

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Senator Karin Brownlee at 8:30 a.m. on February 21, 2002 in Room 123-S of the Capitol.

All members were present except:

Committee staff present:

April Holman, Legislative Research
Debra Hollon, Legislative Research
Norman Furse, Revisor of Statutes
Sherman Parks, Revisor of Statutes
Lea Gerard, Committee Secretary

Conferees appearing before the committee:

April Holman, Legislative Research
Steve Rarrick, Deputy Attorney General
Consumer Protection
Kim Wilcox, President & CEO
Kansas Board of Regents
Dick Veach, Kansas Rural Independent
Telephone Company

Others attending:

See attached list

Continued Hearings on **SB 467** Commercial electronic mail act; protection from deceptive and unwanted "spam":

April Holman, Legislative Research, briefed the committee on background information regarding Spam Laws in the United States (Attachment 1). Twenty states have enacted statues regulating unsolicited e-mail messages or "spam". Most of these states require the sender of the e-mail to provide opt out information and although other provisions of the legislation vary from state to state they can loosely be grouped into two approaches. The first approach makes it illegal to send unsolicited commercial e-mail using a third party's domain name without permission or containing falsified routing information. The second approach requires that certain unsolicited commercial e-mails contain a label either ADV: or ADV:ADULT at the beginning of the subject line.

Tony Hadley, Experian Information Services, testified on **SB 467** (Attachment 2). Experian supports Section (c) (1) (A) relating to use of the domain name without permission, Section (B) relating to false or misleading information in the subject line, and Section (D) relating to "do not send" notification. Experian does not support the idea that e-mails sent to consumers who have provided authorization to receive them should have to be labeled with "ADV:". The bill imposes penalties on the party that assists in the transmission of the message instead of placing the penalty on the party responsible for content of the message. Experian did provide amendments to **SB 467** with their testimony.

Senator Emler asked Tony Hadley to comment on what "assisting in the transmission" means when you provide assistance with knowledge or conscientiously avoid knowing that the initiator of the message is engaged in a practice that violates the consumer protection act. Tony Hadley stated the major point he was making is that Experian can't understand all of the marketing laws, fraud and deception laws that exist within a regulatory regime; that is the responsibility of the marketer.

Chairperson Brownlee asked Tony Hadley whether or not Experian has a contractual relationship with the companies whose e-mails they send to indicate they are responsible to comply with the laws as to content of their message? Mr. Hadley explained that all of Experian's standard contracts state the sponsoring company will be liable. Experian also has contracts which set forth standards that a company must attest to in terms of gaining permission to send e-mails.

Mike Murray, Director of Governmental Affairs for Sprint, testified in support of **SB 467** with amendments on Pages 1 and 3 of the Attorney General's balloon (Attachment 3). Sprint is concerned

CONTINUATION SHEET

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about the two proposed amendments on Page 2 of the balloon presented by the Attorney General. The definition of express authorization (new paragraph (7) on page 2) prevents this form of authorization and the new language on line 18 would require the use of ADV on the subject line of the e-mail even though the consumer has consented to receiving such promotions through the e-mail service provider. Sprint would support additional language which allows for the use of such e-mail service providers and includes that type of permission as express authorization.

Steve Rarrick, Deputy Attorney General, Consumer Protection Division, testified in support of **SB 467** with some proposed balloon amendments (Attachment 4). Three internet providers (ISP's) have expressed support of **SB 467** as drafted. The provisions allow customers to deny or unsubscribe to unwanted e-mail that would reduce the costs incurred by ISP's.

Hearings on **SB 614**—KUSF funding for KAN-ED.

In accordance with KSA 75-3715a, the fiscal note concerning **SB 614** was submitted to committee members.

Kim Wilcox, President and CEO for the Kansas Board of Regents, testified in support of **SB 614** (Attachment 5). The bill supports a dedicated funding stream that sustains KAN-ED into the future. If the Board of Regents is to continue to be responsible for managing KAN-ED, the Regents do not want to simply run a phone company. If we want an educational network, then the network changes and future should be driven by educational types of directives.

Richard Veach, General Manager of Pioneer Communications, testified in support of **SB 614** (Attachment 6). The Kansas Universal Service Fund exists to support high quality telecommunications services in the areas of the state that are the most expensive to serve. Funding KAN-ED would require a small increase in the size of the KUSF fund. The small increase is far outweighed by the benefits that would be provided.

Committee discussion followed regarding KUSF and the money invested in this fund over the last six years. Chairperson Brownlee requested that Janet Buchanan, KCC, provide information regarding KUSF and how that money is dispersed. Chairperson Brownlee stated the increase for KUSF to fund the KAN-ED project would be .75%.

Meeting adjourned at 9:30 a.m.

The next meeting is scheduled for February 22, 2002 at 8:15 a.m.