FLORIDA PUBLIC SERVICE COMMISSION
FLETCHER BUILDING
101 EAST GAINES STREET
TALLAHASSEE, FLORIDA 32399-0850

M E M O R A N D U M

May 24, 1990

TO : DIRECTOR OF RECORDS AND REPORTING

FROM : DIVISION OF COMMUNICATIONS (LONG)
DIVISION OF LEGAL SERVICES (GREEN)

RE : DOCKET NO. 891194-TL - PROPOSED TARIFF FILINGS BY SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY CLARIFYING WHEN A NONPUBLISHED NUMBER CAN BE DISCLOSED (T-89-506, FILED 9/29/89) AND INTRODUCING CALLER ID TO TOUCHSTAR SERVICE (T-89-507, FILED 9/29/89)

AGENDA : JUNE 5, 1990 - CONTROVERSIAL AGENDA - PARTIES MAY PARTICIPATE

CRITICAL DATES: NONE (COMPANY WAIVED 60 DAYS)

ISSUE AND RECOMMENDATION SUMMARY

ISSUE 1: Do the proposals presented to date by Southern Bell adequately address the needs of the Commission-defined at-risk customers delineated at the February 20, 1990 Agenda Conference?

RECOMMENDATION: Yes, the proposals presented by Southern Bell adequately address the needs of the Commission-defined at-risk customers. At-risk customers are those meeting the criteria established by this Commission at the February 20, 1990 Agenda Conference. They include law enforcement agencies and personnel, HRS-approved domestic violence intervention agencies and

personnel, private marriage and family counselors and other agencies/personnel dealing with domestic violence.

The company should make any or all of the following alternatives available to these customers:

1. Per line blocking;
2. Calling cards;
3. Calling Party Number Revision;
4. Foreign Central Office (FCO) or Foreign Exchange (FX) service;
5. Remote Access Dialing Arrangements;
6. Any other arrangement agreed to by both the company and the eligible customer.

ISSUE 2: [LEGAL] Should the Commission grant law enforcement's specific request to forward any number of the law enforcement agent's choosing?

RECOMMENDATION: No, the Commission should not grant law enforcement's specific request to forward any number of the law enforcement agent's choosing.

ISSUE 3: If a Commission-defined at-risk agency (or individual) agrees to issue Southern Bell calling cards to its at-risk personnel and clients for use in their homes or when traveling for work-related sensitive calls, what rate should Southern Bell charge the agency for local customer dialed credit card calls made with these cards? What should be the rate for any specialized solutions law enforcement may require?

RECOMMENDATION: If an agency or individual agency meets the Commission's criteria for relief, Southern Bell calling cards issued and used should have all local customer dialed credit card charges waived (zero rate for these calls). The agency will be responsible for issuing cards only to those employees or clients who are certified to be at risk, recertifying these individuals annually, and taking reasonable measures to discourage unauthorized calls made with these cards.

All other solutions, such as special arrangements for law enforcement agencies, should be charged at rates consistent with this Commission's decision at the February 20, 1990 agenda. That decision provided for nonrecurring charges to be waived for 30 days prior/60 days after Caller ID is available, in each area it becomes available for any solution provided. The normal recurring charges would apply (there is no recurring rate or cost for per-line blocking) and nonrecurring charges apply after the 60 day period (there is no nonrecurring rate or cost for issuing calling cards). If a service is not tariffed and would be provided under a special arrangement, the company should charge a recurring rate equal to its incremental or marginal recurring cost to provide the service.

The company's tariff should require the eligible customers to maintain written certification of their at-risk personnel, recertify them annually, and make such certifications available to Southern Bell's security department if requested.

ISSUE 4: Should the Commission require Southern Bell to request Commission approval before implementing any technology that would change the "Out of Area" signal sent on calls made through an operator such as outlined in Issue 3?

RECOMMENDATION: Yes, the Commission should require Southern Bell to request Commission approval before implementing any technology that would change the "Out of Area" signal sent on calls made through an operator such as outlined in Issue 3.

ISSUE 5: What should be the effective date of the tariffs?

RECOMMENDATION: All at-risk customers should submit their orders to Southern Bell no later than August 15, 1990. Southern Bell should file a report on September 1, 1990 outlining the number of personnel protected and the nature of their work (HRS caseworkers, private domestic violence counselors, judges, federal and state law enforcement, etc.), and any requests placed prior to August 15, 1990 that remain to be completed. The effective date of the tariffs should be October 3, 1990, allowing for all at-risk customers to be properly accommodated. If staff believes that problems still exist with Caller ID's implementation, a recommendation will be prepared for the October 2, 1990 Agenda Conference outlining the problems and making further recommendations.

CASE BACKGROUND

On June 19, 1984, the Commission approved a two-year trial of TouchStar service in Orlando (Docket No. 840139-TL). This experiment was extended for a third year and was completed on May 9, 1988. One of the features offered during this trial was Call Monitor (now called Caller ID), a feature whereby a caller's telephone number was displayed to the called party after the first ring. The usage sensitive rate structure of Call Monitor coupled with the difficulty in obtaining the required CPE restricted this service to a very few subscribers.

When TouchStar was reimplemented on a permanent basis in August 1988 (Docket No. 880791-TL), Call Monitor was not included. Southern Bell Telephone and Telegraph Company (Southern Bell or company) indicated that it would further test the feature in other states and gather information from regional Bell companies' offerings in other parts of the country before reintroducing it here.

Southern Bell filed two proposed tariff revisions on September 29, 1989. One added Caller ID to its TouchStar features; the other filing proposed clarifications regarding the divulgence of nonpublished telephone numbers.

Staff had several concerns with the appropriateness of that filing. Among the concerns were the usefulness of the service, its affect on nonpublished subscribers, the privacy concerns, and its compliance with state and federal wiretapping/trap-and-trace laws.

Some of those concerns were adequately addressed at the December 19, 1989 Agenda Conference. The tariff implementing Caller ID (T-89-507) was approved as filed, effective February 1, 1990. The tariff amending the nonpublished/unlisted telephone number offering (T-89-506) was denied as filed; Southern Bell was directed to amend the filing with a prohibition on the resale of any nonpublished numbers acquired through Caller ID. This tariff filing, if amended, would be approved administratively also effective February 1, 1990 (it was amended and filed, but has not yet been given an effective date by the Commission).

One issue concerning the appropriateness of blocking certain agencies' numbers and any charge for such blocking was deferred for further consideration before the February 1, 1990 effective date. However, this issue was again deferred at the January 30, 1990 agenda and the effective dates suspended when additional questions were raised concerning the blocking and privacy issues. Staff and the company were directed to seek answers to those questions and return to the Commission on February 20, 1990.

The Commission approved specific criteria for blocking at the February 20, 1990 agenda. The criteria consisted of the following:

1. The customer (agency or individual) should establish that its business is law enforcement or one which the divulgence of identities over the telephone could cause serious personal or physical harm to its employees or clients, such as a domestic violence intervention agency; and,

2. The customer (agency or individual) should establish that the forwarding of numbers through Caller ID would seriously impair or prevent it from performing its business; and,

3. The customer (agency or individual) should establish that no reasonable offering by the telephone company other than blocking will protect its desired anonymity.

Southern Bell was directed to accommodate the needs of all of the eligible parties and report back to the Commission in time for the June 5 agenda. The company sent bill inserts to all customers in areas where Caller ID was to become available. They also held extensive meetings with Department of Rehabilitative Services (HRS) officials and a law enforcement task group set up at the February agenda. Southern Bell filed its report on the progress of these efforts on May 1, 1990 (Attachment A).

DISCUSSION OF ISSUES

ISSUE 1: Do the proposals presented to date by Southern Bell adequately address the needs of the Commission-defined at-risk customers delineated at the February 20, 1990 Agenda Conference?

RECOMMENDATION: Yes, the proposals presented by Southern Bell adequately address the needs of the Commission-defined at-risk customers At-risk customers are those meeting the criteria established by this Commission at the February 20, 1990 Agenda Conference. They include law enforcement agencies and personnel, HRS-approved domestic violence intervention agencies and personnel, private marriage and family counselors and other agencies/personnel dealing with domestic violence.

The company should make any or all of the following alternatives available to these customers:

1. Per line blocking;
2. Calling cards;
3. Calling Party Number Revision;
4. Foreign Central Office (FCO) or Foreign Exchange (FX) service;
5. Remote Access Dialing Arrangements;
6. Any other arrangement agreed to by both the company and the eligible customer.

STAFF ANALYSIS: Southern Bell was directed at the February 20 agenda to resolve the anonymity concerns of HRS domestic violence case workers and a law enforcement task group set up at that agenda. The company conducted several

meetings with both groups as well as dozens of meetings with local police personnal. Southern Bell also, under Commission guidance, sent a bill insert (Attachment B) to all of its customers in areas where Caller ID will be immediately available explaining the service and outlining the Commission-approved criteria for blocking. This was done in an attempt to notify any parties that HRS or the law enforcement task group overlooked.

The meetings Southern Bell conducted with HRS were quite productive. HRS agreed to limit the availability of relief to only those offices and case workers involved in sensitive investigations or harboring abuse victims. Southern Bell and HRS agreed that the sensitive office lines would be equipped with permanent blocking (displaying "Private Number" or "P") and telephone calling cards would be issued to the case workers and foster parents for any incidental sensitive calls made from their homes.

The company's meetings with law enforcement were not quite as fruitful. The law enforcement task group (consisting of field agents and their supervisors from the Justice Department, DEA, Department of the Treasury, FBI, FDLE, and other federal, state, and local offices) agreed that calling cards, cellular phones, and payphones would satisfy many of their needs but remained adamant that they be given the ability to deliver, at their option, any working or nonworking telephone number (see Issue 2).

Southern Bell attempted to offer blocks of numbers, call diversion methods, and other solutions. The law enforcement task force rejected all of

the proposed solutions, requesting that Southern Bell find some way to arrange for "any number delivery." At an April 3 meeting in Miami, Southern Bell presented a technically possible method for meeting the task force's request, although it would be arduous for both the company to implement and the agents to use. Another meeting was scheduled for April 17 to allow the company to develop cost analyses and further technical refinements.

Southern Bell and the task force could not agree on a viable solution and the negotiations did not proceed any further until the end of May. Southern Bell would not offer any number delivery for what it termed "severe liability concerns" (some of which staff has outlined in Issue 2), and the task force retained the position that any number delivery was necessary for it to continue its investigations properly.

Southern Bell met with the task force on May 22 in an attempt by both sides to reopen negotiations. The parties agreed that some other solutions would be adequate in most situations, but again the task force was concerned that some major cases could be hampered without the ability to manipulate the originating number of some calls. The meeting concluded with Southern Bell agreeing to research some alternatives further and the law enforcement group agreeing that some of the alternatives presented would be more helpful than previous offerings. It is important to note here, however, that the task force has indicated to staff that it is maintaining its previous position and plans to advocate any number delivery or per call blocking at the June 5 agenda.

Several developments at the national level have occurred since the February 20 agenda . Joseph Baer, a professional engineer from New York, has requested the FCC to initiate rulemaking on Caller ID-type services. His request is that all common carriers must "make available to any non-business telephone subscriber (with an unlisted number) the means, at reasonable charges, of substituting a confidentially registered 'alternate alphanumeric identity' (AI) for the billing number on a call-by-call basis..." Staff has contacted the FCC and we have been informed that no action has been taken on this request, nor is any likely in the near future.

Staff investigated the technology required to provide this "name instead of number" arrangement. We found that, although it is being tested in some switches now, this ability will not be generically available until the second generation call management (or CLASS II) features become available at the end of 1991. Also, it could take six months to one year after that date before the capability would be widely deployed in Florida.

Another development at the federal level was the introduction of a bill in the U.S House of Representatives (HR 4340, attachment C) by Robert W. Kastenmeier (D-Wisc.) amending the Electronic Communications Privacy Act of 1986. The bill proposed to clarify that Caller ID would not constitute a trap and trace device if the call originator could block receipt of the identifying information.

This bill is the House version of Senate Bill 2030 introduced by Herbert Kohl (D-Wisc.) earlier this year. SB 2030 is scheduled for hearings before the Senate Subcommittee on Technology and the Law on June 7, 1990. No hearings have been scheduled for HR 4340, although both bills may be addressed at the June 7 Senate hearings.

Staff is faced with the dilemma of trying to speculate what alternatives offered by Southern Bell are feasible for law enforcement after the task force's refusal to entertain any option but the delivery of any number of their choosing. Although we do not have firsthand knowledge of undercover operations, staff has scrutinized the available options, conferred with law enforcement personnel in other jurisdictions and developed the following analysis.

Southern Bell developed several alternatives, any or all of which it offered to the law enforcement task force as solutions to their problem (see Attachment A). Briefly, some of the alternatives presented were as follows:

1. Per line blocking - this arrangement permanently blocks the delivery of all outgoing numbers from the associated line, sending a "P" or "Private Number" or an "O" or "Out of Area" designation. Southern Bell's proposed rates for "P" delivery - nonrecurring: standard Secondary Service Order charge; recurring cost (and rate) $0.00. Proposed rates for delivery of "O" - nonrecurring: $142.50; recurring: $11.30.

2. Calling card - a customer dials 0 + 7 digits and the call is completed through an operator, sending an "O" or "Out of Area" designation. Proposed rates - nonrecurring: $0.00; recurring: $0.17 per call.

3. Calling Party Number Revision - this arrangement allows a different preset number (to be determined by the company) to be delivered on all calls. Limited availability (DMS 100 offices only). Proposed rates - nonrecurring: $18.75; recurring: $3.95

4. Foreign Central Office (FCO) or Foreign Exchange (FX) - this allows undercover phones at a single location to appear to be in different parts of town. This works like any standard FCO or FX line. Proposed rates: standard tariffed rates for FCO and FX.

5. Remote Access Dialing Arrangement - this is a two-stage dialing arrangement that can be accessed from any location. An agent may dial the remote unit, enter an access code, and wait for a second dial tone. The number delivered would be the one associated with the remote unit (number to be determined by the company). Proposed rates - nonrecurring: $409.55 first line, $183.40 ea. additional line; recurring: $36.50 first line, $23.05 ea. additional line; additional authorization codes: $12.95 each.

Southern Bell also proposed arrangements whereby the agents could choose from blocks of numbers and other possibilities short of delivering any number.

As stated previously, law enforcement rejected these solutions and maintained that, even though the proposals would work in most situations, they still would not make the undercover operations "whole." The agents would still theoretically be restricted from some calls they are presently able to make. The only alternative to any number delivery as stated by the task force would be unlimited per-call blocking for all subscribers.

The endorsement of per-call blocking by the task force (which has not been indicated to staff as an official opinion from the law enforcement community as a whole) leads staff to wonder whether the use of calling cards

would suffice the undercover agents in most situations. There are two relatively minor differences with the two alternatives. The use of per-call blocking (dialing *67 then the terminating number) appeals to the task force because they believe that they can "blend in" with the rest of the population. Calling card use would not be nearly so prevalent and therefore, more suspicious. On the other hand, per-call blocking would deliver "Private Number" (or "P") and immediately alert the called party that the caller intentionally deleted his/her number, while calling through a calling card delivers "Out of Area" (or "O"), which could mean any of several things (long distance, cellular, technical difficulties, etc.).

If an undercover agent uses per-call blocking, he/she must face the problem of explaining to the called party why the number was not passed if a suspect becomes suspicious. That same agent, if using a calling card, now has the option of being in a car, out of town, or can still make the exact same argument he/she would have made for delivering a "P" with per-call blocking.

Staff's only remaining concern is law enforcement's claim that they would much more easily blend in with society if per-call blocking were approved. We believe the history of telephone technology and the criminals' uses of it simply do not support this claim. Cellular telephones, although used by only a very small percentage of subscribers, are popular with drug dealers and other criminals because they are portable and difficult to trace. Call Forwarding was claimed to be the biggest boon to bookmakers since the

invention of the telephone itself (try to find one by the telephone number he/she gives out!). Criminals quickly find ways to circumvent the conventional systems to suit their own needs. Staff fully expects that drug dealers will quickly learn of the use of calling cards and begin to use them themselves when unable to make a cellular call. Although most individuals will have no need or desire for this type of anonymity, it is there for anyone who values it enough to call the phone company and ask (remember that calling card calls are recorded for billing purposes in case an obscene caller tries it).

Staff asked law enforcement personnel in New Jersey, where per-call blocking is not available, what problems they have encountered. Although we by no means spoke to everyone involved in undercover operations, the people we did speak to claimed that the use of cellular phones, payphones, and remote call diverters (such as Southern Bell has proposed) have filled their needs quite satisfactorily. None of the personnel in New Jersey we spoke with claimed that either any number delivery or per-call blocking was absolutely necessary for undercover operations. It should be pointed out that none of the personnel made any claims to knowing what the needs for Florida may be, just that in New Jersey they have adapted existing technology to their needs and that Caller ID service overall was working very well there.

If staff's analysis is correct that there is no substantive difference between calling cards and per-call blocking other than discouraging

calling card use by making it inconvenient (extra digits) and costly ($ .70 to $1.00 per call for the general population), coupled with HRS's apparent satisfaction with the calling card use along with limited per-line blocking, it could be construed that the company should be under no obligation to provide any additional options to law enforcement than it has to HRS. However staff believes that all of the options presented by Southern Bell are reasonable, and law enforcement agencies should be able to choose which combination works best for each office's needs.

Staff believes that the alternatives proposed to date by Southern Bell are adequate to protect law enforcement's anonymity. The measures proposed are certainly equivalent, if not superior, to unlimited per-call blocking and do not deteriorate either the desirability or the effectiveness of Caller ID service. Staff recommends that these measures are appropriate and should be made available to all law enforcement agencies who request them.

ISSUE 2: [LEGAL] Should the Commission grant law enforcement's specific request to forward any number of the law enforcement agent's choosing?

RECOMMENDATION: No, the Commission should not grant law enforcement's specific request to forward any number of the law enforcement agent's choosing.

STAFF ANALYSIS: Representatives of law enforcement have requested that, in conjunction with implementation of Caller ID service, they be given the ability to deliver, at their option, any working or nonworking telephone number of their own choosing. Staff believes that granting such a request could violate the due process rights of a subscriber whose number was so appropriated. But even more importantly, Staff strongly believes that granting such a request would not be in the public interest.

It is well settled that as between the telephone company and a subscriber, it is the company that "owns" (has a property interest in) the telephone number. However, as between the subscriber assigned a particular telephone number and a third party (such as law enforcement), the person assigned the number has a superior right to the number. The property interest of a subscriber in his telephone number appears to be one of a license; that is, the subscriber is granted permission to do certain things (i.e., make and receive calls; bill calls to his number) he could not do without the license. The classic example of a license is the sale of a theater ticket, which allows the purchaser to occupy a seat for the purpose of watching the performance. The ticket purchaser holds no interest in the theater itself and the theater

can limit the privileges associated with the ticket. A telephone number can be seen as analogous to the theater ticket. The subscriber's telephone number offers admission to the telephone network for limited purposes. No one would suggest that because a theater ticket conveys no interest in the theater itself that a third party could take the ticket or seat purchased by another with impunity. Indeed, just as the ticket belongs to the purchaser, so does the telephone number belong to the subscriber.

It is quite possible that a court could find that a subscriber's interest in his telephone number is sufficient to implicate due process protections where law enforcement acts to appropriate the number for its own use. The fundamental notion of due process is being afforded notice and an opportunity to be heard, generally before deprivation of a protected interest. Such protected interests include life, liberty, and property. There is a strong argument to be made for an individual's property interest in his assigned telephone number. In addition, it can be argued that an individual has a liberty interest in being free from having communications with suspected criminals being attributed to him via his assigned telephone number.

But due process arguments aside, staff believes that granting law enforcement's request would not be in the public interest. We wish to make it clear that we believe the needs of law enforcement are of the highest order and deserve the full attention of and careful consideration by this

Commission. The nature of the drug war alone causes us to envision an infinite number of situations where granting law enforcement's request would constitute an invaluable aid in apprehending criminals. At the same time, the risk of harm to an innocent citizen cannot be discounted. The potential for misplaced retaliation on the part of criminals is not far-fetched. We recognize that law enforcement has proposed only limited uses for the requested capability (i.e., a drug courier is detained at the airport and an agent taking his place must make a telephone call from a specific location at a particular time) and we have no reason to doubt law enforcement's sincerity. However, the nature of the harm flowing from even a totally innocent mistake, we believe, far outweighs the benefits that might be gained from granting the request. Additionally, the uncomfortable notion of intentional misuse of the capability must also be recognized.

Staff believes the Commission's duty to regulate utilities in the public interest requires that law enforcement's request be denied. We believe this is particularly true here, where the type of harm that could occur is devastating, and the person likely to be harmed is an innocent bystander.

ISSUE 3: If a Commission-defined at-risk agency (or individual) agrees to issue Southern Bell calling cards to its at-risk personnel and clients for use in their homes or when traveling for work-related sensitive calls, what rate should Southern Bell charge the agency for local customer dialed credit card calls made with these cards? What should be the rate for any specialized solutions law enforcement may require?

RECOMMENDATION: If an agency or individual agency meets the Commission's criteria for relief, Southern Bell calling cards issued and used should have all local customer dialed credit card charges waived (zero rate for these calls). The agency will be responsible for issuing cards only to those employees or clients who are certified to be at risk, recertifying these individuals annually, and taking reasonable measures to discourage unauthorized calls made with these cards.

All other solutions, such as special arrangements for law enforcement agencies, should be charged at rates consistent with this Commission's decision at the February 20, 1990 agenda. That decision provided for nonrecurring charges to be waived for 30 days prior/60 days after Caller ID is available, in each area it becomes available for any solution provided. The normal recurring charges would apply (there is no recurring rate or cost for per-line blocking) and nonrecurring charges apply after the 60 day period (there is no nonrecurring rate or cost for issuing calling cards). If a service is not tariffed and would be provided under a special arrangement, the

company should charge a recurring rate equal to its incremental or marginal recurring cost to provide the service.

The company's tariff should require the eligible customers to maintain written certification of their at-risk personnel, recertify them annually, and make such certifications available to Southern Bell's security department if requested.

STAFF ANALYSIS: Staff expects the majority of eligible customers will be sate agencies or agencies funded with state tax dollars. Other agencies and individuals will most likely be licensed marriage and family counselors and other mental health professionals dealing directly with domestic violence intervention or otherwise violent patients. It is not the intent of this Commission to put any undue financial burden on these agencies as a result of implementing Caller ID. This concept was taken into account when it was decided that nonrecurring charges for remedies these customers choose would be waived as each new area came on line. Also because there was no recurring cost to Southern Bell for providing per-line blocking, no rate needed to be developed.

Other solutions, however, seem to be more appropriate in many instances than blocking. The calling card option by far hold the most appeal to HRS officials. The cards are portable, convenient, and can be managed just as any other corporate credit card can.

The major drawback of calling cards according to HRS is their cost. Southern Bell's local operator-assisted rate (which currently includes customer dialed calling cards) is currently $1.00 per call. The company's costs for customer dialed calling card calls is estimated to be $0.17 per call. Although the call volumes provided to staff are very rough, if the 350 designated caseworkers make 10 calls per month using these cards, HRS would add another $7,140 to its annual phone bill at Southern Bell's reported cost ($42,000 at Southern Bell's current rates). If 1000 law enforcement officers make 15 calls per month, statewide law enforcement bills would rise $30,600 per year ($180,000 at Southern Bell's current rate). Although these amounts are not large compared to these agencies' total budgets, publicly funded agencies must nevertheless watch every penny, especially during the present crisis with the state budget.

Staff believes that the availability of per-line blocking and calling cards should be the standard remedies for eligible agencies. Their use should be encouraged and provided at minimal investment.

There are also some special arrangements that some law enforcement agencies may desire for certain applications. Staff views these arrangements as exceptions. Just as the law enforcement agencies now compensate the telephone company for any elaborate trap-and-trace or similar arrangements provided to them, staff believes that sophisticated call diverters, etc. should be provided in a similar manner. So as to not encourage any profit

making on these arrangements, staff recommends that they be provided at the company's recurring incremental or marginal cost, with installation charges waived for the 30 day prior/60 day after period previously approved at the February 20, 1990 agenda.

Southern Bell has not provided full incremental cost information for each of the proposed alternatives, but has provided proposed rate information, as previously discussed, and some detailed cost information for many of the alternatives. They have claimed that many of the solutions, such as calling card calls at $0.17 per call, are proposed at their incremental cost. Although it appears to staff that the company's rates follow each service's marginal cost fairly closely, we recommend that in order to properly provide the services at marginal cost, as in our recommendation statement, the company revise this information to provide true incremental or marginal costs and adjust the proposed rates for the alternatives to match those costs.

Staff believes that although the projected amount of call volumes by the affected agencies does not add up to an amount of money that could not be managed, Southern Bell's profit margin on Caller ID service will be better able to absorb these costs than any publicly funded agency. We therefore recommend that the costs for the most common solutions be, for the most part, borne by the company (and added to the service's costs when developing future rate and contribution levels) as outlined in this recommendation.

ISSUE 4: Should the Commission require Southern Bell to request Commission approval before implementing any technology that would change the "Out of Area" signal sent on calls made through an operator such as outlined in Issue 3?

RECOMMENDATION: Yes, the Commission should require Southern Bell to request Commission approval before implementing any technology that would change the "Out of Area" signal sent on calls made through an operator such as outlined in Issue 3.

STAFF ANALYSIS: One of law enforcement's criticisms with the use of credit cards was that their days were already numbered - that the technology would soon be available to pass customer dialed credit card numbers, long distance numbers, etc. and they would be left with a device that didn't work. This was a legitimate concern.

Staff does not believe that the technology to connect cellular and long distance carriers to the Signalling System 7 and Caller ID networks is within 3 years of completion (more likely 5-7 years). Many long distance carriers have not even begun deployment of SS7 and the issues of revenue sharing for transmitting these services, etc. have not been resolved.

Southern Bell has indicated that the software required to pass numbers through the operator is being developed and could be available within two to three years (it is unlikely it will be available any sooner). This technology will not be inherent, however, and companies may choose to purchase it or not deploy it at all.

Staff recommends that Southern Bell be required to seek Commission approval before implementing any technology that would prevent the "Out of Area" signal from being transmitted on customer dialed credit card (including calling card) calls. This will ensure that the Commission can address any concerns that may develop before allowing the use of calling cards to become obsolete.

ISSUE 5: What should be the effective date of the tariffs?

RECOMMENDATION: All at-risk customers should submit their orders to Southern Bell no later than August 15, 1990. Southern Bell should file a report on September 1, 1990 outlining the number of personnel protected and the nature of their work (HRS caseworkers, private domestic violence counselors, judges, federal and state law enforcement, etc.), and any requests placed prior to August 15, 1990 that remain to be completed. The effective date of the tariffs should be October 3, 1990, allowing for all at-risk customers to be properly accommodated. If staff believes that problems still exist with Caller ID's implementation, a recommendation will be prepared for the October 2, 1990 Agenda Conference outlining the problems and making further recommendations.

STAFF ANALYSIS: HRS staff has indicated that it will need a period of time to issue its counselors calling cards and instruct them on their use. They proposed a 90 day period, but claimed they could feasibly accomplish it within 60 days.

The law enforcement task force, maintaining its position, has not provided any information that Southern Bell could use to start blocking police lines and issuing calling cards to the various agencies. There has been no incentive for them to provide this information as long as the negotiations still proceed. Staff believes that a definite effective date, allowing them enough time to implement the alternatives and educate their personnel, will

facilitate mutual cooperation. Staff does not intend to hold Southern Bell liable for law enforcement delays, nor do we believe law enforcement agencies will delay further if the Commission approves staff's recommendation.

Staff recommends that the law enforcement agencies be given at least 90 days to identify the lines and agents needing protection, receive calling cards from Southern Bell, and make any other special arrangements. Staff believes that an effective date of October 3, 1990 will allow enough time to satisfy all requests and still provide staff with enough time to analyze the company's report and prepare a recommendation, if necessary.

We recommend that the tariffs be allowed to become effective on that date only if Southern Bell files a report by September 1, 1990 stating that all worthy requests have been filled. Staff will review this report and contact the appropriate agencies. If we are satisfied that the company has accommodated HRS and law enforcement in a reasonable manner, the tariffs will become effective automatically October 3, 1990. If the company has <u>not</u> accommodated the agencies in a reasonable manner, we will bring a status recommendation for Commission review at the October 2, 1990 Agenda Conference. The report should outline the number of personnel and nature of agency (X number of police, X number of judges, X number of HRS personnel, etc.) protected.

ATTACHMENT A

Southern Bell

Marshall Criser, III
Operations Manager
Regulatory Relations

Suite 400
150 South Monroe Street
Tallahassee, Florida 32301
(904) 222-1201

May 1, 1990

RECEIVED

MAY 0 1 1990

DIVISION OF COMMUNICATIONS

Mr. Walter D'Haeseleer, Director
Division of Communications
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0866

Dear Mr. D'Haeseleer:

Re: Southern Bell's report on the status of Caller I.D.

I have enclosed Southern Bell's report on the status of Caller I.D. and related blocking issues in response to the Commission's Order No. 22704 in Docket No. 891194. Included in the report is a summary of the customer response to the billing insert which was directed by the Commission, a review of our contacts with HRS, law enforcement and other stakeholder groups, and a description, including technical detail and cost, of the blocking methodologies which have been developed. I have also included comments concerning other related issues which were requested by Staff. These are outlined in the index which precedes the attached material.

By copy of this letter I am providing these materials to HRS and the Law Enforcement Task Group in South Florida. I hope that this material will be of assistance to Staff in developing its recommendation for the June 5 agenda. If there are any further questions which we can address, please let me know.

Sincerely,

Marshall Criser

cc: Carol McNally c/o HRS
Ron Tudor c/o FDLE
John Hastings c/o DEA

Caller I.D. Status Report
May 1, 1990
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Attachment	Topics
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B	Contacts with HRS
C	Contacts with Law Enforcements
D	Contacts with other stakeholders
E	Description of blocking mechanisms
F	Comments concerning Congressional Research Service's position on Caller I.D.
G	Northern Telecom proposed Customer Name Delivery alternative
H	Touchstar Availability

SOUTHERN BELL
CALLER ID BLOCKING STUDY
MARCH 9 - APRIL 26, 1990

Category		Number
RATE OR GENERAL INFORMATION		1,268
NON PUB		
Informational		174
Negative		692
CONTACTS BY:		
A. Agencies		
Informational		5
Blocking Availability		14
Negative Comments		6
B. Law Enforcement		
Individuals	- blocking availability	141
	- negative comments	33
Official	- blocking availability	24
	- negative comments	6
C. Others		
Press	- blocking availability	8
	- negative comments	0
Doctors	- blocking availabiiity	35
	- negative comments	79
Others	- blocking availability	49
	- positive comments	21
	- negative comments	34
TOTAL CALLS RECEIVED		2,589
TOTAL BILL INSERTS SENT		1,189,793

1. % RESPONSE = $\frac{\text{\# OF CALLS RECEIVED}}{\text{BILL INSERTS SENT}}$

$\frac{2,589}{1,189,793} = .2\%$

2. % NEGATIVE COMMENTS = $\frac{\text{\# OF NEGATIVE COMMENTS}}{\text{BILL INSERTS SENT}}$

$\frac{850}{1,189,793} = .07\%$

Contacts with HRS

HRS has distributed correspondence to their employees describing the availability of blocking for Caller I.D. and solicited identification of agency locations and employees homes which would qualify for blocking. HRS included a provision which provides for supervisory approval of blocking requests to ensure that such requests are warranted.

Based on that solicitation, HRS provided Southern Bell with a preliminary list on April 26 which identifies 329 employee home locations and 32 agency locations (see attached) for which it believes blocking is appropriate. On April 27 HRS updated that notification to advise that its Sexually Transmittable Disease (STD) centers would also require blocking. Individual lines for those STD centers would increase the initial blocking requests by approximately 200 to 300 lines, however, Southern Bell and HRS have agreed to review those locations to determine if the blocking function can be focused on selected lines in a particular center. The numbers identified cover those areas which would be Caller I.D. capable, i.e. Touchstar deployed, through June 1990. It is expected that additional requests will be made as Caller I.D. is deployed in other areas of the state. Because the initial Touchstar deployments cover most of the major population areas in the state it is anticipated that HRS's eventual blocking needs should be no more than double their initial request.

With regard to the blocking mechanism, HRS has requested blocking of calling party number delivery at most agency locations and the calling card option for employees homes and for certain departments, such as the Inspector General's office, when their transient function requires flexibility in blocking implementation. Southern Bell has advised HRS of the 17¢ per call proposed offering for the calling card option. HRS has estimated that this will result in a cost of $1,000 per month* for the initial implementation of blocking and, following the same estimate of their final needs, up to $2,000 per month when Caller I.D. is fully deployed. They are currently evaluating the impact on their departmental budget and will providing comments to the Commission regarding that issue.

Beginning the first week of May, Southern Bell and HRS are initiating a process to identify agency and individual employee telephone numbers in order to implement the appropriate blocking alternatives. Southern Bell will advise the Commission of when blocking will be fully implemented.

* Based on 20 calls per month per employee.

Preliminary
HRS CONFIDENTIALITY TELEPHONE REQUESTS

DISTRICT 4 (Jacksonville, Daytona Beach, New Smyrna Beach & other areas)

Employee requests:

Jacksonville	76
Daytona Beach	0
Callahan	1
Pnte Verda	2
Mandarin	4
Jax Beach	7
Orange Park	3
Middleberg	2
Not Identified	9
Total	104

Program Requests

Inspector General's office (Jacksonville)	1
Domestic Abuse Council, Inc. (Daytona Beach)	3 #'s
Hubbard House, Inc. (Jacksonville)	5 #'s

DISTRICT 7 (Orlando)

Employee Requests

Orlando	5

Program Request

Inspector General's Office	1
Help Now of Osceola, INc. (Kissimmee)	2 #'s
Salvation Army (Cocoa)	6 #'s
Spouse Abuse, Inc.	9 #'s

DISTRICT 9 (West Palm Beach, Ft. Pierce)

Employee Requests

West Palm Beach	30*

Program Requests

Inspector General's Office

DISTRICT 10 (Ft Lauderdale)

Employee Requests

Ft. Lauderdale	100*

Program Request

Inspector General's Office	1

DISTRICT 11 (Miami)

Employee Requests

Miami	58

Program Requests

Inspector Generals Office	3

MEDICAID PROGRAM INTEGRITY

Employee Requests	32

TOTAL EMPLOYEE REQUESTS	329
TOTAL PROGRAM REQUESTS	32

*Requests pending

Contacts with Law Enforcements

Subsequent to the Commission's last agenda discussion of Caller I.D., representatives of Southern Bell, including our Security, Customer Relations, Regulatory, and Network departments have met representatives of FDLE and DEA, and others, who were present at the agenda. The blocking options described in this report were developed and discussed.

In addition to meeting with that task group, Southern Bell has made contact with 97 individual law enforcement agencies. With regard to negotiations with the law enforcement task group, an impasse has been reached over the task group's request for the ability to deliver "any" telephone number without restriction. Southern Bell has provided an alternative proposal that would allow delivery of telephone numbers within a controlled group to ensure that an uninvolved third party's telephone number is not delivered in the process of undercover communication. Southern Bell's alternative has been discussed with the individual agency contacts and appeers to be acceptable.

At this time, Southern Bell intends to continue contact with the Law Enforcement Task Group to determine if a resolution can be reached. Contacts with individual law enforcement agencies will also be pursued in order to describe the blocking alternatives and to solicit identification of agency and employee telephone numbers which require one of the blocking alternatives. That contact process will include a contact by our Security department with the undercover segment of each agency to respond directly to their specific needs. Concurrently our Marketing department will make contact with the communications officer in each agency to solicit telephone numbers of non-undercover officers who believe they need blocking on their home phone.

OTHER STAKEHOLDER CONTACTS

	REACTION
RADIO SHOWS	
13	11 favorable 1 mixed 1 negative
TV SHOWS	
9	all favorable
GROUP TALKS	
45 Speakers Bureau talks	all favorable
17 Talks to other civic groups:	
- Year 2000 Conference (Dade)	favorable
- Miami Shores Rotary	favorable
- National Assn. of Retired Federal Employees	favorable
- Palm Beach County Criminal Justice Commission	non-committal
- Kiwanis Club (Boca Raton)	favorable
- St. Thomas More Men's Club (Palm B.)	favorable
- R.V. Moore Community Center (Daytona)	favorable
- Sunrise Lions (Daytona)	favorable
- AmVets (Daytona)	favorable
- Kiwanis (St. Augustine)	favorable
- Westside Business Men	favorable
- St. Augustine Democrats	favorable
- Clay County Fair	favorable
- Downtown Lions (Jacksonville)	favorable
- San Jose Neighborhood Watch (Jacks.)	favorable

RECOMMENDATIONS/ALTERNATIVES

OPTIONS THAT BLOCK THE CALLING NUMBER AND DELIVER A "P" OR "PRIVATE NUMBER"

	Alternative	Pricing
1)	Permanent CND blocking Per line specific	N/A

OPTIONS THAT DELIVER AN "O" OR "OUT OF AREA":

	Alternative	
2)	Cellular Service	$550/unit; $35.00/month; $0.25 - $0.35/minute
3)	Calling Card 0 + 7 digits	$0.17/call surcharge

OPTIONS THAT SUBSTITUTE THE ORIGINATING NUMBER WITH A DIRECT VALID SEVEN/TEN DIGIT NUMBER:

	Alternative		
4)	CPN Calling Party Number Revision (Designated line DMS only)	Service Ordr. Chrg. Non-recur. Chrg. Recur. Mthly Chrg.	$16.80 1.95 3.95
5)	FCO Foreign Central Office	$25.00 service conn.; Recur. Chrg. $40 - $80	
6)	Remote access dialing arrangem't Two stage dialing with authorization code.	Service Ordr. Chrg. Non-recur. Chrg. Recur. Chrg. Addl. Auth. Code	$129.15 230.40 1st line 54.25 addl. line 36.50 1st line 23.05 addl. line 12.95
7)	Call transfer	Tariff rate	
8)	Additional line	Tariff rate	
9)	Pay phone	$0.25/call	

CALLING NUMBER DELIVERY BLOCKING

Delivers: A "P" for Private or "Private #"

Description: Calling Number Delivery Blocking assigns the permanent privacy indication to individual lines and/or to ESSX groups. Using this arrangement, a "P" or "Private #" is delivered on every call originated from these stations. No action is required by the subscriber.

Application: Agency administrations lines or the Police/Fire Departments or an agent's home number could be equipped with this feature to prevent the delivery of the originating telephone number.

Concerns: Touchstar features "Call Return" and "Call Trace" are functional against this feature.

Privacy: There is no recurring charge to the subscriber. The Public Service Commission will decide as to a Service Order charge to establish the feature.

CELLULAR SERVICE

Delivers:	An "O" for "Out of Area"
Description:	All calls originated from a cellular telephone will deliver an "Out of Area" signal to the called party display unit.
Application:	When available to the Agency/Agent, an undercover call may be placed from a cellular telephone. The delivery of "OUT OF AREA" allows the Agency/Agent anonymity.
Concerns:	Future development by the cellular companies may result in the deliver of cellular telephone numbers. Ther are no plans at this time to deploy this feature by BellSouth.
Pricing:	Costs for a cellular unit average $550.00 (estimate).
	Installation and service establishment differ between companies and is therefore impossible to quote. Recurring monthly charges average $35.00. There is also air time charge ranging from $0.25 to $0.35 per minute, dependent on time of day and day of the week.

CALLING CARD

Delivers: An "O" or "OUT OF AREA".

Description: All calls originated with a call card 0 + 7 digits from any where will deliver an "OUT OF AREA".

Application: An Agency or Agent initiates a call from the Agency, from the Agent's home, from a pay station or any other location allowing the Agency/Agent to maintain anonymity.

Concerns: Future development of the 0 + trunks being converted to CCS7 will result in the originating number being delivered. There are no plans for this development to take place in the next several years.

Pricing: The agency will be provided sufficient calling cards to equip undercover agents with specific calling card numbers billed back to a miscellaneous account. The price per call will be $0.17 for the surcharge. Toll calls will be billed at full tarriffed rates.

CALLING PARTY NUMBER REVISION

Delivers: A preset number different from originating number.

Description: Calling Party Number Revision is available in specific Central Offices and can be added as a feature to any line served from that Central Office. This feature allows a different preset valid telephone number to be sent forward on each call.

Application: An agency can originate calls, from the agency served by a DMS, and appear to be calling from a different geographical area.

Concerns: The replacement telephone number must be an actual working telephone number assigned to and paid for by the agency.

Pricing:

	Establishment
Service Cost	$16.80
Non-recurring charge	1.98
Recurring monthly charge	$3.95

NOTE: CPN may be used in connection with Private Access Dialing Arrangement.

FOREIGN CENTRAL OFFICE
FOREIGN EXCHANGE

Delivers: 7/10 digit number associated with FCO/FX.

Description: A circuit is established between Central Offices in different geographical areas. Dial tone is acquired from the FCO/FX.

Application: The agency could establish a circuit providing dial tone and a telephone number in a geographical area different from the agency location.

Pricing: Pricing for FCO/FX will be offered at the standard tariffed rates. As an example, service connection charges for FCO is $25.00. Recurring charges for FCO is dependent on distance but an average cost would range from $40.00 to $60.00.

Foreign Exchange costs are considerably higher.

REMOTE ACCESS DIALING ARRANGEMENT

Delivers: The telephone number associated with the outgoing line of the dialing arrangement.

Description: This is a two-stage dialing arrangement that can be accessed from any location to originate a call to any location and maintain the true location of the agent.

Application: An agent in transit, at home, or at the agency, would dial the access number, input a 4-5 digit security code and dial the target telephone number. The number delivered to the target is associated with the outgoing line of the dialing arrangement. Anonymity of this location is maintained.

Concerns: None

Pricing:

Service Order Charge	$129.15	
Non-recurring Charge	280.40	first line
	54.25	each add.line
Recurring Monthly Charge	36.50	first line
	23.05	each add.line
Additional Authorization code	12.95	

PAY PHONE

Delivers: Pay telephone number.

Description: All calls originated from pay telephones will deliver the station telephone number.

Application: Agent, while in transit, may use the pay phone to place undercover calls while maintaining agency anonymity.

Concerns: Call Return is restricted to prevent call return to pay stations.

Pricing: $0.25 per call.

Congressional Research Service's Position on Caller I.D.

Congressional Research Service's position is that Caller I.D. is contrary to the proscriptions of the Electroni Communications Privacy Act of 1986. Their analysis was requested by the House Judiciary Committee's staff as a result of Congressman Kastenmeier's Caller I.D bill. Congressman Kastenmeier recommended that blocking be made available with Caller I.D.

The Congressional Research Service concluded that Caller I.D. was in violation of the trap and trace provisions of the Act. Southern Bell disagrees with the Congressional Research Service's conclusion in that the trap and trace statute addresses consent by the user. In the case of Caller I.D., the "user", Caller I.D. subscriber, requests services, purchases an adjunct device, and connects it to the telephone. These actions imply knowledge and consent in the use of Caller I.D.

Section 934.31, Florida Statues, which tracks the language of the Electronic Communications Privacy Act of 1986, also permits the telephone company to provide a trap and trace service "Where the consent of the user of the service has been obtained."

Calling Party Identification Alternatives

Northern Telecom has announced a prospective product, provided by a DMS 100 switch, which would deliver the Calling Party Name to the called party. Their initial capability to provide the service is not efficient for deployment on a large scale.

It should be noted that initiation of the Calling Party Name would be controlled by the called party and would not allow the calling party to deliver their name in lieu of their number.

TOUCHSTARR AVAILABILITY

TOUCHSTAR TARIFF	*AUGUST 1988*
NEW SMYRNA BEACH	AUGUST 1988
FT. PIERCE	NOVEMBER 1988
ORLANDO	MAY 1989
WEST PALM BEACH	SEPTEMBER 1989
MIAMI	NOVEMBER 1989
FT. LAUDERDALE	NOVEMBER 1989
DAYTONA	JUNE 1990
PALM COAST	JUNE 1990
JACKSONVILLE	AUGUST 1990
BREVARD	NOVEMBER 1990
FLORIDA KEYS	3 QTR 1991
INDIAN RIVER	3 QTR 1991
PENSACOLA	3 QTR 1991
GAINESVILLE	4 QTR 1991
PANAMA CITY	4 QTR 1991

IMPORTANT NOTICE

The Florida Public Service Commission has approved the introduction of a new service referred to as Caller Identification, or Caller ID. The Commission will establish the dates for its availability to customers at an upcoming regular agenda conference.

When the service is implemented, a Caller ID subscriber will receive the number of the calling party on a special display unit attached to the telephone line when a call is received. (Customers have to purchase the display unit; it is available from a variety of sources.) After reading the displayed number, the person may then choose to answer the call, to return the call later, or to ignore the call altogether. In addition, some display units now available are capable of storing up to 40 or more calling numbers.

Under Southern Bell's currently approved proposal, the number of virtually **all** incoming direct-dial local calls will appear including those from unlisted and/or nonpublished subscribers. These subscribers will be separately notified.

Because of the specialized concerns of some agencies and individuals who may be legitimately at risk as a result of this service, the Public Service Commission has approved blocking the delivery of some numbers in special circumstances **if no other reasonable alternative can be arranged.** Two

(over)

such alternatives would be to place the call through an operator (additional charges apply) or to place the call from a public payphone.

The criteria the Commission used to determine eligibility for blocking include:

1. The customer (agency or individual) should establish that its business is law enforcement or one which the divulgence of identities over the telephone could cause serious personal or physical harm to its employees or clients, such as a domestic violence intervention agency; and,
2. The customer (agency or individual) should establish that the forwarding of numbers through Caller ID would seriously impair or prevent it from performing its business; and,
3. The customer (agency or individual) should establish that no reasonable offering by the telephone company other than blocking will protect its desired anonymity.

If you are a member of a law enforcement agency and have any questions regarding Caller ID, please contact your employer. Other individuals should direct their questions to Southern Bell at **1-800-321-4327** by April 30, 1990. (HRS agencies and employees involved in violence intervention have already been contacted and are being dealt with at this time.)

Southern Bell
A BELLSOUTH Company
March 1990

prices make up a large portion of our ingredient costs. Any increase or decrease in sugar prices has a definite effect on our total costs.

The bill introduced by Representatives Thomas J. Downey and Willis D. Gradison would lower our sugar costs almost a million dollars the first year and even more in successive years. Very little, if any, of the savings would fall to our bottom line as increased profits. The consumer would be the primary beneficiary because the savings in sugar cost would be used to offset increases in other areas. Almost daily we see price adjustments that affect our cost of doing business. For example, our employee health insurance costs for 1989 were 22.9 percent higher than in 1988, and we are spending almost 15 percent more for cartons today than we did a year ago. For the consumers' benefit, we try not to pass along price increases every time we have wage or ingredient cost increases. If the savings in sugar cost were to be greater than the other cost increases incurred in a given year, we would pass along the cost savings through lower prices. We are committed to producing high value sweet snacks. Our track record bears this out. Since Little Debbie Snack Cakes were first introduced in 1968, our selling price has just slightly more than doubled while the Consumer Price Index has quadrupled. Two times in the past 14 years we have passed on cost savings when ingredient costs came down.

I urge to rewrite the United States sugar program in 1990. Reduce the sugar loan rate and increase import quotas. Both American business and the American public—our customers and your constituents—will benefit.

TELEPHONE PRIVACY ACT OF 1990

HON. ROBERT W. KASTENMEIER

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 21, 1990

Mr. KASTENMEIER. Mr. Speaker, today I am introducing a bill that would bring automatic number identification devices within the purview of Federal law. In 1986, Congress passed the Electronic Communications Privacy Act [ECPA], bringing together civil liberties groups, the Justice Department, businesses, and consumers. The Subcommittee on Courts, Intellectual Property, and the Administration of Justice, which I chair, held extensive hearings on ECPA, in which all witnesses agreed that technology had outstripped our laws regulating the interception of electronic communications and that the laws did not cover a variety of new technologies. As the House report on ECPA stated:

Although it is still not twenty years old, the Wiretap Act was written in [A] different technological and regulatory ERA. Communications were almost exclusively in the form of transmission of the human voice over common carrier networks. Moreover, the contents of a traditional telephone call disappeared once the words transmitted were spoken and there were no records kept. Consequently the law primarily protects against the aural interception of the human voice over common carrier networks.

The [wiretap law] did not attempt to address the interception of text, digital or machine communications. The statutory framework appears to have supplanted an important sector of the new communications technologies.

Many communications today are carried on or through systems which are not common carriers. Electronic mail, videotex and similar services are not common carrier services. Under existing law the interception of these services or the disclosure of the contents of messages over these services are probably not regulated or restricted. Moreover, totally private systems are rapidly being developed by private companies for their own use. It is not uncommon for businesses now not to use the local telephone company [or] in some instances the long distance companies in the creation of voice and data networks. Since these networks are private they are not covered by existing Federal law. In addition, data is transmitted over traditional telephone services as well as by these services. Since data, unlike the human voice, cannot be aurally intercepted, it is also largely unregulated and unrestricted under present law.

Today, we have large scale electronic mail operations, cellular and cordless telephones, paging devices, miniaturized transmitters for radio surveillance, and a dazzling array of digitized information networks which were little more than concepts two decades ago. Unfortunately, the same technologies that hold such promise for the future also enhance the risk that our communications will be intercepted by either private parties or the government.

Society had come to believe that these new technologies were appropriate for use, but the laws did not set forth the parameters for that use. ECPA attempted to consider each of these new technologies and, where possible, to integrate them into the law.

Technology changes so quickly that, unfortunately, only 4 years later, we are already faced with new devices that may not be covered by ECPA. Automatic number identification, commonly known as Caller ID or ANI, is an example. ANI is designed to trap the telephone number of a caller and display it on a device next to the telephone of the party being called. Presumably, the party being called may decide, upon review of the telephone number, to answer the call or not.

I welcome new technological developments and believe that they should be made available to consumers. However, technological advances must always be balanced against compelling societal interests.

While in appearance ANI is a simple electronic device, it promises to significantly alter the communications landscape. There are privacy interests on both sides of the ANI debate. Congress must assess the impact that this new service will have on the privacy interests of both telephone callers and call recipients. We must evaluate how it will affect practices and customs that have developed over many years, and how to protect against adverse uses of information that was once considered private, but that will now be widely available through use of ANI.

Advocates of ANI contend that the new service will expand privacy protections for telephone call recipients. ANI will serve the same function as a peephole in one's front door, allowing the called party to decide whether the person calling has a familiar number, and whether to answer the telephone. Adherents further believe that ANI will deter harassing telephone calls by enabling people to easily screen callers. They therefore oppose any limitations on the use of the service, arguing that any limitations would defeat those purposes.

On the other hand, many people are concerned that ANI may invade privacy because it shifts the historical privacy balance away from the calling party and to the called party. It has become accepted in our society that when a person places a telephone call, it may be done anonymously. It is only when and if the caller decides to reveal his or her identity that the recipient knows who is calling. Contrary to present practice and custom, ANI would automatically display the caller's telephone number with or without the caller's consent. Even answering machines today permit callers to decide whether or not to leave a message and thereby reveal their identities.

ANI would suspend this expectation of privacy on which callers have come to rely, even with respect to callers with unlisted telephone numbers. Those expressing concerns about the service maintain that a privacy custom that is so ingrained in our society must be safeguarded. Accordingly, they either oppose the service altogether, or at a minimum urge the imposition of specific measures to protect the privacy interests of the calling parties.

As a preliminary matter, there are questions about whether the new service is necessary to achieve some of its stated purposes. For example, as noted, ANI has been promoted as a means to protect people against harassing telephone calls. However, other technologies may serve the same purposes, without the potential privacy invasions created by ANI. The technology exists to allow a recipient to "trap" a caller's number within the system, thus permitting the telephone company to read it and identify the caller. A person can also block all future calls from certain numbers. Finally, answering machines can screen out unwanted telephone calls.

Information obtained through the ANI service may erode personal privacy interests in ancillary but important ways. For example, if consumers call mail order companies for information, the companies can obtain the consumer's phone number and, through a reverse directory, the consumer's name and address. As a result, the consumer may be involuntarily added to mailing lists and be subjected to unwanted telephone sales solicitations.

Moreover, by affording the caller privacy, our current telephone system furthers many vital societal purposes. These purposes arguably would be frustrated if the ANI service is implemented without safeguards. For example, those taking refuge in battered women's shelters who call home to talk to their children would have their whereabouts revealed to their husbands. Those contacting AIDS hotlines, or serving as news sources, police informants, or as whistleblowers often do so by using the telephone. They depend on anonymity in making those calls. Similarly, psychiatrists, other medical professionals, and social workers who need to call their patients or clients from their homes could not do so without disclosing their telephone numbers and home addresses.

Finally, certain businesses might use ANI to screen calls and thereby discriminate against minorities or people who live in poor neighborhoods by refusing to respond to, to provide services.

I know that telephone companies across the country are developing their own policies about ANI. Some companies have decided to offer it; some have decided that the privacy

Doc. 04645-90

concerns must be ironed out first, and have not decided whether or not to offer it. Some have decided to offer ANI, but only with blocking devices for those who want them.

I am also aware that some of the telephone companies that have offered ANI have reported enthusiastic consumer reaction. Others have determined that their customers want blocking devices.

Communications policy is a Federal matter, and there should be uniformity. If it is to be effective, that policy should not be made by the States or regions, or by individual telephone companies.

In addition to the policy arguments about whether and how ANI should be implemented, there are significant legal issues involved. The primary one is whether ECPA already covers ANI. The Library of Congress has provided my subcommittee with a legal analysis that concludes that ECPA does in fact cover ANI, and that it prohibits it. If this is the case, then the telephone companies that are offering the service are violating the law. I know that there are legal opinions to the contrary. These questions must be resolved clearly and promptly.

I am therefore introducing a bill that I believe will resolve these legal and policy questions. I am pleased to cosponsor the bill along with another member of my subcommittee, the gentleman from Oklahoma, Mr. SYNAR. The bill will provide uniformity, and will adequately balance the various privacy concerns expressed by the supporters and opponents of ANI. It will permit the telephone companies to offer ANI to their customers, but it will require them to also offer blocking devices to customers who do not want their telephone numbers revealed.

A blocking device would maintain the status quo, at least for those who want it. There may be some who have no problem with having their telephone numbers revealed. They do not need to request a blocking device. But for those who do not want their numbers revealed, blocking devices would be available.

The premise of the bill is simple. It amends 18 U.S.C. 3121, which currently sets forth general prohibitions on the use of pen registers and trap and trace devices. ANI is a trap and trace device "which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted" (18 U.S.C. 3126(4)). The bill creates an exception to section 3121's prohibition for the use of devices allowing telephone call recipients to determine any "individually identifying information" about the caller or the caller's number. This exception applies only if the telephone company provider enables the caller to block receipt of the identifying information. Section 3121 already makes certain exceptions, but they apply to providers, rather than users, and would thus be inapplicable to ANI devices. Section 3121 now provides for criminal penalties. This bill would also create civil liability, with remedies set forth in 18 U.S.C. 2707, for providers who enable telephone call recipients to obtain individually identifiable information about the caller, but who fail to provide blocking devices.

The approach taken in this bill is supported by the White House Office of Consumer Affairs, by State attorneys general around the country, such as in Pennsylvania and North Carolina, and by the National Association of State Utility Consumer Advocates. In addition, law enforcement officers have expressed concerns that offering ANI without also providing blocking devices will compromise their efforts by discouraging confidential informants.

We should not allow ANI to be offered without Federal guidance. The Congress must consider the importance of a uniform communications policy, the significant privacy concerns that I have noted, and the implications of a change in the status quo such as ANI would cause. In addition, I am aware that questions exist about whether the state of technology today will permit complete and immediate implementation of the bill's requirements. These questions will be fully aired when the Subcommittee on Courts, Intellectual Property, and the Administration of Justice, which I chair, holds early hearings on this bill. I am confident that the concerns of all sides will be resolved satisfactorily.

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, October 18, 1989.

To: House Committee on the Judiciary.
(Attention: Virginia Sloan)
From: American Law Division.
Subject: Caller Identification telephone equipment and the Electronic Communications Privacy Act.

This is in response to your request for information as to whether installation or use of caller identification telephone equipment is contrary to the proscriptions of the Electronic Communications Privacy Act of 1986 (ECPA), Pub. L. No. 99-508, 100 Stat. 1848 (1986). It appears to be. The language of the Act prohibits installation and use. Under ordinary circumstances the statutory exceptions appear inapplicable. The legislative history, while not specific, seems to support such an interpretation. The courts, on the other hand, might consider the privacy interest involved relatively minor and accordingly find that Congress did not intend to preclude the use of such equipment.

Caller identification telephone equipment uses a device to identify the number of the telephone from which an incoming call originated and then to display a name associated with that number. It may also be used in conjunction with equipment which remotely records or displays the telephone number or a name associated with that number for either incoming or outgoing calls or both.

The ECPA established a new chapter 206 in title 18 of the United States Code, 18 U.S.C. 3121-3127, which prohibits the installation or use of pen registers or trap and trace devices.[1] Pen registers record the numbers of the telephone instruments dialed from a particular telephone instrument; trap and trace devices record the numbers of telephone instruments upon which calls for a particular instrument have been dialed.

Caller identification equipment constitutes a "trap and trace device" for purposes of the ECPA, for it meets the definition of 18 U.S.C. 3127(4) regardless of whether a number or a name associated with the number are displayed after the trap and trace has occurred.[2]

The ECPA's legislative history seems to confirm a Congressional intent to embody the type of equipment under consideration here within the prohibitions of 18 U.S.C. 3121. Admittedly, the equipment does not appear to have been specifically mentioned anywhere within that history and its discussion of trap and trace devices involved surreptitious use of those devices by a third party, ordinarily either the phone company or the police. THe ECPA was intended to protect communications privacy against both private and law enforcement intrusions.[3] Congress also intended to protect communications privacy against threats possible under the existing state of technology and those that might become possible in the future.[4]

The most persuasive argument within ECPA's history seems to flow from Congress' treatment of tracking devices. H.R. 3378 and S. 1667, the bills under consideration during the hearings which led to enactment of the ECPA, each have added a new chapter 206 to title 18 of the United States Code. That chapter would have forbidden the installation and use of pen registers and tracking devices except under certain designated circumstances.

During the hearings evidence was offerd that suggested that the definition of tracking devices had been drafted so as to arguably encor pass ordinary private use paging devices (including video display pagers), rather then merely surreptitious use.[5]

Both committees responded by removing the tracking provisions from chapter 206. The Senate committee also added language elsewhere in the bill designed to outlaw the interception of communications to, but not the use of, video display paging devices. It then inserted trap and trace device provisions into chapter 206.

Neither the Senate committee report nor the subsequent debate in either House explain the substitution in specific terms. It is difficult to believe, however, that Congress would have unintentionally approved a definition of trap and trace devices which facially proscribed their use by both parties and nonparties to a communication when it had so recently rejected such a definition of tracking devices.

Even assuming Congress intended the trap and trace provisions of chapter 206 to apply to the use of caller identification display equipment it does not necessarily follow that it restricts all such use.The ECPA's trap and trace restrictions are subject to a number of exceptions. Two of these involve installation and use pursuant to court orders issued either under the procedures of chapter 206 or under those of the Foreign Intelligence Surveillance Act, 18 U.S.C. 3121(a). The caller identification display is likely to be offered by a communications provider as a customer convenience rather than for purposes of criminal investigations or foreign intelligence, the purposes upon which the court orders must be based. The court order exceptions are therefore not likely to be applicable in most cases.

The provider exceptions are arguably more relevant and in earlier memoranda we noted that the prohibitions do not apply when the provider exceptions are available. ("The Application of Restrictions on Trap and Trace Devices to Phone Service Allowing Display of Phone Numbers of Incoming Callers," July 14, 1989; "Trap Devices and the Electronic Communications Privacy Act of 1986, P.L. 99-508," August 31, 1989).[6]

The first exception exempts "use of a pen register or trap and trace device by a provider of electronic or wire communication service—(1) relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider,

[1] Footnotes at end of article.
[2] Footnotes at end of article.
[3] Footnotes at end of article.
[4] Footnotes at end of article.
[5] Footnotes at end of article.
[6] Footnotes at end of article.

or to the protection of users of that service from abuse of service or unlawful use of service." 18 U.S.C. 3121(b)(1) (emphasis added.)

On its face the exception does not exempt use of a trap and trace device by users of wire or electronic communication service. It affords the exception only to providers. In other parts of chapter 208 where Congress intended an exception to apply to both providers and their customers it stated that intention clearly, see e.g., 18 U.S.C. 3127(3) which includes both provider and customer use within the billing exception to the restriction of the use of pen register. Finally, the legislative history of the exception supports the view that it was only to be available to providers.

When the legislation was introduced the exception was limited to only the operation, maintenance and testing language component of the current exception. The current language appeared in the clean bills reported out by both the House and Senate committees, although in the case of the House version the exception was limited to pen registers since proposed chapter 206 only covered pen registers in the House version.

The Senate report simply paraphrases the language of the exception, S. Rep. No. 541 at 46, but the House report identifies a number of instances where the original language would not reach pre-existing protective practices, "[t]elephone companies can use pen registers to verify long distance billing information. Telephone companies can use pen registers to detect the use of illegal devices, such as 'blue boxes' (devices used to avoid toll charges for long distance calls). Additionally, a pen register could be placed on the phone of a person suspected of placing harassing or obscene calls." H.R. Rep. No. 647 at 24 n.36.

During the House hearings telephone company representatives had described their use of pen registers or trap and trace devices and/or called for amendments consistent with their past uses in terms comparable to those added to the exception.[5]

Even assuming that the exception could be read to embrace user rather than provider use of trap and trace devices, its authorization seems limited to uses designed to prevent toll charge fraud, obscene or harassing phone calls or similar threats or abuses. It does not seem to permit perpetual use offered as a customer convenience.

Congress' treatment of internal communications systems may offer a final hint as to whether chapter 206 was intended to include a user exception. Prior to the enactment of the ECPA, an employer who monitored his employees' calls on a private, internal communications system had been found not to have violated the wiretap prohibitions. Those prescriptions, it had been held, applied only to the interceptions occurring on a wire communications system furnished or operated by a communications common carrier, *United States v. Christman*, 375 F.Supp. 1354, 1355 (N.D.Cal. 1974); cf., *People v. Stratton*, 28 Cal.App.3d 257, 262, 102 Cal.Rptr. 675, 681 (1972). The ECPA amended the definition of "wire communications" to overcome that result.[6] The same definition of wire communications applies for both purposes of the wiretap law and chapter 206, 18 U.S.C. 2510(1). Absent that change an employer would be permitted to use pen registers and trap and trace devices to spy on employee communications in an internal communications system. By redefining wire communications and by limiting the exceptions to providers Congress may have believed it was affording a level of protection that would not be available if subscribers were permitted to qualify for the provider exceptions.

Much the same can be said of the second exception which permits "use of a pen register or a trap and trace device by a provider of electronic or wire communication service— . . . (2) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service." 18 U.S.C. 3121(b)(2) (emphasis added).

This exception appears to mean that the telephone company, in order to prevent toll charge fraud and misuse of service by obscene or harassing calls, may use pen registers and trap and trace devices to record customer calls placed and received. It does not appear to authorize the telephone company to offer, nor its consumers to use, trap and trace devices as continuous convenience. The legislative history cited above with respect to the first exception seems to confirm this.

Any suggestion that either of these exceptions authorizes a user's employment of a trap and trace device to identify all incoming calls in order to avoid answering those from sources likely to be obscene or harassing overlooks the fact that permissible use is limited to providers.

The third exception is somewhat more obscure. It permits "use of a pen register or a trap and trace device by a provider of electronic or wire communication service— . . . (3) where the consent of the user of that service has been obtained." 18 U.S.C. 3121(b)(3) (emphasis added). The term "*the* user" rather than "*a* user" as found in the second exception seems to imply the exception is restricted to consent to use a trap or trace in connection with a particular call where there is only a single user who may consent, as opposed to continuous use of a trap and trace device in connection with a particular line which might over the course of time have many users.

The terminology "use . . . where . . . consent . . . has been" indicates that the consent exception is limited to instances where there has been *prior* consent to use of the device with respect to a particular call.

The language from the legislative history quoted earlier concerning pre-ECPA practices appears to confirm both of these interpretations.

The consent exception therefore cannot embody consent of a telephone subscriber to include a continuously operating trap and trace device as a feature of his or her telephone service. Such instances involve use of the device by the user or subscriber rather than the provider.

It is possible to argue that anyone who purchases or subscribes to a telephone service which includes a caller identification display feature has given prior consent to its use. Such an argument has weaknesses beyond the fact that the exception is limited to providers. The phrase "the user" implies that the exception is limited to particular calls rather being a general exception. Since the trap and trace has already occurred when the name associated with the calling number is displayed regardless of whether a "user" chooses to answer the call or not, there is no "the user" to consent when a call is not answered. But the situation where the subscriber is not the user present greater difficulties. Even if a subscriber may be presumed to have consented to use for purposes of his or her calls, other users cannot be presumed to have consented because they do not necessarily have any effective means of denying that consent and the exception clearly envisions user consent rather than just subscriber consent.[7]

The final exception is inapplicable for purposes of our discussion since it is contained in the definition of a pen register and is limited to billing activities.[8]

It is possible that notwithstanding the language of chapter 206 and the fact that its legislative history at least fails to contradict that language, a court may feel that Congress simply did not intend chapter 206 to reach commonly available caller identification display equipment. Some courts reached an analogous conclusion with respect to spousal wiretapping within the home, see *Simpson v. Simpson*, 490 F.2d 803 (5th Cir. 1974). Such a result may be more likely in cases where the privacy intrusion may seem relatively minor to some. Since this result occurs in the absence of facial or legislative history support, it must be acknowledged but is virtually impossible to predict.

In summary, use of telephone equipment which displays a name associated with the number of the instrument used for incoming calls appears to be prohibited by the language of 18 U.S.C. 3121 enacted as part of the Electronic Communications Privacy Act of 1986. The Act's legislative history fails to refute the plain meaning of the Act's language and may be read to confirm that Congress intended the Act's prescriptions to apply to such cases. None of the Act's exceptions appear applicable under most circumstances.

CHARLES DOYLE,
Senior Specialist.

FOOTNOTES

[1] "§ 3121. General prohibition on pen register and trap and trace device use; exception.

(a) IN GENERAL.—Except as provided in this section, no person may install or use a pen register or a trap and trace device without first obtaining a court order under section 3123 of this title or under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

(b) EXCEPTION.—The prohibition of subsection (a) does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service—

(1) relating to the operation, maintenance, and testing of a wire or a wire or electronic communication system or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or (3) where the consent of the user of that service has been obtained.

(c) PENALTY.—Whoever knowingly violates subsection (a) shall be fined under this title [not more than $100,000 if the offender is an individual and not more than $500,000 if the offender is an organization] or imprisoned for not more than one year, or both."

[2] "As used in this chapter— . . . (4) the term 'trap and trace device' means a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted." 18 U.S.C. 3127(4).

[3] "These new modes of communication have outstripped the legal protection provided under statutory definitions bound by old technologies. The unfortunate result is that the same technologies that hold such promise for the future also enhance the risk that our communications will be intercepted by either private parties or the Government." 132 Cong. Rec. 14886 (1986) (remarks of Rep. Kastenmeier upon the introduction of H.R. 4952). See also, S. Rep. No. 541 at 3; H.R. Rep. No. 647 at 19.

[4] "The first principle upon which the ECPA is based in that legislation which protects electronic communications from interception by either private parties or the Government alike [is] be comprehensive, and not limited to particular types or techniques of communications. . . . Any attempt to write a Law which tries to protect only those technologies which exist in the marketplace today, that is, cellu-

lar phones and electronic mail is destined to be outmoded within a few years." 132 Cong. Rec. 14886 (remarks of Rep. Kastenmeier accompanying H.R. Rep. No. 647) (1986).

See e.g., *Electronic Communications Privacy Act: Hearings Before the Subcomm. on Courts, Civil Liberties, and the Administration of Justice of the House Comm. on the Judiciary*, 99th Cong., 1st & 2d Sess. 98-9 (statement of John Stanton, Chairman of Telocator Network of America) (1986); *Electronic Communications Privacy: Hearing Before the Subcomm. on Patents, Copyrights and Trademarks of the Senate Comm. on the Judiciary*, 99th Cong., 2d Sess. 118-19 (statement of John Stanton) (1986). These hearings will hereinafter be cited as House Hearings and Senate Hearings respectively.

Our earlier memoranda also point out that it would be somewhat inconsistent for Congress to have outlawed a customer convenience in a law that was otherwise designed to protect customer wire and electronic communications from unjustified, surreptitious intrusions.

"The gist of the statutory exception is for use of a pen register when such use relates to the operation, maintenance and testing of an electronic communication service. . . . However, they do not appear to permit two of the most common uses of pen registers, i.e., in toll fraud and abuse of service (harassing call) investigations." House Hearings at 431 (memorandum of James S. Golden, Southwestern Bell Corp.).

"To my everlasting surprise, it has been the other area, involving the tracing of more common events, that seems to present the most problems. These events are normally obscene or harassing telephone calls. While I believe there are actually fewer wiretap orders than most people might expect, telephone call tracing is fairly common. . . With tracing devices, no entry is required. An adjustment in the central office permits a circuit to stay open or be pinpointed so that the number of the caller and called party can be identified. The particular activity depends upon the technology used in the telephone company's central office switch. Interception of conversation does not occur in these cases. With traces, the cooperation of a victim is needed to match the time of the call that is traced by the telephone company with the time of the call identified as offensive or harassing by the victim." Id. at 484-85 (letter of Martin T. McCue, Centel Corp.); see also id. 526, 530 (memorandum of John R. Dardi, AT&T); id. 530 (comments of H.W. William Cuming).

"Subparagraph (B) specifies that wire, cable or similar connections furnished or operated by any person engaged in providing or operating such facilities for the transmission of 'communications affecting interstate or foreign commerce,' are within the definition of a 'wire communication.' This language recognizes that private networks and intracompany communications systems are common today and brings them within the protection of the statute."

It should be noted that such remote recording might be considered permissible under either of the first two exceptions in 18 U.S.C. 3121(b) but for the fact those exceptions are only available to providers.

"The term 'pen register'. . . does not include any device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business" 18 U.S.C. 3127(3).

PEACE DAY 1990

HON. LEON E. PANETTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 21, 1990

Mr. PANETTA. Mr. Speaker, I rise today to introduce commemorative legislation that would designate the third Sunday in May as Peace Day 1990.

In light of the recent and rapid changes in the world and the resulting spirit of hope for peace, it would be only fitting that we recognize May 20, 1990 as Peace Day 1990. 1989 was a historic watershed for the cause of peace. From Poland to Czechoslovakia, throughout all of Eastern Europe and down to Nicaragua, the citizens of the world have loudly proclaimed their devotion to peace, their thirst for democracy. The idea of peace includes not only the absence of war, but also the ideals of individual liberty, basic human rights, and freedom to pursue economic enterprise.

Peace Day 1990 will recognize the efforts of the many people who have given of themselves selflessly to fight for freedom and democracy around the world. Accordingly, the United States should be the first to recognize the importance of these peace movements. Let us remember the sacrifice of the Chinese students, the sacrifices of East Europeans, and the sacrifices of so many other peoples in search of freedom and peace.

On this we can all agree: peace is the great equalizer; it cuts across all social lines, all nationalities and race, and all economic levels. Peace should be at the forefront of all endeavors and an ultimate goal for United States foreign and domestic policies.

The State of California has already designated the third Sunday in May as Peace Day 1990. This is the second year that Californians will celebrate Peace Day. The Second Annual Peace Day's theme will be "discovering our common ground." It would certainly be appropriate to focus our national effort on "discovering our common ground" with the peoples of the world who have fought for freedom and peace on earth.

I encourage my colleagues to join me in sponsoring this legislation to designate Peace Day 1990, and I urge its speedy adoption.

The text of the resolution follows:

H.J. Res —

Whereas peace is a primary goal for all peoples, regardless of political association, nationality, or race;

Whereas peace and freedom are primary goals of the United States for its own citizens and for those of other nations;

Whereas the United States has led the world in helping to establish peaceful democracies;

Whereas there has arisen within many nations a strong voice calling for its leadership to seek peace with other nations of the world and to banish the threat of nuclear war;

Whereas international cooperation among all nations is essential to prevent military and environmental crises;

Whereas it is vital that people everywhere acknowledge and understand their role in achieving peace at the local, State, Federal, and global levels;

Whereas the citizens of the United States now call on other nations of the world to unite and demonstrate their commitment to the promotion of peace and peaceful acts; and

Whereas such efforts reinforce community cooperation and help to nourish a spirit of peace, notwithstanding the diverse cultural, economic, political, racial, and ethnic groups involved: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That May 20, 1990, is designated as "Peace Day" in recognition of the desire of the people of the United States to establish a solid and binding peace in the world, and the President of the United States is authorized and requested to issue a proclamation calling upon the people of the United States to observe the day with appropriate ceremonies and activities.

ATTACKS BY ETHNIC ROMANIAN GANGS

HON. ROBERT K. DORNAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, March 21, 1990

Mr. DORNAN of California. Mr. Speaker, several of my colleagues reacted with disgust and concern to the press reports today and yesterday reporting 2 days of continued attacks by ethnic Romanian gangs armed with clubs and axes against ethnic Hungarians and their party, the Hungarian Democratic Federation in Romania. The attacks took place in Tirgu Mures (Marosvasarhely), a city whose population is still 50 percent Hungarian.

This Romanian group, Vatra Romaneasca, was not curbed by the Romanian army until 2 people were dead, and 16 ambulances were needed to carry the injured to hospitals. Among the severely injured was the famous playwright, Andras Suto, who lost sight in one of his eyes, and suffered several fractured ribs, and a broken arm. He had to be transported first to Bucharest, then to Budapest by helicopter, for operations. While not bloody, anti-Hungarian demonstrations spread to Cluj (Kolozsvár), Salmar (Szatmárnémeti) and Oradea (Nagyvarad).

I call upon our State Department to protest strongly the mob attacks against the peaceful Hungarian minority and warn the Romanian Government that without an adequate solution of the Hungarian and other nationality problems, democracy cannot flourish in Romania.

Mr. Speaker, I would also like to submit the following Washington Times article on this matter for the RECORD.

[From the Washington Times, Mar. 21, 1990]

ROMANIANS ATTACK ETHNIC HUNGARIAN PROTESTERS; 2 KILLED

TIRGU MURES, Romania—About 3,000 Romanians armed with scythes and clubs attacked 5,000 ethnic Hungarian protesters yesterday in this Transylvanian town, killing two persons and injuring about 90, police said.

Eyewitnesses said the Romanians charged the Hungarians and drove them from the central square, where they had occupied the town hall.

They reported seeing Hungarians clubbed to the ground, and Arpad Kovacs, an official of the Hungarian Democratic Union party, said, "I am afraid this is going to be a horrible night."

But as night fell, seven army tanks formed a barricade between the rival groups.

The Hungarians had gathered yesterday morning to protest a Romanian attack on the Hungarian Democratic Union headquarters in Tirgu Mures the previous night.

Four persons in the building were seriously injured while police tried to escort them to safety.

They included Andras Suto, an ethnic Hungarian who is one of Romania's best-known writers. He was flown to the Bucharest military hospital suffering from eye injuries, broken ribs and a broken arm.

President Ion Iliescu visited Mr. Suto before he was taken to Hungary for treatment in Budapest to save his sight.

Tensions have been growing between Romanians and the 2-million-strong Hungarian minority in Transylvania since the Decem-

101ST CONGRESS
2D SESSION

H. R. 4340

To amend title 18, United States Code, to protect the privacy of telephone users.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 1990

Mr. KASTENMEIER (for himself, Mr. SYNAR, and Mr. EDWARDS of California) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend title 18, United States Code, to protect the privacy of telephone users.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Telephone Privacy Act of 1990".

SEC. 2. TITLE 18 AMENDMENTS.

(a) EXCEPTION TO PROHIBITION.—Section 3121 of title 18, United States Code, is amended—

(1) in the heading for subsection (b), by inserting "WITH RESPECT TO USE BY PROVIDER" after "EXCEPTION";

(2) by inserting after subsection (b) the following:

"(c) EXCEPTION WITH RESPECT TO USE OF CALLER IDENTIFICATION SYSTEMS.—The prohibition of subsection (a) does not apply with respect to the use of a device that allows the recipient of a telephone call to determine any individually identifying information about the caller or the originating number (other than information voluntarily given by the caller in the course of the communication) if the provider enables any telephone call originator to block receipt of the identifying information."; and

(3) by redesignating subsection (c) as subsection (d).

(b) CIVIL LIABILITY.—Section 3121 of title 18, United States Code, is further amended by adding at the end the following:

"(e) CIVIL ACTION.—Any user of wire or electronic communication service may, in a civil action, obtain relief against any provider who directly or indirectly provides to recipients of telephone calls the ability to determine individually identifiable information, but fails to enable an originator to block receipt of the originating number as required under subsection (b)(3), in the same manner and to the same extent

as a customer aggrieved by a violation of chapter 121 of this title may, under section 2707 of this title, obtain relief against the violator.".

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