transportation and motor fuels.

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

Sec. 4. K.S.A. 2001 Supp. 50-670 is hereby repealed.

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.

2-12

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Rules and Regulations Implementing the) CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)
)
)
)
)
)
)

REPORT AND ORDER

Adopted: June 26, 2003

Released: July 3, 2003

By the Commission: Chairman Powell, Commissioners Abernathy, Copps and Adelstein issuing separate statements.

TABLE OF CONTENTS

	<u>Paragraph Number</u>
I. INTRODUCTION.....	1
II. BACKGROUND	4
A. Telephone Consumer Protection Act of 1991	4
B. TCPA Rules	6
C. Marketplace Changes Since 1992	8
D. FTC National Do-Not-Call Registry and Telemarketing Rules.....	9
E. State Do-Not-Call Lists.....	12
F. Notice of Proposed Rulemaking	14
G. Do-Not-Call Implementation Act	15
III. NATIONAL DO-NOT-CALL LIST	16
A. Background	16
B. Discussion	25
1. National Do-Not-Call Registry	28
2. Exemptions	42
3. Section 227(c)(3) Requirements	55
4. Constitutionality.....	63
5. Consistency with State and FTC Do-Not-Call Rules.....	74

*Cox
Reimer
Hyper
Travis Mith*

IV. COMPANY SPECIFIC DO-NOT-CALL LISTS86

 A. Background86

 B. Discussion.....90

 1. Efficacy of the Company-Specific Rules90

 2. Amendments to the Company-Specific Rules92

V. INTERPLAY OF SECTIONS 222 AND 22797

 A. Background97

 B. Discussion.....100

VI. ESTABLISHED BUSINESS RELATIONSHIP.....109

 A. Background109

 B. Discussion112

 1. Definition of Established Business Relationship.....113

 2. Telecommunications Common Carriers119

 3. Interplay Between Established Business Relationship and Do-Not-Call Request.....124

VII. TAX-EXEMPT NONPROFIT ORGANIZATION EXEMPTION.....125

 A. Background125

 B. Discussion128

VIII. AUTOMATED TELEPHONE DIALING EQUIPMENT129

 A. Background129

 B. Discussion131

 1. Predictive Dialers.....131

 2. "War Dialing"135

IX. ARTIFICIAL OR PRERECORDED VOICE MESSAGES136

 A. Background136

 B. Discussion139

 1. Offers for Free Goods or Services; Information-Only Messages.....139

 2. Identification Requirements.....143

 3. Radio Station and Television Broadcaster Calls.....145

X. ABANDONED CALLS146

 A. Background146

 B. Discussion150

 1. Maximum Rate on Abandoned Calls.....151

 2. Two-Second-Transfer Rule.....153

 3. Prerecorded Message for Identification155

 4. Established Business Relationship.....156

 5. Ring Duration.....157

XI. WIRELESS TELEPHONE NUMBERS.....160

 A. Background160

 B. Discussion.....165

1. Telemarketing Calls to Wireless Numbers165

2. Wireless Number Portability and Pooling168

XII. CALLER IDENTIFICATION.....173

 A. Background173

 B. Discussion179

XIII. UNSOLICITED FACSIMILE ADVERTISEMENTS185

 A. Background185

 B. Discussion187

 1. Prior Express Invitation or Permission187

 2. Fax Broadcasters194

 3. Fax Servers.....198

 4. Identification Requirements203

XIV. PRIVATE RIGHT OF ACTION.....204

 A. Background204

 B. Discussion206

XV. INFORMAL COMPLAINT RULES207

XVI. TIME OF DAY RESTRICTIONS208

XVII. ENFORCEMENT PRIORITIES.....211

XVIII. OTHER ISSUES215

 A. Access to TCPA Inquiries and Complaints.....215

 B. Reports to Congress217

XIX. PROCEDURAL ISSUES.....218

 A. Regulatory Flexibility Act Analysis.....218

 B. Paperwork Reduction Act Analysis219

 C. Late-Filed Comments.....220

 D. Materials in Accessible Formats221

XX. ORDERING CLAUSES222

- Appendix A: Final Rules
- Appendix B: Final Regulatory Flexibility Act Analysis
- Appendix C: Comments Filed

database on March 1, 2003.¹⁸⁹ As noted above, Congress has approved the necessary funding for implementation of the national database.

56. Pursuant to sections 227(c)(3)(B)-(C), we require each common carrier providing telephone exchange service to inform subscribers for telephone exchange service of the opportunity to provide notification that such subscriber objects to receiving telephone solicitations. Each telephone subscriber shall be informed, by the common carrier that provides local exchange service to that subscriber, of (i) the subscriber's right to give or revoke a notification of an objection to receiving telephone solicitations pursuant to the national database and (ii) the methods by which such rights may be exercised by the subscriber. Pursuant to section 227(c)(3)(C), we conclude that, beginning on January 1, 2004, such common carriers shall provide an annual notice, via an insert in the customer's bill, to inform their subscribers of the opportunity to register or revoke registrations on the national do-not-call database. Although we do not specify the exact description or form that such notification should take, such notification must be clear and conspicuous. At a minimum, it must include the toll-free telephone number and internet address established by the FTC to register or revoke registrations on the national do-not-call database.

57. Section 227(c)(3)(D) requires the Commission to specify the methods by which registrations shall be collected and added to the database. As discussed above, consumers will be able to add their telephone numbers to the national do-not-call registry either through a toll-free telephone call or over the Internet.¹⁹⁰ Consumers who choose to register by phone will have to call the registration number from the telephone line that they wish to register. Their calls will be answered by an Interactive Voice Response (IVR) system. The consumers will be asked to enter on their telephone keypad the telephone number from which the consumer is calling. This number will be checked against the ANI that is transmitted with the call. If the number entered matches the ANI, then the consumer will be informed that the number has been registered. Consumers who choose to register over the Internet will go to a website dedicated to the registration process where they will be asked to enter the telephone number they wish to register.¹⁹¹ We encourage the FTC to notify consumers in the IVR message that the national registry will prevent most, but not all, telemarketing calls. Specifically, we believe consumers should be informed that the do-not-call registry does not apply to tax-exempt nonprofit organizations and companies with whom consumers have an established business relationship. The effectiveness and value of the national registry depends largely on an informed public. Therefore, we also intend to emphasize in our educational materials and on our website the purpose and scope of the new rules.

58. Section 227(c)(3)(E) prohibits any residential subscriber from being charged for giving or revoking notification to be included on the national do-not-call database. As discussed above, consumers may register or revoke do-not-call requests either by a toll-free telephone call or over the Internet. No charge will be imposed on the consumer. Section 227(c)(3)(F) prohibits

¹⁸⁹ See also Letter from Michael Del Casino, AT&T, to Marlene Dortch, FCC, dated March 18, 2003.

¹⁹⁰ *FTC Order*, 68 Fed. Reg. at 4638-39.

¹⁹¹ *FTC Order*, 68 Fed. Reg. at 4639.

Murray, Michael R [LTD]

From: Taylor, Lilli M [REG]
Sent: Wednesday, February 08, 2006 8:28 AM
To: Murray, Michael R [LTD]
Cc: Roth, Diane M [LTD]
Subject: RE: Annual Federal Do Not Call Message

The notice is for local and long distance residential customers. Wireless customers may list their well number, but carriers are not required to provide notification to wireless customers. Therefore, PCS does not send the notification to customers.

-----Original Message-----

From: Murray, Michael R [LTD]
Sent: Wednesday, February 08, 2006 8:01 AM
To: Taylor, Lilli M [REG]; Roth, Diane M [LTD]
Subject: RE: Annual Federal Do Not Call Message

Is this for both long distance and local customers? Do we know if PCS notifies customers that they can register their cell phones, too?

From: Taylor, Lilli M [REG]
Sent: Wednesday, February 08, 2006 5:50 AM
To: Murray, Michael R [LTD]; Roth, Diane M [LTD]
Subject: Annual Federal Do Not Call Message

Mike,
Residential customers receive the following annual Do Not Call Message as a bill message in their January invoice.

Let me know if you have any questions.
Lil

National Do Not Call list

If you do not want to receive telephone solicitations, you may enter your telephone number into the National Do Not Call database by dialing 1-888-382-1222 (TTY 1-866-290-4236) or by visiting www.donotcall.gov. This toll free number or Internet site may also be used if you wish to revoke your previous entry. If you have received a telephone solicitation even though you had entered your phone number into the National Do Not Call database, you may call 1-888-225-5322 (TTY 1-888-835-5322), email donotcall@fcc.gov, or write to: FCC, Consumers Inquiries and Complaint Division, 445 12th Street SW, Washington, DC 20554.



KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR
BRIAN J. MOLINE, CHAIR
ROBERT E. KREHBIEL, COMMISSIONER
MICHAEL C. MOFFET, COMMISSIONER

Before the Senate Utilities Committee
Comments by the
Staff of the Kansas Corporation Commission
February 8, 2006

Senate Bill 464

Thank you Mr. Chair and members of the Committee. I am Leo Haynos, Chief of Pipeline Safety for the Kansas Corporation Commission and I am appearing today on behalf of the KCC Staff.

We are here today to support SB 464 which gives authority to the Commission to promulgate regulations in support of the existing statute's directive to the Corporation Commission to administer and enforce the Kansas Underground Utility Damage Prevention Act, also known by the acronym KUUDPA.

Before I begin discussing the bill, I would like to give a brief overview of the Act and some of its history. In Kansas, if you don't count water and sewer facilities, there are roughly 160,000 miles of utility lines that are buried. Typically one thinks of gas lines as buried facilities. However they also include almost all phone lines, cable TV and fiber optic communication lines as well as electric service lines. In fact, most new housing developments place all of the utilities underground. Under KUUDPA, there are two groups that are affected by the law's requirements. They are excavators and operators of underground utilities. At the heart of underground utility damage prevention is the need for accurate and consistent communication

Senate Utilities Committee
February 8, 2006
Attachment 3-1

between excavators and operators. Typically, an excavator planning to dig has no knowledge of who may have buried facilities in the area where he will be working. He depends on the call center to notify all operators of buried facilities at his work site. The call center has electronic maps of the underground facilities of all its members. After being called by the excavator, the center sends a message or a "ticket" to the utility to alert them of possible digging near their facilities. In order to protect their facilities and to prevent accidents, the utilities respond by placing flags or paint marks on top of the ground that indicate the location of their facilities. In theory, this is a simple concept; however, as requests for locates increase and the underground becomes more congested, the communication link between excavators and operators begins to unravel. In 2005, the call center received 465,000 requests from excavators to locate buried facilities. Each call for locates generally produces 5 locate requests being sent to facility operators since there is usually more than one type of facility in the ground at any given place. In some cities, as many as 9 operators must respond for every request by an excavator. Last year, the call center informed utility operators 2.4 million times that an excavator was planning to dig near their facilities and that he needed locates.

Although the system works pretty well considering the volume of use, Kansas utilities still suffer approximately 4 million dollars of damage each year. The main concern however, is not the money lost because of damaged utilities. The main concern is safety and continuity of service. Safety of the excavator while digging is an immediate consideration along with safety of the public. The highest safety concerns would be those dealing with electric and gas utilities, but water contamination is also a potential risk as is phone line damage, particularly for 911 communications.

During the 2002 legislative session, the Commission Staff asked for the introduction of Senate Bill 490 which led to several minor revisions of KUUDPA. In my testimony before this committee at that time, I explained that it was our intent to prepare regulations to supplement the statute and provide specific instructions for day to day operations under the Act. In fact, the statutes were amended by SB 490 to allow the KCC to promulgate regulations dealing with marking utilities and requiring guidelines for trenchless excavations. Beginning in 2003, Staff worked with a group of utility operators and excavators to draft regulations and in late 2004 we began the approval process. The Department of Administration completed their review and modification of the submitted language in the summer of 2005, and the proposed regulations were sent to the office of the Attorney General for review as the next step of the process. In October of last year, the office of the attorney general stated the existing statute limits the KCC authority to promulgate regulations to the two areas specifically stated in the Act. Subsequently, the office of the attorney general ruled they could not approve a regulation without a statute that clearly authorizes adoption of the regulation.

Today, we are supporting SB 464 because we believe KUUDPA regulations will be a valuable tool in providing clear direction to the regulated community. For example, the proposed regulations, in addition to providing the requirements for marking and trenchless excavation guidelines, also define several terms used in the statute but not defined. The proposed regulations also provide clear instruction regarding what needs to be included in the excavator's notice of intent to excavate as well as including requirements for the utility operator to provide data to the KCC on the number and type of damages suffered each year. The underground

utilities industry is constantly evolving to include new techniques for repairing existing infrastructure or placing new facilities in service. Within the last 10 years, techniques such as vacuum excavation, trenchless excavation, and pipe bursting have developed into accepted and popular excavation techniques. As I stated earlier, the purpose of KUUDPA is to ensure appropriate communication between excavators and utility operators. Clarifying the authority of the Commission to promulgate regulations gives us the ability to modify and clarify the law's requirements within the constraints of the statute as the industry evolves. We believe this bill will allow the Commission to deliver more effective administration of the One Call law.

This concludes my testimony, and I will now stand for questions.