

## HOUSE BILL No. 2606

By Representative Gordon

10-26

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AN ACT concerning telecommunications services; relating to the fraudulent procurement thereof; amending K.S.A. 2001 Supp. 66-1,187 and 66-2002 and repealing the existing sections.

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

Section 1. K.S.A. 2001 Supp. 66-1,187 is hereby amended to read as follows: 66-1,187. As used in this act:

(a) "Broadband" means the transmission of digital signals at rates equal to or greater than 1.5 megabits per second.

(b) "CLASS services" means custom local area signaling services, which include automatic callback, automatic recall, calling number identification, selective call rejection, selective call acceptance, selective call forwarding, distinctive ringing and customer originated trace.

(c) "Commission" means the state corporation commission.

(d) "Dialing parity" means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications carrier of the customer's designation from among two or more telecommunications carriers, including such local exchange carrier.

(e) "Federal act" means the federal telecommunications act of 1996, P.L. 104-104 (amending the communications act of 1934, 47 U.S.C. 151, *et seq.*)

(f) "ISDN" means integrated services digital network which is a network and associated technology that provides simultaneous voice and data communications over a single communications channel.

(g) "LATA" has the meaning ascribed to it in the federal act.

(h) "Local exchange carrier" means any telecommunications public utility or its successor providing switched telecommunications service within any local exchange service area, as approved by the commission on or before January 1, 1996. However, with respect to the Hill City exchange area, in which multiple carriers were certified by the commission prior to January 1, 1996, the commission's determination, subject to any court appeals, of which authorized carrier shall serve as the carrier

1 of last resort will determine which carrier shall be deemed the local  
2 exchange carrier for that exchange.

3 (i) "Number portability" has the meaning ascribed to it in the federal  
4 act.

5 (j) "1+ intraLATA dialing parity" means the ability of a local exchange  
6 service customer to specify the telecommunications or local exchange  
7 carrier that will carry the intraLATA long distance messages when that  
8 customer dials either "1" or "0" plus a 10-digit number.

9 (k) "Operating area" means:

10 (1) In the case of a rural telephone company, operating area or service  
11 area means such company's study area or areas as approved by the federal  
12 communications commission;

13 (2) in the case of a local exchange carrier, other than a rural telephone  
14 company, operating area or service area means such carrier's local  
15 exchange service area or areas as approved by the commission.

16 (l) "Rural telephone company" has the meaning ascribed to it in the  
17 federal act, excluding any local exchange carrier which together with all  
18 of its affiliates has 20,000 or more access lines in the state.

19 (m) "Telecommunications carrier" means a corporation, company,  
20 individual, association of persons, their trustees, lessees or receivers that  
21 provides a telecommunications service, including, but not limited to, in-  
22 terexchange carriers and competitive access providers, but not including  
23 local exchange carriers certified before January 1, 1996.

24 (n) "Telecommunications public utility" means any public utility, as  
25 defined in K.S.A. 66-104, and amendments thereto, which owns, controls,  
26 operates or manages any equipment, plant or generating machinery, or  
27 any part thereof, for the transmission of telephone messages, as defined  
28 in K.S.A. 66-104, and amendments thereto, or the provision of telecom-  
29 munications services in or throughout any part of Kansas.

30 (o) "Telecommunications service" means the provision of a service  
31 for the transmission of telephone messages, or two-way video or data  
32 messages.

33 (p) *"Telecommunications service abuse" means an act by a third party*  
34 *which through deception, fraud, trick or other similar ploy results in the*  
35 *initiation of long distance telephone calls which are billed to a residential*  
36 *or business customer's account, but which have not been authorized by*  
37 *the customer.*

38 ~~(q)~~ (q) "Universal service" means telecommunications services and  
39 facilities which include: single party, two-way voice grade calling; stored  
40 program controlled switching with vertical service capability; E911 ca-  
41 pability; tone dialing; access to operator services; access to directory as-  
42 sistance; and equal access to long distance services.

43 ~~(r)~~ (r) "Enhanced universal service" means telecommunications serv-

1 ices, in addition to those included in universal service, which shall include:  
2 Signaling system seven capability, with CLASS service capability; basic  
3 and primary rate ISDN capability, or the technological equivalent; full-  
4 fiber interconnectivity, or the technological equivalent, between central  
5 offices; and broadband capable facilities to: All schools accredited pur-  
6 suant to K.S.A. 72-1101 *et seq.*, and amendments thereto; hospitals as  
7 defined in K.S.A. 65-425, and amendments thereto; public libraries; and  
8 state and local government facilities which request broadband services.

9 New Sec. 2. (a) Limits on liability.

10 (1) A customer shall be liable for charges incurred as a result of tel-  
11 ecommunications service abuse only if:

12 (A) The charges are authorized by the customer;

13 (B) the liability is not in excess of \$50; or

14 (C) the customer does not notify the interexchange telecommunica-  
15 tions service provider of the existence of the unauthorized charges within  
16 90 days of the initiation of the calls resulting in such charges.

17 (2) Burden of proof.

18 In any action by a telecommunications service provider to enforce li-  
19 ability for charges incurred through telecommunications service abuse,  
20 the burden of proof is upon the provider to show that the use was au-  
21 thorized or, if the use was unauthorized, then the burden of proof is upon  
22 the provider to show that the conditions of liability as set forth in this  
23 subsection have been met.

24 (b) Exclusiveness of liability.

25 Except as provided in this section, a customer incurs no liability for  
26 telecommunications services provided as a result of telecommunications  
27 service abuse.

28 Sec. 3. K.S.A. 2001 Supp. 66-2002 is hereby amended to read as  
29 follows: 66-2002. The commission shall:

30 (a) Adopt a definition of “universal service” and “enhanced universal  
31 service,” pursuant to subsections (p) and (q) of K.S.A. ~~2000 Supp.~~ 66-  
32 1,187, *and amendments thereto*;

33 (b) authorize any requesting telecommunications carrier to provide  
34 local exchange or exchange access service pursuant to subsection (a) of  
35 K.S.A. ~~2000 Supp.~~ 66-2003, *and amendments thereto*;

36 (c) on or before July 1, 1996, the commission shall initiate a pro-  
37 ceeding to adopt guidelines to ensure that all telecommunications carriers  
38 and local exchange carriers preserve and enhance universal service, pro-  
39 tect the public safety and welfare, ensure the continued quality of tele-  
40 communications services and safeguard the rights of consumers;

41 (d) review, approve and ensure compliance with network infrastruc-  
42 ture plans submitted by local exchange carriers pursuant to K.S.A. ~~2000~~  
43 ~~Supp.~~ 66-2005, *and amendments thereto*;

1 (e) review, approve and ensure compliance with regulatory plans sub-  
2 mitted by local exchange carriers pursuant to K.S.A. ~~2000 Supp.~~ 66-2005,  
3 *and amendments thereto*;

4 (f) on or before January 1, 1997, establish, pursuant to K.S.A. ~~2000~~  
5 ~~Supp.~~ 66-2006, *and amendments thereto*, the Kansas lifeline service pro-  
6 gram, hereinafter referred to as the KLSP;

7 (g) initiate and complete a proceeding by January 1, 1997, to establish  
8 a competitively neutral mechanism or mechanisms to fund: dual party  
9 relay services for Kansans who are speech or hearing impaired; telecom-  
10 munications equipment for persons with visual impediments; and tele-  
11 communications equipment for persons with other special needs. This  
12 funding mechanism or mechanisms shall be implemented by March 1,  
13 1997;

14 (h) on or before January 1, 1997, establish the Kansas universal serv-  
15 ice fund pursuant to K.S.A. ~~2000 Supp.~~ 66-2008, *and amendments*  
16 *thereto*, hereinafter referred to as the KUSF, and make various deter-  
17 minations relating to the implementation of such fund;

18 (i) authorize all local exchange carriers to provide internet access as  
19 outlined in K.S.A. ~~2000 Supp.~~ 66-2011, *and amendments thereto*, and  
20 report on the status of the implementation provisions to specified legis-  
21 lative committees;

22 (j) review the federal act and adopt additional standards and guide-  
23 lines as necessary for enforcing slamming restrictions;

24 (k) commencing on June 1, 1997 and periodically thereafter, review  
25 and, to the extent necessary, modify the definition of universal service  
26 and enhanced universal service, and KUSF, taking into account advances  
27 in telecommunications and information technology and services;

28 (l) on or before January 1, 1997, initiate and complete a proceeding  
29 to establish minimum quality of service standards which will be equally  
30 applicable to all local exchange carriers and telecommunications carriers  
31 in the state; any local exchange carrier or telecommunications carrier  
32 violating such standards, for each occurrence, shall forfeit and pay a pen-  
33 alty of not less than \$100, nor more than \$5,000; violations of such stan-  
34 dards shall be enforced in accordance with provisions of K.S.A. 66-138  
35 and 66-177, and amendments thereto; ~~and~~

36 (m) on January 1, 2000, prepare and submit a report to the legisla-  
37 ture. The report shall include an analysis of the manner in which the  
38 regulatory framework has served to: Protect consumers; safeguard uni-  
39 versal service; ensure that consumers have reaped the benefits of com-  
40 petition; maximize the use of market forces; and promote development  
41 of the telecommunications infrastructure throughout the state. The com-  
42 mission also shall recommend if and how the KUSF should be modified;   
43 *and*

1     *(n) adopt rules and regulations to facilitate the implementation and*  
2 *enforcement of restrictions against telecommunications services fraud as*  
3 *described by section 2, and amendments thereto.*

4     New Sec. 4. Any person who intentionally commits telecommuni-  
5 cations services fraud as defined in subsection (p) of K.S.A. 66-1,187, and  
6 amendments thereto, and incurs unauthorized charges in an amount in  
7 excess of \$500 shall be deemed guilty of a class 10, nonperson felony.  
8 Any such person which incurs unauthorized services in an amount less  
9 than \$500 shall be guilty of a misdemeanor.

10     Sec. 5. K.S.A. 2001 Supp. 66-1,187 and 66-2002 are hereby repealed.

11     Sec. 6. This act shall take effect and be in force from and after its  
12 publication in the statute book.

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