

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

M E M O R A N D U M

April 8, 1991

TO : DIRECTOR OF RECORDS AND REPORTING

FROM : DIVISION OF COMMUNICATIONS (LONG, BRISWOLD) *pal*
DIVISION OF LEGAL SERVICES (GREEN, KUPLIN) *R/for ABC*

RE : DOCKET NO. 891194-TL - PROPOSED TARIFF FILINGS BY
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
CLARIFYING WHEN A NONPUBLISHED NUMBER CAN BE DISCLOSED
AND INTRODUCING CALLER ID TO TOUCHSTAR SERVICE

AGENDA: APRIL 18, 1991 SPECIAL AGENDA - CONTROVERSIAL - PARTIES
MAY NOT PARTICIPATE

CRITICAL DATES: NONE

DOCUMENT NUMBER-DATE

03408 APR 19 1991

REC-RECORDS/REPORTING

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FPSC-RECORDS/REPORTING

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LIST OF ABBREVIATIONS/ACRONYMS

ACR - Anonymous Call Rejection (e.g., "block the blocker")
ANI - Automatic Number Identification
Attorney General - Florida's Office of the Attorney General
Bellcore - Bell Communications Research, Inc.
Centel - Central Telephone Company of Florida, Inc.
CLASS - Custom Local Area Signaling Services
DGS - Florida Department of General Services
FCADV - Florida Coalition Against Domestic Violence
FDLE - Florida Department of Law Enforcement
FMA - Florida Medical Association
FPCA - Florida Police Chief's Association
GTEFL - GTE Florida, Inc.
OPC - Florida's Office of Public Counsel
OEP - Florida Office of Statewide Prosecution, Office of the Attorney General
PNS - Protected Number Service
Southern Bell - Southern Bell Telephone & Telegraph Company/Florida
SS7 - Common Channel Signaling System 7
United - United Telephone Company of Florida, Inc.

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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 that allowed a caller's telephone number to be 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 customer premises equipment (CPE) restricted this service to a very few subscribers.

When TouchStar was reimplemented permanently in August 1988 (Docket No. 880791-TL), Call Monitor/Caller ID 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 Service; the other filing proposed changes regarding the divulgence of nonpublished telephone numbers.

Staff had several concerns with the appropriateness of those filings. Among the concerns were: the usefulness of the service, effects on nonpublished subscribers, associated privacy concerns, and compliance with state and federal wiretapping/trap-and-trace laws.

The Commission addressed some of those concerns at the December 19, 1989 Agenda Conference and approved the tariff implementing Caller ID (T-89-507) 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. The Commission allowed for this tariff filing, if amended, to be approved administratively also effective February 1, 1990 (it was amended and refiled, 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

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deferred for further consideration before the February 1, 1990 effective date. However, the Commission again deferred this issue at the January 30, 1990 agenda and suspended the effective dates when additional questions were raised concerning the blocking and privacy issues. The Commission directed staff and the Company to seek answers to those questions and return 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 the eligible parties and report 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 Health and 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.

A recommendation was filed on May 24, 1990 for placement on the June 5 agenda. A few days prior to that agenda a district court in Pennsylvania ruled that Caller ID, in any form, was illegal in that state. This event, coupled with U.S. Senate hearings scheduled for June 7, 1990, prompted the Commission to defer a decision on Caller ID until June 17, 1990 in order for the Commission and staff to analyze those and any other

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developments.

On June 7, 1990, the Office of Public Counsel (OPC) filed a Request for Hearings on Southern Bell's tariff proposals. OPC's Request asked for both customer hearings in the territory served by Southern Bell, as well as a formal evidentiary proceeding under Section 120.57(1), Florida Statutes. On June 19, 1990, Southern Bell filed its Response to OPC's Request for Hearings, urging the Commission to deny OPC's Request.

At the July 17, 1990 Agenda Conference, the Commission considered whether it was appropriate to hold hearings on this matter as well as what action, if any, should be taken on the tariffs pending the outcome of any hearings. The Commission heard from all in attendance who wished to address these questions without regard to whether they were parties or were seeking party status in this docket. The overwhelming view of those who spoke was that hearings should be conducted before any further action was taken in this docket. In light of the strong sentiment expressed in favor of conducting hearings, Southern Bell's representative withdrew the Company's June 19th response that had opposed granting the hearings requested by OPC. Accordingly, the Commission found it appropriate to grant OPC's Request and to schedule customer hearings in the territory served by Southern Bell, as well as a Section 120.57(1) hearing on the tariffs. Further action on Southern Bell's tariffs was held in abeyance pending the outcome of the hearings. This decision was reflected in Order No. 23370, issued August 20, 1990.

Public hearings were held at the following times and places: (1) September 25, 1990, 2:30 p.m. and 6:30 p.m., Holiday Inn, Orange Park, Florida; (2) September 26, 1990, 6:30 p.m., Holiday Inn International Park, Orlando, Florida; and (3) September 27, 1990, 10:00 a.m. and 6:30 p.m., Radisson Mart Plaza, Miami, Florida. The evidentiary hearing was held on November 28 and 29, 1990, at our headquarters in Tallahassee, Florida.

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EXECUTIVE SUMMARY

Caller ID arrived at the Commission in September 1989 without much fanfare or attention. Since that time, however, it and the privacy concerns surrounding it have been hotly debated everywhere: on NightLine, in The Wall Street Journal, etc. It even received the ultimate indication of its trendiness: it became the butt of jokes on The Tonight Show.

Many states have considered or are considering Caller ID service, with a wide variety of results. The North Carolina Attorney General produced a spreadsheet of each state's current activity regarding this matter. A copy of the report is attached to this recommendation (Attachment A).

This Commission and its staff have tried to balance the desires and concerns of Florida's citizens through two years of investigation, no fewer than four Agenda Conferences, as well as three public hearings and a full evidentiary hearing that are the subject of this recommendation. Staff has concluded that although the majority of consumers - sometimes the vast majority - consistently favor the implementation of Caller ID, we cannot ignore the minute segment of the population that could suffer genuine physical danger and/or harm should Caller ID be implemented without safeguards.

The first distinction necessary was to define "Caller ID." Although it was given very little to no time in the record of this case, we believe that a distinction between Caller ID, as a generic term for a Custom Local Area Signaling Service (CLASS) feature, and Automatic Number Identification (ANI) must be made. Caller ID is a feature designed to transmit the calling number cheaply through the network for dissemination to called parties through a line-side connection. ANI is a feature long-used by telephone companies for billing customers. ANI is a billing number (which is the phone number for residences and small businesses, hence the rub) sent from the calling party's serving office to an interexchange company's (IXC's) facilities, or through the LEC's facilities for certain services to a trunk-side connection at the terminating end. ANI is now being used in several fashions by IXCs and LECs such as billing for 976 calls, toll calls, etc. Also, ANI is being marketed to end users through interstate 800 service. ANI's use for billing purposes has never been disputed; its impending dissemination to end users through Universal Access Numbers, etc. is where the privacy and policy concerns overlap with Caller ID. However, ANI cannot be

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blocked at this time in the same way that CallerID can; until now it has made no sense to develop a way to block billing information. Staff believes it is therefore useless to debate two differing technologies with differing solutions to form one policy. We are therefore not recommending any policy on ANI at this time. It is important to note that these two technologies are part of an ever-growing list of technologies that transmit calling party information through the network (see Attachment B).

We concur with the Florida Office of the Attorney General that Caller ID is a trap-and-trace device under the legal definition of such, and should not be allowed unless parties have an opportunity to give or deny consent when making a call. We also concur with the Attorney General that the Commission's actions in this proceeding do not constitute "state action," a necessary requirement to violate Florida's Constitution.

We believe that Florida's consumers will enjoy many benefits from the implementation of Caller ID, among them fewer annoying/harassing calls, faster service from businesses, better emergency services in some instances, and better management and privacy when receiving calls. We also believe that Caller ID does pose some problems: greater dissemination of numbers to solicitors, and less anonymity for those such as law enforcement officers who depend on such anonymity for their jobs and lives.

We do not believe that any of the other CLASS features can take the place of Caller ID; it alone gives the called party a number with which to make a decision on answering the call. We do, however, believe that Call Trace is designed to have significant social value regarding abusive call deterrence and should be priced in such a way as to maximize the public's ability to use it.

We also recommend that per-call blocking (not per-line blocking) be made available to all customers, without presubscription and at no charge. This will alleviate the concerns of nearly all the parties, as well as nonpublished customers and other groups. Per-line blocking should be made available to police and violence intervention agencies at their offices. This arrangement should negate the requirement for Southern Bell to develop customized solutions for law enforcement and domestic violence agencies, although we encourage the Company to continue working with these agencies to find solutions for all their telecommunications needs.

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Per-call blocking will not, however, create a "balance" between the called and calling parties, as claimed by blocking advocates. The implementation of Anonymous Call Rejection (ACR) will create this balance. It will allow blocked calls to be rejected by the called party. We recommend that Southern Bell report the status of this technology periodically to us and file a tariff for the service as soon as it becomes available.

With the restrictions recommended here, we believe that Caller ID is in the public interest. The called party is at a distinct disadvantage with today's technology; the ability for each party to control his/her own privacy can ultimately be achieved with the combination of Caller ID, per-call blocking, and Anonymous Call Rejection.

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DISCUSSION OF ISSUES

ISSUE 1: For the purpose of this docket, what is the definition of "Caller ID"?

RECOMMENDATION: Staff recommends for the purpose of this docket, the definition of Caller ID includes any Custom Local Area Signaling Services (CLASS) feature that provides calling party identification information to the called party. Automatic Number Identification is not included in this definition.

POSITION OF PARTIES

SOUTHERN BELL: Caller ID is an optional TouchStar service that will permit the display of the number of a calling party on the called party's customer premises equipment ("CPE").

GTEFL: Caller ID describes a CLASS service that delivers calling party identification information to the called party's on-premises telephone equipment, which can display that identification information or use it for other identifying purposes. Currently, the calling party identification information delivered is the calling party's telephone number, which can be delivered via either Automatic Number Identification (ANI) or Calling Number Identification (CNI).

ANI, which is provided via a trunk-side connection to the serving central office, has traditionally been used by both exchange carriers and interexchange carriers to identify telephone numbers for billing purposes. ANI is currently provided as part of Feature Group B and D access service. ANI may also be used by interexchange carriers for non-billing purposes and by customers of interexchange carriers and local telephone companies for customer account verification and other purposes. CNI, which is provided via a line-side connection to the serving central office, is a service made available by deployment of Signaling System 7 ("SS7") to exchange carrier end offices. With SS7, CNI is delivered from the calling party's serving office to the called party's serving office and from the called party's serving office to the called party's telephone equipment. To provide CNI service, the office serving the calling party, the office serving the called party, and the interoffice telephone facilities must be equipped and interconnected with SS7 capability.

In the future, a number of alternative calling party

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identification methods, such as special coded identifiers or calling party names, may provide substitutes for ANI and CNI, depending on the application.

UNITED: Caller ID essentially has two definitions in today's environment, the first (more of a global term) encompassing the broad scope of passing information about the calling party through the network and the second (more of a specific term) being the actual Caller ID feature provided by Custom Local Area Signaling Service. In regard to the first definition of Caller ID, this broad form of calling party identity is referred to by United Telephone Company of Florida, Inc. (United) as Calling Party Identification (CPID) information. CPID has been broadly defined and developed within the Information Industry Liaison Committee (IILC) to encompass all forms of calling party identification information, including Caller ID (the feature), which automatically allows the called party to identify the calling party, station, or line. Additional forms of CPID include Automatic Number Identification (ANI), directory numbers, calling party name, calling party address, and personal identification codes. CPID delivery services are made available through such methods as Feature Group D access, Common Channel Signaling System 7 (SS7), Feature Group B access, CLASS, Simplified Message Desk Interface (SMDI), and Integrated Services Digital Network (ISDN).

The Caller ID feature is a subset of CPID. It enables the called customer to view, via a display unit, the primary telephone number of the calling party who initiated the incoming call. The display unit may be an adjunct device which sits next to the customer's telephone set or it may be a special telephone set with the display unit built into the telephone.

Caller ID is one of the CLASS features. United plans to file its tariff for the CLASS features under the name of ExpressTouchSM Service. Caller ID will only work on calls which originate and terminate within the CLASS equipped network area.

For the purposes of this docket, both definitions of Caller ID must be considered depending on the issues being addressed. Issues 2, 3, 4, and 5 deal with the broad CPID definition of Caller ID and the remaining issues are more directed towards the actual Caller ID feature and are answered accordingly.

United believes the differences, but more importantly, the

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similarities between the CPID and its Caller ID feature subset are important because while the method of providing Caller ID (the feature) is new, the act of sending information about the calling party through the network (CPID) is not new, and has been going on for years. CPID is an essential factor in meeting today's telecommunication needs and should hold no restrictions.

OPC, FCADV: Caller ID is a service proposed by Southern Bell that would allow customers to use a display to show the called party's telephone number.

ATTORNEY GENERAL, OSP, FDLE, FMA, FPCA: Caller ID is a service proposed by Southern Bell that would allow customers to use a display to show the calling party's telephone number when they answer the telephone.

DGS: Caller ID is the display of the calling party's telephone number to the called party prior to the called party answering the telephone. This is how the feature currently offered by Southern Bell is defined, but this docket should consider the planned expansion of the caller ID displayed information to include additional calling party related information.

STAFF ANALYSIS: Custom Local Area Signaling Services (CLASS) are a family of features being provided in several areas of Florida. The CLASS services can include a number of features that "store" calling party information for retrieval. (Sims TR 66-67, 97) For example, Call Trace, a CLASS feature, allows the subscriber to notify the central office that a record is to be made for the last call received, while Call Return, also a CLASS feature, redials the last incoming number. (Sims TR 67-68) Caller ID, a proposed CLASS feature, enables the called party to receive information on the calling party, presently the number from which they are calling, via a display device at the called party's premises after the first ring cycle. (Sims TR 69) Call Trace and Call Return differ from Caller ID; Call Trace and Call Return do not give the called party access to the calling party's telephone number as does Caller ID. (Sims TR 68)

CLASS and Calling Number Identification (CNI) are terms coined by their developer, Bellcore. However, these services are not provided solely by Southern Bell or other Bell companies. Other local exchange companies offer CLASS services and have assigned their individual label to their offering. For example, Southern Bell's CLASS offering is TouchStar, United's is ExpressTouch (Jones 490, 499), GTE's is SmartCall (Elsewi TR

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363) And Centel's is Custom Calling II.

As does Southern Bell, Centel and United have elected to label their CMI feature "Caller ID" while GTE calls their service "Calling Number Identification." For this docket, staff recommends the term Caller ID be used as a generic term to refer to all of the services planned to be offered under different names by other carriers that are synonymous with Southern Bell's Caller ID.

Southern Bell was the first LEC to file a tariff in the State of Florida to offer Caller ID, an optional TouchStar feature. However, several other companies have filed tariff proposals to offer Caller ID service. United filed its proposal for Caller ID on December 20, 1990, GTEFL filed for Calling Number Identification on December 21, 1990, and Centel filed for Caller ID on August 6, 1990.

United has advanced the position that Caller ID has two definitions, one broad and one narrow. The broad definition includes the passing of information about a calling party through the network. This information can be Automatic Number Identification (ANI), directory numbers, calling party name, calling party address, or personal codes. (Jones TR 489-490, 499) The narrow definition categorizes Caller ID as a subset of the broad classification and refers to a particular CLASS feature. Under this definition, Caller ID enables the called party to see the number of the station from which a call is being placed via a display device. (Jones TR 489-490, 499)

The Attorney General, OSP, and DGS concur with United's position. GTEFL's position, although not entirely clear, appears to more narrowly define Caller ID to be one of the CLASS services that allows the called party, using an on premises display device, to see the calling party's number. Southern Bell has taken the narrow view that Caller ID is a TouchStar service that allows the display of the calling party's number on a display unit of the called party. (Sims TR 52-53)

In addition, other CLASS offerings, not yet available, will provide other calling party identification information such as calling party name and calling party address. (Jones TR 490) Staff recommends that the term Caller ID include all these potential CLASS offerings.

Staff recommends the Commission confine its definition of

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Caller ID to only those CLASS features that provide the calling party's exchange number or other identification such as caller name, caller address, and other caller related information to the called party.

Staff also recommends that Caller ID not be construed as including Automatic Number Identification (ANI), a position taken by United. ANI is provided as part of Feature Group B and D access service and is used primarily for identification of numbers for billing purposes and customer account verification purposes by interexchange and local exchange companies.

Although there have been and will be proposals to allow ANI to be delivered to end users, ANI differs from Caller ID in several ways. Caller ID currently requires SS7, ANI does not. Unlike Caller ID, ANI cannot currently be blocked on individual lines without blocking the transfer of the number to all parts of the network. ANI delivers the billing number, which may or may not be the calling number. Also, ANI is provided via a trunk-side connection while Caller ID is provided line-side. This will greatly limit the end user applications of ANI.

Although the policy considerations regarding the dissemination of calling party information to end users encompasses both technologies, they are fundamentally different from an engineering standpoint. therefore, any solutions for one may or may not apply to the other. Staff is currently exploring ANI's technical specifications and will explore them at a later agenda, after the broad policy considerations in this docket have been implemented.

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ISSUE 2: [LEGAL] Is Caller ID a trap and trace device as described in Chapter 934, Florida Statutes?

RECOMMENDATION: Yes, Caller ID is a trap and trace device as defined in Section 934.02(21), Florida Statutes.

POSITION OF PARTIES

SOUTHERN BELL: In 1986, the federal government required that the states conform their laws, by October 21, 1988, to the requirements of the federal Electronic Communications Privacy Act. See, Pub. L. 99-588 and 18 U.S.C. § 2510. In accordance with this federal mandate, Florida amended its wire-tap statutes to conform with federal law. See Laws of Florida 1988, ch. 88-184, effective October 31, 1988; Chapter 934, Florida Statutes.

As a result of Florida's compliance with the federal mandate, the 1988 amendment of Section 934.02(21), Florida Statutes, and 18 U.S.C. § 3127(4), provide identical definitions of a "trap and trace device." These statutes define a "trap and trace device" as:

...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.

As explained in Issue 1, the display unit that a telephone subscriber must use in conjunction with Caller ID service has no inherent ability to perform a "trap and trace" of telephone numbers. (Tr. Sims, p. 54) Rather, Southern Bell's own technology, used in its normal course of business, provides the capability to "trap and trace" the caller's number. Thus, Southern Bell is the only entity capable of independently "capturing" the incoming electronic number.

Chapter 934, Florida Statutes, entitled "Security of Communications", is a penal statute and as such must be strictly construed. If the language is susceptible of differing constructions, it should be construed "most favorably to the accused". Section 775.021(1), Florida Statutes; 14 Fla. Jur 2d, Criminal Law § 14. By strictly construing the statute which defines a trap and trace device in accordance with the rules of statutory construction, the display unit cannot be defined as a trap and trace device for the reason described above.

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Two courts in states other than Florida have ruled on the legality of Caller ID under similar wire-tap statutes. On May 30, 1990, the Commonwealth Court of Pennsylvania, in David Barasch, Consumer Advocate v. Pennsylvania Public Utility Commission, 576 A 2d 79 (Pa. Commw. 1990) held that Caller ID service was a "trap and trace device" as defined by Pennsylvania Statutes. Id. at p. 85.² The Court failed, however, to cite rules of statutory construction, and apparently did not recognize that it was interpreting a criminal statute which must be strictly construed, with any ambiguity favoring the accused.³

The other court decision addressing Caller ID was the result of a declaratory action in South Carolina. That Court, in Southern Bell v. Hamm, 90-CP-40-2686 (Court of Common Pleas 1990) recognized the principles of statutory construction and strictly construed the South Carolina wire-tap statute. (See Hearing Exhibit No. 51) Because the Southern Bell v. Hamm Court held that the South Carolina wire-tap statute did not prohibit Caller ID, as is discussed in Issue 3, the Court was not required to reach a decision as to whether the display unit was a "trap and trace device."⁴

NOTE: Caller ID does not fall within the statutory definition of trap and trace device. Fla. Stat. §934.02(21) describes a trap and trace mechanism as "a device which captures the incoming electronic or other impulses which identify the origination number of an instrument or a device from which a wire or electronic communication was transmitted." In contrast, the

¹The Commonwealth Court of Pennsylvania is the Pennsylvania appellate court that has jurisdiction over administrative appeals. The Commonwealth Court does not hear criminal law or general civil law matters.

²The Pennsylvania Supreme Court has agreed to hear an appeal of this decision.

³1 Pa. C.S.A. Sec. 1928(1); Commonwealth v. Driscoll, 401 A.2d 312, 316 (Pa. 1979).

⁴Like the Pennsylvania case, this South Carolina decision has also been appealed.

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intelligence that enables calling number identification services to operate resides in the network itself, rather than in any instrument. Specifically, Caller ID relies upon the ability of the network to switch and transport the calling party's telephone number across the SS7 architecture to the called party's terminating end office switch.

UNITED: Section 934.02(21), Florida Statutes, defines a trap and trace device as a "device which captures the incoming electronic or other impulses which identify the originating number of an instrument or a device from which a wire or electronic communication was transmitted."

Caller ID is a service (not a device) which allows the called party to see the calling party's telephone number displayed before answering the telephone. (See, Simms, T. 52) Caller ID does make use of customer premises equipment (CPE) to display the calling number, but the CPE is the equivalent of a dumb terminal which does nothing more than display, and, in some cases, record information sent to it. The CPE does not have the capability of capturing incoming electronic impulses which identify the originating number, it can only display or record information sent to it. The CPE is a passive device; it does not actively seek out and capture impulses, it merely displays what is sent to it.

Caller ID and the CPE used in conjunction with it is not a trap and trace device.

If it is assumed, for the sake of argument, that the CPE used in provision of Caller ID service is a trap and trace device as defined in the Chapter 934, Florida Statutes, such an assumption does not affect the legality of the service under Chapter 934, Florida Statutes.

Section 934.31(1), Florida Statutes, states "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 s. 934.33." Section 934.31(2), Florida Statutes states: "The prohibition of subsection (1) 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:

* * * *

(c) Where the consent of the user of the service has been obtained."

The user of the service is the person receiving calls in a trap and trace situation. The statutory language uses the singular word "user" not the plural word "users." Use of the singular establishes under the clear language of the statute that only the consent of the person receiving the calls in a trap and trace situation is required under the statute. This statutory language is further supported by practices of telephone companies and law enforcement agencies. Trap and trace is used by telecommunication companies in conjunction with law enforcement agencies, on requests of customers, to resolve cases of harassing and abusive telephone calls. No attempt is made, could be made, or is required, to obtain the consent of the person placing the harassing or abusive calls. To interpret the statute as requiring the consent of both parties to a trap and trace request renders the consent exception meaningless. It would require the consent of unknown persons prior to those unknown persons placing calls. It can not be assumed that the legislature inserted a meaningless exception into the statute.

Obtaining the consent of a customer for a pen register is a different matter. The user of the service in a pen register situation is the person making the call. In most cases, a user of the service could write down the numbers, he or she calls, and does not need to have the numbers recorded for him or her by a pen register. Pen registers are most frequently used to gather information about a customer's called numbers without the calling or called parties' knowledge or consent. This is an entirely different situation from a trap and trace which is almost invariably done at the customer's request.

If trap and trace at the request of the customer were in violation of the Chapter 934, Florida Statutes, the emergency E-911 system which allows the 911 answering point to see a display of the calling number (and other information) would not be legally permissible.

⁵The exception for 911 service established in Section 934.03(2)(g)(2), Florida Statutes, applies to intercept and recording "of incoming wire communications;..." not the trap and trace of incoming numbers. The exception for trap and trace of incoming calls for 911 system providers, as well as other customers, is provided in Section 934.31(2)(c), Florida Statutes.

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It is thus clear that a trap and trace device can be used under Section 934.31(2)(c), Florida Statutes, where the consent of the user of the service has been obtained.

The language of the federal statute dealing with pen registers and trap and trace devices found in 18 USC § 3121 et seq. is almost identical to that of the Section 934.31 et seq., Florida Statutes. The federal statute, like the Florida Statute, contains an exception "where the consent of the user of that service has been obtained." (18 USC § 3121 (b)(3)) The same arguments made above in regard to the Florida Statute also apply to the federal statute.

United knows of no case where use of a trap and trace device with the consent of the user of the service has resulted in a prosecution for the violation of either the Florida or federal statute.

Caller ID and the CPE used with it are not trap and trace devices. Even if the CPE used with Caller ID was considered to be a trap and trace device it would not violate either Florida or federal laws because it is used with the consent of the user of the service.

OPC AND FCADV: Section 934.02(21), Florida Statutes (1990) defines a "trap and trace device" as a device capturing incoming electronic or other impulses which identifies the originating number of an instrument or device from which a wire or electronic communication was transmitted. Section 934.31, Florida Statutes (1990) generally prohibits any person from installing or using a trap and trace device without first obtaining a court order. An exception allows the provider of electronic or wire communication service to use a trap and trace device where the consent of the user of the service has been obtained. No such exception exists for the user of the communication service to use a trap and trace device. Section 934.02(13), Florida Statutes (1990) defines a "user" as any person or entity who uses an electronic communication service and is duly authorized by the provider of such service to engage in such use.

Both Caller ID and traditional trap and trace devices utilize the network in identical ways. All of the functions for capturing information needed to make Caller ID operate occur in the telephone network, particularly in the central office. (Pudor, T. 917; Sims, T. 54). The same is true for a traditional trap and trace device. Just like a Caller ID terminal, the trap

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and trace terminal displays the captured number (Tudor, T. 917-919), while the actual capturing takes place in the network.

ATTORNEY GENERAL, OSP, FDLE, DGS AND FCCA: Sec. 934.02(21) Fla. Stat. (1989) defines "trap and trace device" as "a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or a device from which a wire or electronic communication was transmitted." This is also the definition found in the federal, Pennsylvania, and North Carolina statutes. 18 U.S.C. §3127(A); 18 Pa.C.S. s. 5720; N.C.G.S. 15A-260(3) (1988).

Glenn Mayne, division director at the Department of General Services, described the physical process of Caller ID as follows:

When the calling out-pulse is generated over the line that goes back to the serving wire center, that as it enters that serving wire center that pulse is trapped at that time. It then goes over to a mass storage device of some sort and picks up that particular dialed number, along with the number that it's calling from, and determines the routing. That routing then travels across the network to wherever the calling number has the terminating logic and circuitry in it. And then at that point that number is transmitted to the calling device itself.

(T 1067)

While Nancy Sims, Operations Manager at Southern Bell, made a general denial that Caller ID was a trap and trace device (T 54), she was unable to explain why this was so. (T 205). In fact, the operation of the Caller ID display device which is attached to the call recipient's phone line, often referred to as the CPE, is such that it falls squarely within the Florida and federal definition of a "trap and trace device." This was tacitly admitted by Ms. Sims when she indicated the device "displays the number." (T 205). Indeed, the testimony of GTE representative Larry Radin indicated that Caller ID is a more sophisticated form of trap and trace. (T 466). FDLE witness Ron Tudor confirms that a vast majority of Southern Bell's switches are digital (T 918), and that traditional trap and traces done by

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reason of a court order "do the same thing" that Caller ID does, in that the digital switch is programmed to look for, and display, an originating caller's phone number. (T 902, 919). Thus, there is no meaningful distinction between the operation of a Southern Bell digital switch under a court-ordered trap and trace and the operation occurring to facilitate Caller ID. Additionally, with Caller ID, the CPE at the call recipient's phone is the method through which the ultimate display of the number occurs. The CPE is, therefore, "a device which captures the incoming electronic or other impulses which identify the origination number..."

A Pennsylvania appellate court has recently found Caller ID to be a trap and trace device within the meaning of this definition. Barasch v. Pennsylvania Public Utilities Commission, 576 A.2d 79 (Pa. Commw. 1990) (Pa. S.Ct. review pending). Similarly, North Carolina's Attorney General has opined that Caller ID constitutes a trap and trace device:

when the calling party's number is successfully transmitted by Bell's switch to our hypothetical customer's Caller ID display device, there is unquestionably a "trap and trace" as the term is defined by the statutes (G.S. 15A-260-264 and 18 U.S.C. 3121-3127).

Response and Memorandum of Attorney General, In the Matter of Tariff Filing to Establish Rates and Regulations for Caller ID Service Docket No. P-55, Sub. 925 (North Carolina Utilities Comm., filed January 3, 1991).

Because both Pennsylvania and North Carolina's definitions of "trap and trace device" mirror that of Florida, these decisions indicate that Caller ID as proposed by Southern Bell involves the illegal use of a trap and trace device under Florida

*Kentucky's Attorney General adopted the North Carolina interpretation as part of a brief recently filed in the Kentucky Public Service Commission. Without addressing the wiretap issue, the Kentucky PSC required GTE South to provide free per-call blocking. In the Matter of: The Tariff Filing of GTE South Incorporated to Establish Custom Local Area Signaling Service, Case No. 90-096, (Ky. Public Service Commission, October 8, 1990).

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law, as is discussed in greater detail in Issue 3.

FHA: Caller ID violates Chapter 934, Florida Statutes, (1989). The Florida Legislature has carefully delineated the circumstances and conditions under which interception of wire and oral communications may be authorized. Specifically listed as one of its concerns was the effective protection of the privacy of such communications. Section 934.01(2), Fla. Stat. (1989). The Legislature also listed as a specific objective the safeguard of personal privacy. Section 934.01(4), Fla. Stat. (1989). Moreover, the Florida Supreme Court has interpreted the legislative intent behind Chapter 934 as affording even broader protection to privacy than the Federal Act. State v. Tsavaris, 394 So.2d 418 (Fla. 1981).

Chapter 934, Fla. Stat. (1989), Florida's Wiretap Act, was enacted with a great concern for protection of one's privacy interests. It specifically prohibits the use of a "trap and trace device" without first obtaining a court order unless the device's use falls under three specific exceptions.

Such a device is defined by the Act as "a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or a device from which a wire or electronic communication was transmitted." Section 934.02(21), Fla. Stat. (1989). The Caller ID device translates an incoming electronic signal into the calling party's number and displays the number on the screen. As such, the device fits squarely within Florida's definition of a trap and trace device. Pennsylvania, for example, has a nearly identical provision, and that a state's Attorney General has conceded that Caller ID is a trap and trace device. Barasch v. Pennsylvania Public Utility Commission No. 2270 C.D., Commonwealth Court of Pennsylvania, 1989. Therefore, a court order is required, or the device must fit within one of the statutory exceptions before it may be used.

A court order is required for the installation or use of a trap and trace device unless:

- (1) the trap and trace device is used by a provider of electronic or wire communication service relative to "the operation, maintenance and testing of a wire or electronic communication service or to the protection of the rights or property of the provider or to the

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protection of users of that service from abuse of service or lawful use of service"; or

(2) when the trap and trace device is used by a provider of electronic or wire communication service "[t]o record the fact that a wire or electronic communication was initiated or completed in order to protect the provider thereof, another provider furnishing service toward the completion of the wire communication, or user of the service, from fraudulent, unlawful, or abusive use of service."

The only other exception to the requirement for a court order applies where the user of the services has given consent. Sections 934.31(2)(a), (b), (c), Fla. Stat. (1989).

The pertinent exceptions listed above clearly apply only when a provider of electronic or wire communication service uses a trap and trace device for three specific purposes. Even if Southern Bell were to justify the device on the basis that it protects users of the service from abuse, unlawful use, or fraudulent or abusive use, the exceptions do not apply unless the trap and trace device is used by the provider, that is, Southern Bell. Caller ID impermissibly places the device into the hands of the general public, unlike, for example, Call Tracing, over which Southern Bell retains control and which information is appropriately communicated to law enforcement authorities. Under the present statutory scheme, the installation or use of Caller ID would first require a court order under Section 934.33, Fla. Stat. (1989).

Chapter 934 also addresses the use of "Pen Register" devices, and restricts the use of such a device without a court order in precisely the same manner as trap and trace devices. No court has yet decided how the Florida Constitution relates to trap and trace devices, but the Florida Supreme Court's recent treatment of the issue with regard to pen registers is applicable here.

STAFF ANALYSIS: Caller ID is a trap and trace device, as defined in Section 934.02(21), Florida Statutes. Section 934.02(21) defines a trap and trace device as "a device which captures the incoming electronic or other impulses which identify the

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originating number of an instrument or a device from which a wire or electronic communication was transmitted." This is identical to the definition found in the federal law at 18 U.S.C. § 3127(4).

Southern Bell, GTEFL, and United argue that the proper approach to this issue is one that separates the Caller ID display device from the service itself. Under this view, Caller ID (the service) is not a trap and trace device because it is not a "device." However, this approach ignores the fact that traditional trap and trace functions in a fashion identical to Caller ID. That is, both Caller ID and traditional trap and trace service utilize the network in identical ways. In both cases, all of the functions for capturing the information occur in the telephone network itself. Just like a Caller ID display box, the trap and trace terminal only serves to display the number captured by the network. (Sims TR 54; Tudor TR 917-919)

Considering the evidence in this record, as well as the arguments made by the parties in their briefs, it becomes obvious that no meaningful distinction can be made between Caller ID and traditional trap and trace devices. The crucial question, then, is whether Caller ID fits one of the statutory exceptions to the general prohibition against trap and trace devices. That question is addressed separately in Issue 3.

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ISSUE 3: [LEGAL] Does Caller ID violate any federal laws or any laws of the State of Florida?

RECOMMENDATION: No, with universal, per-call blocking available free of charge, Caller ID does not violate any state or federal laws.

POSITION OF PARTIES

SOUTHERN BELL: Several parties in this proceeding have alleged that Caller ID may violate Chapter 934, Florida Statutes, with respect to certain prohibitions against trap and trace devices. As set forth above, the display unit used in conjunction with Caller ID service is not a trap and trace device and, therefore, the use of such a device does not violate the statutory provisions against trap and trace devices. As noted under Issue 2, Chapter 934, Florida Statutes, is a penal statute which must be strictly construed and any reasonable doubt as to the meaning of such a statute must be construed in favor of the accused. In addition, the Supreme Court has held that it must be assumed that the Legislature knew the plain and ordinary meanings of words when it chose to include them in a statute. Rinker Materials Corp. v. City of North Miami, 286 So.2d 522 (Fla. 1973); Reed v. Bowen, 503 So.2d 1265, 1267 (Fla. 2d DCA 1986) affirmed 512 So.2d 198 (Fla. 1987). The Florida Supreme Court has also held that when the language of the statute is clear and not unreasonable or illogical in its operation, a court may not go outside the statute to give it a different meaning. Jones v. Utica Mutual Insurance Co., 463 So.2d 1153 (Fla. 1985); Holly v. Auld, 457 So.2d 217 (Fla. 1984); Reed v. Bowen, *supra*. By applying these rules of statutory construction, Florida Statutes clearly do not prohibit Caller ID service.

Even assuming, however, that the display unit is a trap and trace device, which it is not, several statutory exceptions would permit Southern Bell to offer Caller ID. While the use of a trap and trace device typically requires a court order, Section 934.31, Florida Statutes, provides several exceptions which permit an individual to use a trap and trace device without obtaining a court order.

Caller ID is a service offered by Southern Bell specifically for the purpose of protecting subscribers against calls that may prove to be "fraudulent, unlawful, or abusive". (Tr. Sims, pp. 55-56) Section 934.31(2)(b), Florida Statutes, expressly allows a trap and trace device to be used without a

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court order "to protect...a user of service from fraudulent, unlawful or abusive use of service..." Thus, this statutory exception certainly pertains to the provision of Caller ID.

Furthermore, Section 934.31(2)(c), Florida Statutes, expressly provides that a trap and trace device may be used without a court order "where the consent of the user of the service has been obtained". Section 934.31(2)(c), Florida Statutes. Interpreting the statute strictly and assuming that the Legislature knew the plain and ordinary meaning of the words, it is clear that the "consent of the user of the service" is all that is required to conform to this exception and that the consent of the "user" means the consent of a singular user, not "users".

Interpreting the statute in this way is also consistent with a reasonable operation of the statute. The statute was clearly intended to restrict law enforcement from placing a trap and trace device on a person's telephone line without a court order or without that person's consent. It would be an unreasonable operation of the statute if "consent of user of the service" actually meant the consent of all parties calling the user's telephone line. As with the legal use of any trap and trace device, it is impossible to obtain the express consent of the calling parties before the identity of the potentially fraudulent, unlawful or abusive caller is known.

The obvious intent of the law was to prohibit a third party, such as a law enforcement officer, from using a trap and trace device on the telephone service of a non-consenting user without first obtaining a court order. See, Southern Bell v. Hamm, supra, at p. 11. ("It seems clear that what the legislature sought to do, in enacting [the same exceptions to a trap and trace device in the South Carolina statute as in Florida Statute], was to protect its citizens from abusive, unauthorized and unwarranted third party or governmental intrusion...") Clearly, by purchasing Caller ID service, the called party is providing his express consent and thus falls within the statutory exception to the prohibition of trap and trace devices.

⁷Not surprisingly, the Florida Medical Association's Post-Hearing Legal Memorandum filed on December 21, 1990, conveniently fails to deny the applicability of this exception.

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In addition, even though the statute expressly provides that the user of the service is the only party required to provide consent, by virtue of placing the call the calling party has given his implied consent to this transaction. Indeed, as the calling party is charged with the knowledge of the Caller ID service tariff once it becomes effective, by placing a call he is giving his express consent. Moreover, Southern Bell's G.S.S.T. A2.3.12 provides that all telephone numbers are the sole property of Southern Bell. Therefore, a subscriber to Southern Bell's services can claim no property interest in his or her telephone number. The telephone number is just that -- only a telephone number. No personal identification is involved unless the called person recognizes the subscriber from past experiences. Although the meaning of the statutory exception permitting a trap and trace device to be used without a court order when "the consent of the user of the service" has been obtained is sufficiently clear on its face, the Legislature's intention may also be ascertained by considering a related statutory provision. The Florida Legislature adopted, almost word for word, the federal Electronic Privacy Communications Act of 1988, in accordance with the federal mandate. When the Legislature amended Chapter 934, Florida Statutes, to conform to the federal law, it explicitly provided that trap and trace devices may be used as authorized by "federal law". The Legislature provided in Section 934.03(i), Florida Statutes, that:

- (i) It shall not be unlawful under ss. 934.03-934.09:
 - 1. To use a pen register or trap and trace device as authorized under ss. 934.31-934.34 or under federal law;....

(emphasis added) See, 18 USC § 3127.

By adding the language that a trap and trace device may ..

⁸G.S.S.T. A2.3.12 states:

Telephone numbers are the property of the Company and are assigned to the service furnished the subscriber. The subscriber has no property right in the telephone number of any other called number designation associated with service furnished by the Company...

used as "authorized...under federal law", the Florida Legislature demonstrated that it intended that "the consent of the user" would have the same meaning that it has under federal law. Since federal law provides that only one party consent is required to have the content of a telephone conversation recorded, it would be anomalous to suggest that all parties' consent is required to simply identify the number of the telephone from which a call is being placed. Indeed, the Pennsylvania appellate court acknowledged that the Pennsylvania Wire-Tap Act was "much more" restrictive than the federal legislation in this regard. See, Barasch v. Pennsylvania PUC, supra, at p. 93.

Furthermore, the Florida Legislature clearly knew how to require all party consent regarding telephonic communication. It expressly stated that "all the parties to the communication" must consent to an "interception" of the communication. Section 934.03(2)(d), Florida Statutes. If the Florida Legislature had intended that "all parties" consent to the use of a trap and trace device, then the language of the trap and trace section of the statute would have said "users" or "all the parties" rather than "user". The law, however, simply states "user".

As discussed above, only two courts have considered Caller ID in conjunction with state wire-tap statutes that conform to the federal statute. Barasch v. Pennsylvania PUC, supra, held that even though the Pennsylvania law was almost identical to the federal Electronic Privacy Communications Act requiring consent of the "user", the Pennsylvania General Assembly intended that the state statute should be stricter than the federal law. Despite the fact that the Pennsylvania statute contains the word "user", in accordance with the federal law, the Court interpreted "user" in Pennsylvania to mean "all of the parties" involved in a conversation. Id. at pp. 84, 93.

The legal rationale relied upon by the Pennsylvania Court is inappropriate under Florida law for two reasons. First, Florida rules of statutory construction require that a criminal statute be strictly construed and any ambiguity be resolved against the state. Florida rules of statutory interpretation also require that it must be assumed that the Legislature knew the plain and obvious meanings of words when it chose to include

⁹10 Pa. C.S. Section 5771(b)(2).

them in the statute and that when the language of the statute is clear and not unreasonable or illogical in its operation, the court may not go outside of the statute to give it a different meaning. A discussion of Pennsylvania rules of statutory construction is noticeably absent from the Pennsylvania Court's decision. Ignoring the general principles of statutory construction, the Pennsylvania Court went outside the letter of the statute and gave a different meaning to the express language of the statute.

Second, the Florida trap and trace statute differs from the Pennsylvania statute. As noted above, Section 934.03(2)(1), Florida Statutes, provides that: "(1) It shall not be unlawful...[t]o use...a trap and trace device as authorized...under federal law." This statutory provision does not exist in the Pennsylvania wire-tap law. Unlike the Pennsylvania laws, the Florida statute clearly sets forth the Florida Legislature's intent that by conforming the Florida statute to the federal Electronic Privacy Communications Act, Florida was determined to apply the state statute regarding trap and trace devices in the same manner as the federal government applied the federal statute.

STAY: Caller ID does not violate any federal or Florida state laws. The provisions of potential relevance to the legal analysis of caller ID are the Electronic Communications Privacy Act ("ECPA"), on the federal level; and Chapter 934 of the Florida Statutes, in the state arena. The Florida statutory scheme closely tracks federal law in all respects relevant to the instant inquiry, as it was expressly revised to conform to the ECPA.

As the above response to question 2 explains, calling number identification services, such as Caller ID, cannot be categorized as trap and trace devices under Florida law. Analysis under federal law yields the same conclusion, since the ECPA definition of "trap and trace device," 18 U.S.C.A. §3127(3) is identical to that set forth in Fla. Stat. §934.02(21). Therefore, Caller ID service does not fall within either the state or federal provisions governing interception of communications. Legislative history supports this view, clarifying that these laws were intended to address surreptitious interception only. See, e.g., S. Rep. No. 541, 99th Cong., 2d Sess. 3 (1986).

Even if the Caller ID feature could be considered a trap

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and trace device, it falls squarely within one or more exceptions permitting use of the devices without the court order otherwise required. One of the broadest exceptions found in both the federal and state schemes allows the installation of a trap and trace device where the consent of the user of the service has been obtained. Fla. Stat. §934.31(2)(c); 18 U.S.C.A. 3121(b)(3). Under the only plausible reading of this provision, the consumer's subscription to Caller ID service necessarily constitutes compliance with the statutory consent requirement. Moreover, the Florida Code explicitly permits the use of trap and trace devices as authorized under federal law. Fla. Stat. §934.03(2)(i). Since federal law requires only one-party consent for lawful interception of communications, there can be no doubt that this standard would apply to the trapping of telephone numbers, a much less intrusive practice. Under §934.03(2)(i), this same standard will apply in Florida, unequivocally permitting use of a Caller ID device upon the subscriber's consent.

UNITED: Section 934.02(21), Florida Statutes, defines a trap and trace device as a "device which captures the incoming electronic or other impulses which identify the originating number of an instrument or a device from which a wire or electronic communication was transmitted."

Caller ID is a service (not a device) which allows the called party to see the calling party's telephone number displayed before answering the telephone. (See, Sims, T. 52) Caller ID does make use of customer premises equipment (CPE) to display the calling number, but the CPE is the equivalent of a dumb terminal which does nothing more than display, and, in some cases, record information sent to it. The CPE does not have the capability of capturing incoming electronic impulses which identify the originating number, it can only display or record information sent to it. The CPE is a passive device; it does not actively seek out and capture impulses, it merely displays what is sent to it.

Caller ID and the CPE used in conjunction with it is not a trap and trace device.

If it is assumed, for the sake of argument, that the CPE used in provision of Caller ID service is a trap and trace device as defined in the Chapter 934, Florida Statutes, such an assumption does not affect the legality of the service under Chapter 934, Florida Statutes.

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Section 934.31(1), Florida Statutes, states "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 s. 934.33." Section 934.31(2), Florida Statutes states: "The prohibition of subsection (1) 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:

* * * *

(c) Where the consent of the user of the service has been obtained."

The user of the service is the person receiving calls in a trap and trace situation. The statutory language uses the singular word "user" not the plural word "users." Use of the singular establishes under the clear language of the statute that only the consent of the person receiving the calls in a trap and trace situation is required under the statute. This statutory language is further supported by practices of telephone companies and law enforcement agencies. Trap and trace is used by telecommunication companies in conjunction with law enforcement agencies, on requests of customers, to resolve cases of harassing and abusive telephone calls. No attempt is made, could be made, or is required, to obtain the consent of the person placing the harassing or abusive calls. To interpret the statute as requiring the consent of both parties to a trap and trace request renders the consent exception meaningless. It would require the consent of unknown persons prior to those unknown persons placing calls. It can not be assumed that the legislature inserted a meaningless exception into the statute.

Obtaining the consent of a customer for a pen register is a different matter. The user of the service in a pen register situation is the person making the call. In most cases, a user of the service could write down the numbers, he or she calls, and does not need to have the numbers recorded for him or her by a pen register. Pen registers are most frequently used to gather information about a customer's called numbers without the calling or called parties' knowledge or consent. This is an entirely different situation from a trap and trace which is almost invariably done at the customer's request.

If trap and trace at the request of the customer were in violation of the Chapter 934, Florida Statutes, the emergency E-

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911 system which allows the 911 answering point to see a display of the calling number (and other information) would not be legally permissible.¹⁰

It is thus clear that a trap and trace device can be used under Section 934.31(2)(c), Florida Statutes, where the consent of the user of the service has been obtained.

The language of the federal statute dealing with pen registers and trap and trace devices found in 18 USC § 3121 et seq. is almost identical to that of the Section 934.31 et seq., Florida Statutes. The federal statute, like the Florida Statute, contains an exception "where the consent of the user of that service has been obtained." (18 USC § 3121 (b)(3)) The same arguments made above in regard to the Florida Statute also apply to the federal statute.

United knows of no case where use of a trap and trace device with the consent of the user of the service has resulted in a prosecution for the violation of either the Florida or federal statute.

Caller ID and the CPE used with it are not trap and trace devices. Even if the CPE used with Caller ID was considered to be a trap and trace device it would not violate either Florida or federal laws because it is used with the consent of the user of the service.

CPE AND FCADV: Section 934.02(21), Florida Statutes (1990) defines a "trap and trace device" as a device capturing incoming electronic or other impulses which identifies the originating number of an instrument or device from which a wire or electronic communication was transmitted. Section 934.31, Florida Statutes (1990) generally prohibits any person from installing or using a trap and trace device without first obtaining a court order. An exception allows the provider of electronic or wire communication service to use a trap and trace device where the consent of the

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user of the service has been obtained. No such exception exists for the user of the communication service to use a trap and trace device. Section 934.02(13), Florida Statutes (1990) defines a "user" as any person or entity who uses an electronic communication service and is duly authorized by the provider of such service to engage in such use.

Both Caller ID and traditional trap and trace devices utilize the network in identical ways. All of the functions for capturing information needed to make Caller ID operate occur in the telephone network, particularly in the central office. (Tudor, T. 917; Sims, T. 54). The same is true for a traditional trap and trace device. Just like a Caller ID terminal, the trap and trace terminal displays the captured number (Tudor, T. 917-919), while the actual capturing takes place in the network.

ATTORNEY GENERAL, OSP, FDLE, DGS AND FPCA:

Electronic devices enable law enforcement officials and private citizens to monitor and record private conversations, to monitor movements of persons and objects, and to trace or record telephone calls made to or from a particular telephone. Recognizing the threat to privacy rights that would result from unrestricted use of these devices Congress passed Title III of the Omnibus Crime Control and Safe Streets Act of 1968, which regulates the electronic and mechanical interception of wire, oral and electronic communications by government officials and private citizens.

Georgetown Law Journal, Vol. 76:521, 626 (1988).

Title III of the Omnibus Crime Control and Safe Streets Act of 1968 is codified at 18 U.S.C. §§2510-2520. As noted by the United States Supreme Court in Gelbard v. United States, 408 U.S. 41, 48 (1972), the overriding concern of the Congress when it passed Title III was to protect privacy rights. See also Berger v. New York, 388 U.S. 41 (1967), and S. Rep. No. 1097, 90th Cong., Second Session 66, reprinted in 1968 U.S. Code Congress and Administration News 2112, 2153 (discussing constitutional standards established in Berger and legislative history of Title III).

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In 1986, the Congress revisited the area of electronic surveillance when it passed Public Law 99-508, "Electronic Communications Privacy Act of 1986", to monitor the use of pen registers and trap and trace devices. 18 U.S.C. §§3121-3127. Specifically, 18 U.S.C. §3121 provides:

General prohibition on pen register and trap and trace device use; exception

(a) In general.-Except as provided in this section, no person shall install or use a pen register or a trap and trace device without first obtaining a court order under section 3213 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 electronic communication service 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.

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(c) Penalty.-Whoever knowingly violates subsection (a) shall be fined under this title or imprisoned not more than one year, or both.

In section 3127, the Congress defined the terms "wire communication", "electronic communication", and "electronic communication service" as meaning the same as those terms under 18 U.S.C. §2510. Section 3127 also defines the term "trap and trace device" as "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."

The Congressional intent is explained in 1986 United States Code Congress and Administrative News, page 3600, as follows:

Subsection (a) of the proposed section 3121 of title 18 contains a general prohibition against the installation or use of a pen register or trap and trace device without a court order. Such a court order may be obtained under section 3123 of title 18 or under the Foreign Intelligence Surveillance Act (FISA).

Proposed subsection 3121(b) contains exception to subsection (a)'s general prohibition against the use of pen registers and trap and trace devices. Providers of electronic or wire communication services may use pen registers or trap and trace devices if one of three conditions are met. The provider may use a pen register or trap and trace device (1) if it relates 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, or to the protection of users of that service from abuse or unlawful use of the service; (2) to record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward completion, or a user of that service from fraudulent, unlawful or abusive

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use of service; or (3) where the consent of the user has been obtained.

Proposed subsection 3121(c) imposes a penalty for knowing violation of subsection (a). The penalty is a fine under this title, imprisonment for up to 1 year, or both. (Emphasis added)

Clearly Congress intended to insure privacy to all users of electronic communication equipment except in very narrow circumstances.

In 1968, the Florida Legislature also revisited the area of electronic communication and abolished section 822.10, Fla. Stat., which prohibited the tapping of any telephone or telegraph lines. The next year the Florida Legislature created Chapter 934, Fla. Stat., the Security of Communications Law, which closely followed the federal Title III Act outlined above.¹¹ In 1988, the Legislature created section 934.31, Fla. Stat., which provides as follows:

934.31 General prohibition on pen register and trap and trace device use; exception.--

(1) 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 ss. 934.33.

(2) The prohibition of subsection (1) 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:

(a) Which relates to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of the provider or to the

¹¹See Laws of Florida, Chapter 88-184.

protection of users of that
service from abuse of service or
unlawful use of service;

(b) To record the fact that a
wire or electronic communication
was initiated or completed in
order to protect the provider
thereof, another provider
furnishing service toward
completion of the wire
communication, or a user of the
service, from fraudulent,
unlawful, or abusive use of
service; or

(c) Where the consent of the user
of the service has been obtained.

(3) Whoever knowingly violates subsection
(1) is guilty of a misdemeanor or the first
degree, punishable as provided in s.
775.082, s. 775.083, or s. 775.084.

The Legislature also amended section 934.02, F.S., to include within that definition section "electronic communications" which were defined as "any transfer of signals, writings, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or other photo-optical system that effects intrastate, interstate, or foreign communication (providing certain exceptions exist). Furthermore, the Legislature defined "trap and trace device" as "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." Clearly, the Florida statute is nearly identical to the federal law.

A court order is required to install a trap and trace device. The only exceptions set forth in the statute are for the provider of electronic or wire communications service (1) to the phone company) to install such a device under one of three circumstances for its own use:

1. To assist in operation, maintenance, and testing of their equipment,

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2. To record the fact that an electronic communication was initiated or completed in order to protect the provider, or other phone company, from fraudulent, unlawful, or abusive use of its service, or

3. Where the consent of the user of the service has been obtained.

Congressional intent is to protect electronic and other communications from interception. Any exception should be specifically stated within the body of the legislation and not just justified through implication. The general rule for interpreting a statute is to give it a meaning based on the plain language unless that meaning would lead to an absurd result. Section 18 U.S.C. §3121(b) indicates that a telephone provider would be exempt from the prohibition against the use of trap and trace devices if it initiated the device for its own use. As noted by the North Carolina Attorney General, the Congressional Record, March 22, 1990, at E-785 n. 7, indicates that Congressional intent was to limit this exception to telecommunication providers. Telecommunication users, such as Caller ID purchasers, remain under the general statutory prohibitions.

In creating 18 U.S.C. §3121 Congress relied upon a United States Supreme Court report which shed further light on this

The tremendous advances in telecommunications and computer technology have carried with them comparable technological advances and surveillance devices and techniques. Electronic hardware making it possible for over-zealous law enforcement agencies, industrial spies and private parties to intercept the personal or proprietary communication of others are readily available in the American market today.

The United States Congress and Administrative Law

Implicit in this language is a determination that the type of private party which the law sought to bar from active interception of

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communications initiated by other private citizens.

Based upon the foregoing, it is clear that the Caller service proposed by Southern Bell Telephone and Telegraph Company would run afoul of Sec. 934.31, Fla. Stat., which prohibits the use of trap and trace devices by private citizens in Florida. Section 934.31 provides that anyone found guilty of violating this section would be guilty of a misdemeanor. This view of Florida Statutes is consistent with reported Congressional action and is the view accepted by at least one appellate court in Pennsylvania, the Attorneys General of North Carolina and Kentucky, and the Kentucky Public Service Commission.¹² Absent legislative action in Florida addressing this issue, state law makes the current proposed use of Caller ID unlawful.

Even if it is determined that Caller ID does not entail illegal use of a trap and trace device, the utilization of the CTR display box entails the interception of an electronic communication as defined under sec. 934.02(12).

That the digital display of a phone number is an electronic communication is demonstrated by its nature as "signs, signals, writings, images, sounds, data, or intelligence of any nature transmitted in whole or in part..." by the phone system. Fla. Stat. (1989).

It is further demonstrated by reviewing what was specifically excluded from the definition of "electronic communication." Significantly, at sec. 934.02(12)(c), communications made through a tone-only paging device were excluded. Communications made through digital display devices are not mentioned in the exclusions. They were excluded by "electronic communications" and are highly regulated under federal and Florida law. A common example of a digital paging device is the display of a phone number. This is little different from the display one would find on a CTR display box. Consequently, under sec. 934.02(12), the

Florida's Attorney General opined that no state law prohibits wiretapping. He stated that state's law requires the consent of only one of the parties to the conversation. In the Matter of the Provision of Service by Southern Bell Telephone & Telegraph Company to the Chesapeake & Potomac Telephone Company of Maryland, Inc. (November 10, 1990). Accord, Southern Bell v. State of South Carolina (South of Common Pleas, South Carolina November 10, 1990).

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stat., the interception of the electronic communication (i.e., the display of the phone number) is prohibited.

An exception to this prohibition appears at sec. 934.03(2)(d):

(d) It is lawful under ss. 934.03-934.09 for a person to intercept a wire, oral, or electronic communication when all of the parties to the communication have given prior consent to such interception. (Emphasis supplied.)

Other exceptions for intercepting electronic communications are provided in sec. 934.03 (such as by reason of a court order or when done as part of a criminal investigation under limited circumstances), but they do not apply to the Caller ID issue. In the context of Caller ID, under sec. 934.03, the only way the electronic communication can be legally intercepted by the general use of the Caller ID display unit is with consent of "all parties to the communication."

The Caller ID technology automatically generates the display of the originating number between the first and second ring at the recipient's phone. (T 53, 817). A caller does nothing to generate this display. Thus consent of the caller for the interception of the electronic communication must be demonstrated either by express action or his choice not to take a particular action. It is submitted that only if per-call or per-line blocking is made available to every calling party in Florida at no charge, will the predicates for establishing "consent" of the calling party be established.

If a calling party does not "consent" to the interception of the electronic communication, she can engage the per-call block prior in conjunction with dialing a call, or demonstrate a similar refusal to consent by engaging per-line blocking. By dialing calls without engaging blocking, consent to the interception of the electronic communication will be tacitly demonstrated. Indeed, blocking appears to be essential to a demonstration that operation of Caller ID in Florida is not in violation of Chapter 934.

Caller ID violates Chapter 934, Florida Statutes, (1989) as the Florida legislature has carefully delineated the circumstances and conditions under which interception of wire and

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eral communications may be authorized. Specifically listed as one of its concerns was the effective protection of the privacy of such communications. Section 934.01(2), Fla. Stat. (1989). The Legislature also listed as a specific objective the safeguard of personal privacy. Section 934.01(2), Fla. Stat. (1989). Section 934.01(4), Fla. Stat. (1989). Moreover, the Florida Supreme Court has interpreted the legislative intent behind Chapter 934 as affording even broader protection to privacy than the Federal Act. State v. Tsavaris, 394 So.2d 418 (Fla. 1981).

Chapter 934, Fla. Stat. (1989), Florida's Wiretap Act, was enacted with a great concern for protection of one's privacy interests. It specifically prohibits the use of a "trap and trace device" without first obtaining a court order unless the device's use falls under three specific exceptions.

Such a device is defined by the Act as "a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or a device from which a wire or electronic communication was transmitted." Section 934.02(21), Fla. Stat. (1989). The Caller ID device translates an incoming electronic signal into the calling party's number and displays the number on the screen. As such, the device fits squarely within Florida's definition of a trap and trace device. Pennsylvania, for example, has a nearly identical provision, and that a state's Attorney General has conceded that Caller ID is a trap and trace device. Barasch v. Pennsylvania Public Utility Commission No. 2270 C.D., Commonwealth Court of Pennsylvania, 1988. Therefore, a court order is required, or the device must fit within one of the statutory exceptions before it may be used.

A court order is required for the installation or use of a trap and trace device unless:

- (1) the trap and trace device is used by a provider of electronic or wire communication service relative to "the operation, maintenance and testing of a wire or electronic communication service or to the protection of the rights or property of the provider or to the protection of users of that service from abuse of service or lawful use of service"; or

- (2) when the trap and trace device is used by a provider of electronic or wire

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communication service "[t]o record the fact that a wire or electronic communication was initiated or completed in order to protect the provider thereof, another provider furnishing service toward the completion of the wire communication, or user of the service, from fraudulent, unlawful, or abusive use of service."

The only other exception to the requirement for a court order applies where the user of the services has given consent. Sections 934.31(2)(a), (b), (c), Fla. Stat. (1989).

The pertinent exceptions listed above clearly apply only when a provider of electronic or wire communication service uses a trap and trace device for three specific purposes. Even if Southern Bell were to justify the device on the basis that it protects users of the service from abuse, unlawful use, or fraudulent or abusive use, the exceptions do not apply unless the trap and trace device is used by the provider, that is, Southern Bell. Caller ID impermissibly places the device into the hands of the general public, unlike, for example, Call Tracing, over which Southern Bell retains control and which information is appropriately communicated to law enforcement authorities. Under the present statutory scheme, the installation or use of Caller ID would first require a court order under Section 934.33, Fla. Stat. (1989).

Chapter 934 also addresses the use of "Pen Register" devices, and restricts the use of such a device without a court order in precisely the same manner as trap and trace devices. No court has yet decided how the Florida Constitution relates to trap and trace devices, but the Florida Supreme Court's recent treatment of the issue with regard to pen registers is applicable here.

STAFF ANALYSIS: Section 934.31, Florida Statutes, generally prohibits the use of a trap and trace device without first obtaining a court order. An exception exists for the provider of the communications service "where the consent of the user of the service has been obtained." §934.31(2)(c). Southern Bell, GTEFL, and United all assert that by subscribing to Caller ID service, the user has given the necessary consent to make Caller ID an exception to the general prohibition against trap and trace devices without a court order. However, this argument ignores the fact that the exception is granted only to the provider of

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the communications service, not the user. Caller ID cannot, therefore, be offered unless an exception can be found for users of the communication service.

In addition, Caller ID appears to be an unlawful interception of an electronic communication. An electronic communication is defined in Section 934.02(12), Florida Statutes, as "any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects intrastate, interstate, or foreign commerce."

Interception of wire, oral, or electronic communications is prohibited by Section 934.03, Florida Statutes. However, an exception to this general prohibition appears at Section 934.03(2)(d), which makes it lawful to intercept a wire, oral, or electronic communication "when all of the parties to the communication have given prior consent to such interception." This exception applies to any person. The question that remains, then, is how to obtain consent to such interception from both parties to the communication.

The only meaningful method to obtain the consent of the calling party is through the provision of per-call blocking at no charge. With Caller ID, the display of the calling party's telephone number will occur automatically. To demonstrate consent (or lack thereof), it is necessary that the calling party have the opportunity to either take an express action (activate the blocking and not consent) or choose not to block (and impliedly consent). By dialing calls without activating the blocking feature, consent of the calling party is fairly demonstrated. The called party consents when he subscribes to Caller ID service.

It is staff's opinion that although Caller ID runs afoul of the general statutory prohibition against trap and trace devices, it can be legally offered if consent is obtained in both directions. At a minimum, free per-call blocking is required to allow for meaningful demonstration of consent. Without such a provision, staff does not believe the service can be legally offered under Chapter 934 of the Florida Statutes. Staff does not believe there is any other legal impediment to authorizing Caller ID service in Florida.

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ISSUE 4: [LEGAL] Does Caller ID violate Florida's Constitution?

RECOMMENDATION: No, Caller ID does not violate the Florida Constitution because the Commission's regulatory role in reviewing this tariff does not constitute state action.

POSITION OF PARTIES

SOUTHERN BELL: Several parties have raised the concern that Caller ID may violate Article 1, Section 23 of the Florida Constitution which states in pertinent part:

Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein...

(emphasis added) In order to violate a person's right of privacy under the Florida Constitution, there must be a "governmental intrusion" or "state action that infringes on privacy rights". Rasmussen v. South Florida Blood Service, 500 So.2d, 533, 535 (Fla. 1987). See also Shaktman v. State, 533 So.2d 148 (Fla. 1989). In Shaktman, the Supreme Court held that "privacy interests of Article 1, Section 23 are implicated when the government gathers telephone numbers through the use of a pen register." Id. at p. 151 (emphasis added). Thus, actions by private individuals and entities are clearly not subject to constitutional privacy restrictions. Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974); Carlin Communications, Inc. v. Southern Bell Tel. & Tel. Co., 802 F2d 1352 (11th Cir. 1986); Shelley v. Kramer 334 US 1 (1948); Evans v. Abney, 396 U.S. 435, 445 (1970); Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 171-179 (1972). Southern Bell v. Hamm, *supra*, at p. 14.

Southern Bell is a private entity with no connection to the state, other than its regulation by the Commission. The Commission did not suggest, much less require, the implementation of Caller ID service. Moreover, the Commission's involvement in Caller ID has been limited to the routine approval process that Southern Bell must follow regarding the offering of any new service. Section 364.05, Florida Statutes. Sitting as a quasi-judicial, legislative entity under the Florida Administrative Code, the Commission's function has been to weigh the evidence and issue its order, based on a determination of the public interest. As shown below, this limited action by the Commission does not constitute sufficient state action so as to invoke the

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privacy provision of the Florida Constitution.

The question of whether or not the Commission's approval of a tariff constituted "state action", which is required to invoke the Fourteenth Amendment of the U.S. Constitution, was decided in Carlin Communications, Inc. v. Southern Bell, *supra*. The plaintiff in Carlin alleged that the Commission's approval of the Southern Bell "976" tariff constituted "state action". Rejecting the plaintiff's argument, the Eleventh Circuit Court of Appeals noted that:

The only reasonable inference that could be drawn from the record in the case is that [any] operative decisions...were made by Southern Bell and not the Public Service Commission, and therefore...[they were] not fairly attributable to the state.

Id. at pp. 1361-1362.

The leading United States Supreme Court case on the issue of "state action", in the context of the regulation of utilities, is Jackson v. Metropolitan Edison Co., *supra*. Jackson involved the termination of a customer's electric service due to an alleged delinquency in payment. The customer claimed that the tariff filed with the Commission that permitted the termination of service was "state action" depriving her of property without due process of law. In rejecting the customer's claim, the United States Supreme Court found no "state action" even though the utility was "subject to extensive regulation by the state commission". Id. at p. 419. As Justice Rehnquist explained:

The mere fact that a business is subject to state regulation does not by itself convert its action into that of the State for purposes of the fourteenth amendment. [cite omitted] Nor does the fact that the regulation is extensive and detailed, as in the case of most public utilities, do so.

Id. at p. 350. The Supreme Court in Jackson also rejected the grant of monopoly powers and the public function performed by utilities as grounds for finding the state action necessary to invoke the constitution. Id. at p. 352-54.

The issue of whether the approval of Southern Bell's Caller

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ID tariff constituted state action was directly addressed and decided in Southern Bell v. Hamm, supra. The South Carolina Court held that the South Carolina Commission's involvement in considering the Caller ID tariff did not constitute state action. The Court explained:

It is clear to this court that the PSC's only involvement in Southern Bell's proposed offering of Caller ID service was its sitting as a quasijudicial/legislative entity under the APA. Such conduct simply does not rise to the necessary level of involvement to result in action by the State.

Id. at p. 13. The Pennsylvania Court, in Barasch v. Pennsylvania PUC, supra, is the only court to have held that approval of Caller ID constitutes state action.¹³ The Court reasoned that the state action arose because of (i) the Commission's "extensive investigatory hearings", (ii) its order for limited blocking to certain individuals absent a request by the parties to do so, and (iii) its order to require a certification process to be implemented by law enforcement. Id. at p. 87. The Court's rationale is contrary to the U.S. Court of Appeals decision in Carlin, supra. As explained above, the Carlin Court specifically held that an investigation of the tariff by the Commission did not amount to state action. Id. at 1359. Carlin also held that where the Commission supported certain revisions to the "976" tariff that such action did not arise to coercion on the part of the Commission because the "operative deviations...as to the inclusion of the language in the tariff...were made by Southern Bell." Id. at 1360-1361. Where, as here, a private utility such as Southern Bell voluntarily offers a service, such as Caller ID, that service does not involve a governmental intrusion simply because it is offered pursuant to a tariff approved by the Commission.

Even if there were some reasonable expectation of privacy in keeping the telephone number from which the call is placed confidential, which there is not, and even if Southern Bell's Caller ID service did involve the "state action" required to invoke the application of constitutional limitations, which, as

¹³Two of the five judges on the Barasch court dissented from this holding.

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shown above, it does not, under the balancing test established by the United States Supreme Court, the scales are still tipped convincingly in favor of the constitutionality of Caller ID.

It has been suggested by some that the calling party may have an interest in anonymity. On the other hand, the called party certainly has an interest in not receiving threatening, harassing, fraudulent, unlawful or abusive calls and in further knowing the telephone number associated with the party seeking to enter into the home of the called party. The only possible interest of the calling party is that his telephone number not be displayed. That interest is already substantially reduced by the fact that all Southern Bell customers are required by law and contract to identify themselves to the called party, pursuant to G.S.S.T. A2.2.2A, which states: "The calling party shall establish his identity in the course of any communication as often as may be necessary".

Caller ID service protects the calling party's right to be left alone. Just as a "peephole" allows a person to know who is knocking at his door, Caller ID service alerts the called party to the telephone number of the calling party. In addition, the caller is not a passive or unwilling individual in this case. He voluntarily conveys his telephone number, as well as the telephone numbers to which he is placing a call, into the telephone company system. If he wishes to keep his telephone number a secret, he has options available to do so.¹⁴ Thus, the substantial interests that would be served by Caller ID greatly outweigh any interests of the calling party in keeping his number secret from [the] person whom he chooses to call.

The only case from Florida discussing the constitutional issue of the privacy of a telephone number is Shaktman v. State, supra. Contrary to the discussion of Shaktman by the Florida Medical Association in its Post-Hearing Legal Memorandum, the Florida Supreme Court in Shaktman clearly held that the assertion of a constitutional right of privacy required "state action" by the "government" gathering telephone numbers through the use of a pen register. The Court also reasoned that when an individual transmits the telephone number associated with his telephone service that he presumably has no intention of communicating it to an unknown "third party". The Supreme Court explained:

¹⁴See Issue 8, infra.

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The telephone numbers an individual dials or otherwise transmits represent personal information which, in most instances, the individual has no intention of communicating to a third party.

Id. at p. 151. The transmittal of a telephone number to a called party, however, does not constitute the interception of a communication by an unknown "third party" such as the government. Rather, the transmission of the calling party's telephone number through Caller ID is an intentional communication to a known called party. Thus, Shaktman in no way invalidates the use of Caller ID.

GTEFL: Caller ID does not violate Florida's Constitution. Consideration of the privacy issues that have been linked with Caller ID may prompt an examination of Article I, §23 of the Florida Constitution. This section states, in relevant part, that: "Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein." The language of this section is unambiguous; it is concerned only with governmental intrusions into one's privacy. Caller ID, however, is activated upon the request of the individual subscriber and is utilized as that person chooses. Thus, the service does not violate Florida's constitutional privacy restrictions on government invasions of privacy. On the contrary, Caller ID promotes the "right to be let alone" because it allows the consumer to accept or reject calls as he chooses.

Even if Caller ID did implicate Article I, §23, one cannot presume that any anonymity interest of the calling party supersedes the privacy interest of the called party. As set forth more fully in the following responses, a subscriber is, at various times, both a called and calling party. This factor must be considered in devising a Caller ID policy that best serves the public interest. Above all, it is essential to remember that the existence of anonymity concerns in no way compels the conclusion that the service should not be offered.

UNITED: Article I, Section 23, of the Florida Constitution (1968) states:

Right to Privacy.--Every natural person has the right to be let alone and free from governmental intrusion into his private life

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except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.¹⁵

This provision of Florida's Constitution protects natural persons against governmental intrusions into their private lines. Caller ID is not a "governmental intrusion."

This Section of the Florida Constitution was recently examined in the case of Shaktman v. State, 553 So.2d 148 (Fla. 1989). The Shaktman case involved the use of a pen register without the consent of the user of the service. The law enforcement agency involved followed the provisions of Sections 934.32 and 934.33, Florida Statutes, and obtained a court order prior to installing the pen register. The use of the pen register was upheld by the Supreme Court in the Shaktman case; however, in its decision the Florida Supreme Court stated: "We agree with the Third District that the privacy interests of article I, section 23 are implicated when the government gathers telephone numbers through the use of a pen register." (emphasis added, at page 151)

Caller ID is not a governmental intrusion or the government gathering telephone numbers. Caller ID is a service offered by private businesses for its customers.

The fact that the private business involved is a regulated utility does not make the service a governmental intrusion or a state action. The United States Supreme Court in the case of Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974), stated:

The mere fact that a business is subject to state regulation does not by itself convert its action into that of the state for purposes of the fourteenth Amendment. Nor does the fact that regulation is extensive and detailed, as in the case of most public utilities, do so. (at page 350)

Although the finding quoted above from the Jackson case deals with state action under the fourteenth amendment of the

¹⁵Section 23 was added to the Constitution in 1980.

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U.S. Constitution, the rationale is transferable to the case at issue in the absence of any state decisions on the issue. The mere approval of a tariff of a private, regulated business by the FPSC allowing the offering of a new service, does not rise to the level of state action, nor does the use of that service become a "governmental intrusion" within the meaning of the Shaktman case or Article I, Section 23 of the Constitution of the State of Florida.

Another federal case involving a Florida telephone company tariff relied upon and reached the same conclusion as the Jackson case. In Carlin v. Southern Bell, 802 F.2d 1352 (11 Cir. 1986), the Eleventh Circuit Court of Appeals found that: "As noted above, the mere approval by the PSC of a business practice of the regulated utility does not 'transmute a practice initiated by the utility' into state action. Jackson, 419 U.S. at 345..." (at page 1361)

Caller ID is a service initiated by local telephone companies. It is not a service that the state required the local telephone companies to offer. Caller ID is a service offered by private businesses which happen to be regulated by the State of Florida. That regulation does not constitute state action which would raise Caller ID to the level of a "governmental intrusion" prohibited by Article I, Section 23 of the Constitution of the State of Florida.

Caller ID does not violate the Constitution of the State of Florida.

OPC AND FCADY: Not only does Caller ID without free blocking violate the trap and trace statute, but it also violates Article I, section 23 of the Florida Constitution. Article I, section 23 of the Florida Constitution states that "every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein..." This Commission's action on Southern Bell's Caller ID tariff constitutes state action.

This tariff filing is unlike the tariff filings routinely considered by the Commission because it was the subject of a lengthy evidentiary hearing in Tallahassee and public hearings in Jacksonville, Orlando, and Miami. And unlike routine tariff filings, prior Commission orders issued in this docket required detailed changes to the tariff by Southern Bell to receive Commission approval.

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Southern Bell filed its tariff on September 29, 1989. The first Commission order on the tariff filing -- order no. 22397 issued January 10, 1990 (90 FPSC 1:127) -- denied the tariff filing and set forth a number of requirements Southern Bell would have to satisfy to gain Commission approval. Those included a requirement to include a prohibition in the tariff against the sale of nonpublished, nonlisted, or "no sales solicitation" numbers. It also directed the company to file a separate tariff providing for optional blocking.

Commission order no. 22505 issued February 7, 1990 (90 FPSC 2:69) partially reconsidered order no. 22397 on the Commission's own motion. The order deferred the decision on the revised tariff Southern Bell filed pursuant to order no. 22397.

Then, Commission order no. 22704 issued March 19, 1990 (FPSC 3:264) required additional changes to the Southern Bell tariff filing. Order 22704 required Southern Bell to offer optional blocking of Caller ID service and set forth detailed eligibility criteria Southern Bell would have to include in its tariff filing if it were to gain Commission approval. Those criteria were:

1. The customer (agency or individual) should establish that its business is law enforcement or one in 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.

The Commission continued to defer other decisions about the filing.

Finally, after the intervention of numerous parties and formal requests for public and evidentiary hearings, Commission

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order no. 23370 issued August 20, 1990 (FPSC 8:292) granted those requests and held both public and evidentiary hearings.

Routine approval of a tariff filed by a utility would normally be insufficient involvement by the Commission to find state action. Jackson v. Metropolitan Edison Company, 419 US 345 (1974); Carlin Communication, Inc., v. Southern Bell Telephone and Telegraph Co., 802 F.2d 1352 (11th Cir. 1986). But nothing about the history of this case shows routine approval of a company tariff. Instead, the Commission required detailed changes to the tariff filed by Southern Bell. It required both an evidentiary hearing in Tallahassee and a series of public hearings around the state. These types of actions are practically never taken by the Commission on tariff filings.

The detailed involvement of the Commission in this tariff filing amounts to state action. Essentially analogous actions taken by the Pennsylvania Public Service Commission on a Caller ID tariff filing constituted state action. Barasch v. Pennsylvania Public Utilities Commission, 576 A.2d 79 (Pa. Commw. 1990).¹⁶

The provisions of Article I, section 23 of Florida's Constitution apply when there is state action. The Florida Supreme Court applied this constitutional right to privacy to telephone numbers in the case of Shaktman v. State, 553 So.2d 148 (Fla. 1989). In that case the court stated that "a fundamental aspect of personhood's integrity is the power to control what we shall reveal about our intimate selves, to whom, and for what purpose." Shaktman at 150-151. The court then further stated that "the telephone numbers an individual dials or otherwise transmits represent personal information which, in most instances, the individual has no intention of communicating to a third party. This personal expectation is not defeated by the fact that the telephone company has that information." Shaktman at 151. Southern Bell would sell that information to the called party without the caller's consent.

Without free blocking, Southern Bell's Caller ID tariff violates that expectation of privacy already found to exist by the Florida Supreme Court. Thus, as proposed by Southern Bell,

¹⁶The Pennsylvania Supreme Court accepted jurisdiction to review this decision. Briefs will be filed by the parties in February and March of 1991.

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its Caller ID service violated Florida's Constitution.

ATTORNEY GENERAL, OSP, FDLE, DGS AND FPCA: It is well settled that private action no matter how discriminatory or wrongful, is immune from the restrictions of the Fourteenth Amendment. Shelley v. Kraemer, 334 U.S. 1, (1948). Private action is similarly immune from the restrictions of Art. I, Sec. 23 of the State Constitution, as the section speaks specifically to freedom from "governmental intrusion". Protection from private activity was specially considered and rejected by the Ethics, Privacy and Elections Committee of the 1977 Constitution Revision Commission. Dore, Of Rights Lost and Gained 6 FSU L.Rev. 610, 650-651 (1978). Therefore, the state action analysis for federal constitutional rights and the state right to privacy should be the same. It is true that Shaktman v. State, 553 So.2d 148 (Fla. 1989) suggests that under the Florida Constitution some privacy interest against governmental intrusion exists in out-dialed numbers. Case law from the United States Supreme Court and the federal Eleventh Circuit Court of Appeals indicates, however, that the degree of government participation involved in a PSC tariff review would not amount to "state action" required to find a constitutional violation.

The case of Carlin Communication, Inc. v. Southern Bell Telephone and Telegraph Company, 802 F.2d 1352 (11th Cir. 1986) speaks directly to this issue. Carlin involved Southern Bell's "Dial-It" service. With "Dial-It," a subscriber would provide a prerecorded message to Southern Bell, and telephone customers could, for a specified charge, dial a certain number and hear the message. Carlin's messages were sexually suggestive. When the company filed its tariff for "Dial-It" it initially restricted only illegal messages. But at the beginning of the public hearing on the matter, the company's representative read a proposed amendment which would also exclude "any message that implicitly or explicitly invites, describes, simulates, excites, arouses or otherwise refers to sexual conduct, or which contains sexual innuendo which arouses or attempts to arouse sexual desire." Id. at 1355. The tariff, with the amendment, was approved. When two of Carlin's proposed messages were rejected by Southern Bell, Carlin sued, alleging violations of the First and Fourteenth Amendments. The district court granted summary judgment for Southern Bell and the Eleventh Circuit affirmed.

Given this procedural posture, the Court scrutinized the record to determine whether there could be a genuine issue of material fact as to the question of state action. Carlin's first

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argument was that the Public Service Commission, by conducting a study and public hearing and in issuing an order strongly approving the tariff language "placed the 'imprimatur' of the state upon that language." *Id.* at 1358. The Court noted that the study of the dial-it proposal was standard procedure for tariff approval rather than an independent initiative, as demonstrated by "uncontroverted evidence" in the record as to the Commission's routine procedure.

Carlin also claimed that comments made by one Commissioner expressing concern over the possibility of selling "pornographic phone calls" and calling, over advice of Commission counsel, for public hearings, constitutes coercion of Southern Bell by the Commission. However, the Court found that the record viewed as a whole did not support such a reading. It also found that neither the language of the order, strongly favorable to the amendment, nor the favorable comments of various Commissioners, after the amendment was proposed, evidenced coercion. Apart from the fact that the remarks were made after the amendment had already been proposed, there was clear and uncontroverted evidence in the record that Southern Bell was motivated solely by a desire to protect its corporate image.

In the Caller ID context, the South Carolina Court of Common Pleas, using the foregoing analysis, concluded that no state action was present in that state's Public Service Commission tariff approval process. Southern Bell v. Hamm, Case No. 90-CP-40-2686 (Court of Common Pleas, November 20, 1990), slip op. at 13.

While the majority of cases suggest that a public service commission's efforts concerning the approval of a filed tariff do not constitute "state action" of a constitutional level, the Barasch court reached a different conclusion. It distinguished the role assumed by the Pennsylvania Public Utility Commission in considering Bell of Pennsylvania's request to implement Caller ID from that normally take by regulatory commissions. In the Barasch court's opinion, the Commission moved from mere regulation of private enterprise and became involved in "state action" by reason of the extent and nature of its activities. Obviously, such a determination would have to be made on a case-by-case basis, after a review of the role taken by a particular regulatory commission in a matter before it.

It must be noted that the Florida Public Service Commission's involvement in the pending matter has been

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extensive. The fact that parties who normally do not appear before the Florida PSC have intervened in this Commission's consideration of Southern Bell's Caller ID tariff has produced extraordinary response and effort by this Commission. It could be argued that this Commission's efforts in the pending matter constitute "state action" rather than mere regulation.

However, the United States Supreme Court precedent and most other cases demonstrate that showing state action for purposes of proving deprivation of a constitutional right is an extremely difficult task. Given this precedent, it is the position of the parties joined herein that this Commission's role normally would not constitute "state action." However, since the process engaged in by this Commission in considering Southern Bell's Caller ID tariff already suggests an out of the ordinary response to the phone company tariff, a factual basis for finding "state action" may be found to exist. Accordingly, upon the conclusion of this matter the Commission's efforts will be subject to intense scrutiny and review by the parties joined herein to determine if they have exceeded mere regulation and have, in fact, become "state action."

FMA: In 1989, the Florida Supreme Court determined that individuals have a constitutional right of privacy regarding their telephone numbers. Shaktman v. State 553 So.2d 148 (Fla. 1989). Though the device implicated in that case was a pen register, the principles clearly apply in this matter.

The Shaktman petitioners were charged with certain criminal violations relating to illegal gambling. As part of its surveillance activity, the state petitioned the circuit court for a lease line for pen register operation on several telephones within a suspect's apartment. Eventually, the petitioners were formally charged. As part of their defense, the petitioners argued that Article I, Section 23 of the Florida Constitution, the Right of Privacy provision, required that evidence obtained through use of the pen register devices was inadmissible. The petitioners were ultimately convicted and the case made its way to the Florida Supreme Court.

Apparently, a pen register is useful for determining what telephone number an individual dials, rather than, in the case of Caller ID, identifying the dialer's telephone number. Nevertheless, both pen registers and trap and trace devices are prohibited in precisely the same way without a court order, and the same three exceptions apply to the use of each device without

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a court order.

The Shaktman defendants' convictions were ultimately upheld, but only because law enforcement complied with significant procedural requirements relating to the use of pen registers. Caller ID threatens to abolish the clear procedural requisites for the use of trap and trace devices. This, most assuredly, would violate the Constitution of the State of Florida.

The Florida Supreme Court recognized that "the people of Florida unequivocally declared for themselves a strong, clear, free standing, and express right of privacy as a constitutional fundamental right." Id. at 150. That right, the Court continued, "demands that individuals be free from uninvited observation...unless the intrusion is warranted by the necessity of a compelling state interest." Id. The court concluded that Florida's constitutional right of privacy provision is implicated when the government gathers telephone numbers with a pen register.

The telephone numbers an individual dials or otherwise transmits represents personal information which, in most instances, the individual has no intention of communicating to a third party. This personal expectation is not defeated by the fact that the telephone company has that information. Id. at 151.

That the Court intended for each individual to control his or her privacy is solidified by the Court's pronouncement that "the parameters of an individual's privacy can be dictated only by that individual." Id. Caller ID eviscerates callers' constitutional right to privacy by depriving them the control which the Florida Supreme Court requires.

STAFF ANALYSIS: Caller ID does not violate Article I, Section 23 of the Florida Constitution. It is a well-settled principle of the law that in order to violate a constitutional right, there must be either a governmental intrusion of or state action that infringes upon a constitutional right. None of the parties dispute this fundamental foundation of constitutional jurisprudence. A long line of case law is cited by the parties as support for this proposition.

It is staff's position that the necessary state action is

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not present when the Commission is acting upon a tariff filing in accordance with its statutory authority. OPC attempts to impute state action here because the Commission has held a hearing. The Attorney General hints at a similar conclusion, although not coming down so strongly in favor of finding state action. FMA simply concludes that the Florida Constitution is violated by Caller ID.

The arguments put forth by OPC and alluded to by the Attorney General, if accepted, would mean that by providing due process and an opportunity to be heard, in accordance with Chapter 120, the Commission is in danger of depriving persons of their constitutional rights. In contrast, by not affording the parties procedural due process, no constitutional violation would occur. Such a notion should be soundly rejected by the Commission. Even though the Commission's involvement in this docket has been "substantial," state action is simply not present. Given the absence of state action, there is no violation of Florida's Constitution.

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ISSUE 5: What are the benefits and detriments to Florida's consumers of Caller ID services?

RECOMMENDATION: Florida's consumers can expect the following benefits from Caller ID services: faster service from companies they do business with frequently; fewer annoying and/or harassing telephone calls; better emergency service in areas where Caller ID is available, but enhanced 9-1-1 has not yet been deployed; and better management and privacy for incoming calls.

The following must be considered as detriments to Caller ID service: greater dissemination of telephone numbers to marketing firms specializing in unsolicited sales calls; and less anonymity and/or privacy than previously afforded when placing calls for persons whose physical safety may be in jeopardy if calling party information is released.

If unlimited per-call blocking is mandated by this Commission, the benefits could be significantly reduced as telephone abusers elect to use the blocking mechanism. The detriments would also be significantly reduced as parties with legitimate needs for privacy and anonymity when placing calls would not be compromised.

POSITION OF PARTIES

SOUTHERN BELL: Caller ID will benefit the Florida public in general and law enforcement in particular by reducing the number of fraudulent, unlawful, harassing and obscene telephone calls by allowing a victim of these calls to immediately report to law enforcement the specifics of the crime and the number from which the call originated.

In addition, Caller ID should benefit even those customers who do not purchase the service, and also assist local municipalities in quickly responding to emergencies.

Caller ID will also benefit business customers. For instance, Caller ID will allow a business customer to provide a better method of securing business data in computers. Computers may be programmed to accept calls only from authorized telephone numbers which are delivered by Caller ID. In addition, Caller ID will help deter computer hackers from calling computers because the computer would record the telephone number of the calling party. Caller ID will also assist Southern Bell's business customers by allowing them to identify the calling party, which

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should help to prevent fraud and theft.

Caller ID will also benefit business customers by allowing the business customer to immediately access its records when a calling party's number is displayed in the business's computer. Such a benefit will dramatically increase the speed and efficiency of business transactions between the consumer and the business.

STAFF: The benefits of Caller ID and related services are numerous. The service can provide increased privacy protection to residential subscribers, improved law enforcement and public safety capabilities, and opportunities for improved productivity and effectiveness to business customers.

Concerns with respect to Caller ID service has been focused primarily on the loss of anonymity of the calling party. Some parties have expressed concern that Caller ID will compromise the security of police undercover agents. Concerns have also been expressed by some social service organizations (such as "hot lines") that the confidentiality of callers will be compromised, and by battered spouse organizations that the location of the battered spouse will be revealed through Caller ID.

UNITED: Discouragement of obscene, annoying and harassing calls, increased security and privacy for persons subscribing to the Caller ID feature, increased security in access to data bases, storage of numbers of calls missed so they can be returned later, and the ability of hearing impaired persons to distinguish calls which should be answered with a Telecommunications Device for Deaf (TDD) persons from those calls which should be answered with an automated recording or announcement device.

Other benefits included reduction of bomb threats and false fire alarms, reduction of prank calls, verification of originating point of calls from persons under house arrest or on parole. Caller ID will also allow businesses to be more responsive to customers and reduce the occurrence of fraudulent orders received by telephone.

The primary detriments disclosed at the hearing include the reduction of privacy of the calling party, revealing the telephone numbers of undercover law enforcement officers and informants, revealing the telephone numbers of persons calling "hot lines", and revealing the telephone numbers of persons

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calling abusive spouses in circumstances involving domestic violence.

OPC, PCADV: Caller ID is one of a number of services using the new signalling system 7 technology that embodies significant potential to enhance subscribers' call management capabilities.

Caller ID service threatens the physical safety of a number of groups of people, such as battered spouses and undercover law enforcement personnel.

ATTORNEY GENERAL, OSP, FDLE, FMA, FECA: Caller ID affords few benefits unavailable from other sources, and carries the potential for extreme detriment to law enforcement officers, potential victims of crime, and existing telephone customers.

DGS: Research is currently underway to utilize Caller ID within the Department of State, Division of Corporations, the Department of Insurance and the Department of Education, teacher certification program. Other suggested uses include determining the status of applications, certificates, drivers' licenses and legislative bills. Overall, DGS approaches this technology very positively and anticipates it will serve good purposes.

Without proper implementation, Caller ID will impose detrimental impacts upon telephone users. In instances where a SUNCOM user deems it necessary to protect the outgoing number, for any of a variety of reasons that user incurs a cost. All alternatives to blocking involve time; some also cost money. In extreme cases, failure to use an alternative could jeopardize the caller's life.

A more immediate and tangible detrimental effect will impact DGS during its present deployment of the initial phase of its Statewide 800 Megahertz Trunked Radio System. The telephone industry has not even considered the existence of this System in the formulation of its policy. It is crucial that this System operate uniformly throughout the state but there is inconsistency even within the Pilot Project.

STAFF ANALYSIS: The estimated benefits and detriments to Florida consumers from Caller ID received a wide range of treatment from the parties. Some parties addressed Caller ID both as proposed by Southern Bell and with a universal per-call blocking option. The following discussion, unless otherwise stated, deals with

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Caller ID service as currently proposed by Southern Bell, with no provision for universal per-call blocking.

Southern Bell witness Sims listed several potential benefits for residences, businesses, and the general public. Among the benefits cited on the residential side were: customer control of incoming calls, discouragement of obscene/harassing calls, and assistance for speech/hearing impaired customers. For businesses, witness Sims cited personalizing business services, more efficient delivery services, and reduced fraud as benefits to commercial customers. In the general areas, reduced false fire alarms and bomb threats, reduced prank calls to public safety agencies, and the ability for law enforcement personnel to keep track of parolees were also listed as benefits. (TR 55-59)

Witness Sims did acknowledge that a "small segment of subscribers such as law enforcement and domestic violence intervention agencies" could experience problems with Caller ID. However, she also stated that solutions presented by Southern Bell to date adequately meet the needs of those agencies. (TR 59)

GTEFL's witness Elseewi conducted a national survey concerning Caller ID and similar services. This study concluded that consumers believe that Caller ID will protect their privacy and give them "peace of mind." (TR 379) Privacy concerns were also listed as a detriment, but the overall result was a desire for the service for most of the respondents. (TR 367-371, 378)

United's witness Jones concurred with Southern Bell's testimony as to the benefits of Caller ID services. (TR 492, United Brief p. 12) However, United advocated the use of per-call blocking to alleviate the following detriments: reduction of privacy of the calling party, revealing the telephone numbers of undercover officers and informants, revealing the numbers of "hot line" callers, and revealing the numbers of persons calling abusive spouses in circumstances involving domestic violence. (United Brief, pp. 12-13)

OPC provided several witnesses who expounded on the detriments of Caller ID. OPC's witnesses stressed that the detriments to Caller ID could not be overcome unless universal per-call blocking were made available. (TR 596, 956, 987)

FDLE's witness Tudor only addressed the potential benefits and detriments from a law enforcement perspective. Witness Tudor

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was skeptical of Southern Bell's statistics on harassing calls, but did state that a perceived drop in those types of calls "might" occur. (EXH 28, pp. 4-6, TR 817) He also stated that law enforcement may be able to utilize Caller ID to assist in some aspects of undercover operations, "at least for a limited time." (TR 817)

Detriments of Caller ID included use of the service by violent criminals to screen or "set up" calls to police officers, and the use of Caller ID by private citizens to conduct their own investigations and/or intervention efforts. (TR 819) Witness Tudor concluded by claiming that the concerns to law enforcement were not outweighed by the potential benefits. (TR 820)

DGS witness Mayne looked at Caller ID from the perspective of state governmental agencies. Witness Mayne characterized the potential benefits of Caller ID to state agencies as "vast," minimizing the amount of time required when "seeking the status of an application, certificate, driver's license, or a legislative bill." Witness Mayne qualified the endorsement by stating that considerable effort towards automated applications would be necessary to realize the benefits. (TR 1037)

The detriments of unblocked Caller ID posed serious concerns to witness Mayne. Several agencies of state government, including the Office of the Auditor General, Office of the Comptroller, Department of Legal Affairs, and various law enforcement divisions could have their investigations hampered or be put in life-threatening situations should Caller ID be implemented. (TR 1037)

The evidence presented in this case provided for substantial agreement on the benefits and detriments of Caller ID service. The disagreements hovered around the level of these benefits and detriments, and the degree to which they could be alleviated with various alternatives.

OPC's witness Cooper challenged statistics in favor of the service and provided his own that showed that privacy concerns were a major factor in the perceptions of Caller ID services. (TR 606) GTEFL's witness Elsewi countered with an equivalent challenge to witness Cooper's statistics and explained that the way a survey is conducted is as important as the information gained from it. (TR 384) The results of both surveys, mostly conducted in other states than Florida, could not empirically prove that either consumers were or were not concerned with

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Caller ID to the level where they would support or oppose per-call blocking.

Staff believes the record shows that the potential benefits and detriments of Caller ID are clear. It should reduce obscene and/or harassing calls. (Sims TR 55-57) It should provide faster service to some customers from businesses they deal with regularly. (Sims TR 57-59) It should provide better emergency service in non E-9-1-1 service areas. (Sims TR 59) It should provide the call recipient with more information with which to make a decision on incoming calls. (Sims TR 56) It should also provide added security and privacy to the call recipient. (Sims TR 56)

Staff believes the other side of the Caller ID story is also clear. Caller ID will allow for the increased dissemination of customers' telephone numbers to businesses for databases, solicitations, etc. It will also severely intrude upon the calling party's ability to make anonymous telephone calls. Staff considers this a detriment only when calling-party anonymity is a legitimate requirement of a conversation.

What is not clear is the level of these aforementioned benefits and detriments. The evidence presented seemed to challenge that the erosion of benefits should per-call blocking be approved may never happen. (Cooper TR 596) There was also evidence that the perceived benefits of Caller ID may not materialize at the levels expected. (Tudor TR 817) What was largely unchallenged was the supposition that most of the detriments of Caller ID could be avoided should per-call blocking be approved. (Cooper TR 595)

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ISSUE 6: Are there any existing CLASS services (e.g., Call Trace, Call Return, Call Block, etc.) that have similar functions and/or benefits as Caller ID; if so, what are their detriments? Is their rate structure appropriate?

RECOMMENDATION: No CLASS services currently offered perform the same functions as Caller ID. Call Trace, however, does perform a similar function: it sends the incoming number to the Company's security department for further action if requested by the customer.

The combination of Call Trace, Call Return, and Call Block, if used in conjunction, provide many, but not all, of the benefits of Caller ID. No CLASS service other than Caller ID provides information to the called party about the caller's possible identity before the call is answered.

However, because Call Trace has a peripherally similar function/benefit to Caller ID service where abusive and/or annoying calls are concerned at a lower price, it has the potential for a high degree of public utility and benefit. Therefore, its rate structure should promote its use as a substitute for the more expensive Caller ID service for customers who are solely concerned with abusive calls. The Company should file a tariff amending the rate structure of Call Trace to one that is available to all consumers, without presubscription, for a per-activation charge. The tariff filing should be submitted within 60 days following the final order in this docket.

POSITION OF PARTIES

SOUTHERN BELL: Caller ID offers unique functions and benefits available from no other services including such existing CLASS services as Call Tracing, Call Return and Call Block.

GTEFL: No existing CLASS service is able to function as an effective substitute for Caller ID. While certain other services offer similar types of advantages, none can provide the set of benefits specific to Caller ID. Perhaps most importantly, no other service can provide the unrestricted call screening function that is the primary distinctive feature of Caller ID.

UNITED: No other existing or proposed CLASSSM services offer functions or benefits similar to Caller ID. The closest proposed service is Call Trace (or Call Tracing in United's proposed tariff), but it does not provide calling party telephone numbers

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to the called party.

OPC, FCADV: There is considerable overlap in the functionality of the various CLASS services. The overlap is important because it can be used to help the public to manage the use of, or reduce the abuse of, the telephone network. The availability of universal, free, per-call and per-line blocking, along with the offering of Call Trace at a price of no more than \$1 per use, allows the public to achieve greatly enhanced functionalities but without the major cost Caller ID would impose without free per-call blocking.

ATTORNEY GENERAL, OSP, FDLE, FMA, FECA: We join the position of the Public Counsel that call trace at a reasonable price will allow the public to achieve the essential benefits of Caller ID without the major cost or impact of Caller ID.

DGS: There is no other CLASS service which delivers the calling number to the called party so no other CLASS service has the same benefits and detriments. If the purpose of Call Trace is to deter obscene and harassing calls, it should logically be offered as broadly as possible: uniformly to all subscribers at a reasonable per-trace fee. This form of delivery would provide the peace of mind or security which accompanies flat rate, presubscription Call Trace, but would alleviate the burden of anticipating the first obscene call.

STAFF ANALYSIS: There are three CLASS features that have been linked to Caller ID as having the same or similar functions and benefits, without the detriments Caller ID may propose. The features are Call Return, Call Block, and Call Trace. (Sims TR 67) These three services were the only ones identified by the parties as possible "substitutes" for Caller ID.

Call Return stores the customer's last incoming number in that customer's local serving office and allows the customer to call that number with a three digit code. Call Block allows the customer to input up to six numbers or the last number received so those numbers will no longer be able to call the customer. Call trace allows the customer to input a code that sends the last incoming number to the LEC's security department. None of these features allow the customer to have access to the incoming number. (Sims TR 67-68)

The LECs agreed in their positions that none of these other services perform the same or a similar function as Caller ID.

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Southern Bell and United agreed that their benefits were also not similar, but GTEFL recognized that Call Return, Call Trace, and/or Call Block may provide "similar advantages." (Brief p. 51)

Southern Bell's witness Sims explained the differences among the features in her testimony. She recognized there could be some overlap of the features in the marketplace, but maintained:

While there is a possibility of cross elasticity among the TouchStar features, only Caller ID displays the telephone number of the party who is calling. (TR 66)

She went further to explain that with the other features, particularly Call Return and Call Trace, the call recipient must first answer the phone, endure the conversation and/or hang up before activating the feature, while Caller ID displays the number between the first and second rings. (TR 66-72)

The LECs concluded that the main difference between Caller ID and the other features (and, not coincidentally, the "rub" in this docket) is the ability to see the incoming number before the call is answered, thus heightening the call management and privacy of the called party. (Sims TR 66)

OPC and FCADV maintained that although the other features may not provide the identical function, Call Block and Call Trace are designed to provide one of the main, if not the main, benefits of Caller ID: the deterrence of annoying and/or harassing phone calls. (Brief p. 21, Tudor TR 829, Cooper TR 627) OPC singled out Call Trace as a feature in particular that was designed solely for use against harassing calls. OPC's position stated that because of the nature of this feature and its potential to curb abusive calls, Call Trace should be offered on a non-presubscription basis to all customers for a fee of \$1.00 per successful trace. (Brief p. 24)

The rest of the non-LEC intervenors concurred with OPC's position on Call Trace's rate structure, but none went so far as to recommend a specific rate. The Attorney General, DGS, OSP, FDLE, FMA, and FPCA all recommended the service at a "reasonable" per-use fee in their post-hearing briefs.

Staff found little disagreement among the parties in their analysis of the various functions of the services. All agreed that the features all performed distinct functions. The benefits

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derived from the various features seemed to be the point where the features overlap, and where the parties disagreed.

Although the LECs, for the most part, maintained that the features all have distinct benefits, Southern Bell and United failed to emphasize that although this may be true, the features also have common benefits. The major benefit common to all four features (at different levels) is the ability to curb abusive calls. This benefit is one of Caller ID's biggest attractions.

Witness Sims recognized this by conceding the possibility of cross elasticities among the features. (TR 66) Cross elasticities occur when consumers substitute one good with another that is not the same but provides essentially similar benefits to those consumers at a lesser price.

The rate structure for Call Trace, established as the feature most similar in benefit to Caller ID, received a widely dispersed treatment from the parties. As mentioned previously, OPC recommended a \$1.00 per trace charge without presubscription to the service. The rest of the non-LEC parties concurred with the structure, but did not recommend a rate.

This is different from the LECs' currently-approved offerings. Southern Bell, GTEFL, and United currently require the customer to presubscribe to the feature and charge \$4.00/mo., \$5.00/mo., and \$1.00/mo. respectively. United also charges a usage fee of \$5.00/trace. Centel offers the feature for \$4.00/trace, without any need for presubscription.

The LECs provided the full range of recommendations on Call Trace's rate structure. Southern Bell and GTEFL stated that a usage rate would not cover the costs of the service and was not what their studies showed the customers wanted. (Sims TR 90, GTEFL Brief p.59) Southern Bell's witness Sims' evidence regarding customers' desire for Call Trace for a flat monthly fee was based on the results of two TouchStar trials in Orlando and Natchez, Ms. in the mid 1980's. Witness Sims stated that the results of the two trials showed a greater demand and revenues for the TouchStar features in Natchez, where they were all offered for a flat monthly fee, than in Orlando, where the features were all usage sensitive. (EXH 9, pp.1-3)

Although not presented in this proceeding, staff reviewed the results from both trials when analyzing Southern Bell's proposal to offer TouchStar features on a permanent basis back in

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1988 and concluded at that time that the results were market oriented only - they only reflected the long-known fact that customers generally prefer to pay flat fees for services instead of usage sensitive rates. The results did not take into account the possible utility of Call Trace to the public and its potential to curb harassing calls if made available for infrequent use by anyone. Staff recommended approval of Call Trace in 1988 for a flat fee, but recognized that the structure would have to be revisited in the future. (Docket No. 880791-TL)

C. Dean Kurtz, a Vice President with Centel, made a very rare appearance as a witness for OPC to support Centel's current tariff. As mentioned previously, Centel currently provides Call Trace for \$4.00 per trace with no presubscription necessary. (EXH 17)

United sought to combine the best (?) of both worlds by endorsing its current tariff, which includes a \$1.00 per month subscription charge and \$5.00 per successful trace. United maintained that this would recover both the nonrecurring and recurring costs of the service. (Brief p. 17)

Staff agrees with OPC and the other parties who believe that Call Trace provides some similar benefit to Caller ID with regard to combating abusive calls. However, Caller ID provides the incoming number for the call recipient to evaluate when answering a call; Call Trace does not. This ability gives Caller ID additional benefits, such as real-time call screening, that none of the other features can provide.

Staff believes because of these differences, the benefits of Call Trace are not the same as those of Caller ID. However, with regard solely to harassing/abusive calls, Call Trace could become an extremely effective deterrent if properly structured as a low cost alternative to Caller ID for those who are experiencing telephone abuse.

Staff believes that this low cost alternative will only materialize if the rate structure for Call Trace gives it maximum exposure and utility to the public. The widest availability of Call Trace will be achieved if it is offered on a per-use basis as is done presently by Centel, without the need for customers to sign up or pay a recurring charge.

Staff recommends that Call Trace be offered by Southern Bell on a usage-sensitive basis with no presubscription. Centel has

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proved that this arrangement can be done. Call Trace's utility will only be maximized if each customer has the option to use it at any time. Southern Bell should file a tariff revision offering Call Trace on a usage-sensitive basis within 60 days from the issuance of the final order in this docket. We do not recommend a rate for the feature at this time; Southern Bell may submit any rate with its filing and staff will make a recommendation at a later agenda.

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ISSUE 7: What effect will Caller ID have on nonpublished and unlisted subscribers?

STAFF RECOMMENDATION: Caller ID with per-call blocking should have little effect on those subscribers currently having nonpublished or unlisted numbers. Caller ID without per-call blocking will serve to reduce the anonymity of unlisted or nonpublished subscribers.

POSITION OF PARTIES

SOUTHERN BELL: Because of technological constraints, customers purchasing non-published listings have traditionally not had cause to believe that their numbers might be automatically transmitted over the telephone network. In recent years, however, technological advances have permitted Southern Bell and other telephone companies to be able to transmit the number associated with the calling party to the called party for purposes of identifying the calling party.

If a calling party subscribing to a non-published listing does not wish to transmit the number associated with his service to the called party, the calling party will be able to use existing technical limitations to prevent the number from being transmitted. The options include, for instance, calling through an operator, calling through an answering service, using RingMaster or using an outgoing-only line.

In summary, Non-published and non-listed subscribers will continue to have the benefit of either not being listed in the directory or not having their numbers made available through directory assistance.

GTEFL: Nonpublished number services are services that permit a customer to control dissemination of his or her telephone number to the public at large. Any customer subscribing to nonpublished number service should expect that listing information will not to be disclosed to third parties requesting it via directory assistance or in published telephone directories. This service thus can protect the customer's privacy, to a degree, by restricting the availability of the nonpublished subscriber's telephone number to the general public, which might otherwise result in unsolicited and unwanted calls to that subscriber. Nevertheless, nonpublished numbers are still delivered in certain circumstances. For instance, the number will be delivered through ANI and will appear on the bill of a recipient of a collect call.

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The availability of Caller ID in no way affects the ability of nonpublished number service subscribers to restrict the availability of their telephone number to the general public via directory assistance or in published telephone directories. While some parties believe that Caller ID compromises the privacy of nonpublished customers, the service actually can enhance privacy by increasing the ability of nonpublished subscribers to screen unsolicited and unwanted calls before answering.

UNITED: If United's proposal to offer per-call blocking on request at no charge is approved, United sees no effect of Caller ID on non-published and unlisted subscribers.

OPC, FCADV: As of January 30, 1990, there were 844,260 nonpublished numbers in Southern Bell's territory (26.38% of 3,200,000 residence lines) and 230,707 unlisted numbers. Combined, there were 1,074,970 customers with either nonpublished or unlisted numbers (33.59% of 3,200,000 residence lines). Many of these customers have an expectation that their number will not be divulged.

ATTORNEY GENERAL, OSP, FDLE, FMA, FCCA: We adopt the position advanced by the Public Counsel on behalf of the Citizens of Florida that the more than 1 million Southern Bell customers with either nonpublished or unlisted telephone numbers have a legitimate expectation that their numbers will remain private and that continued privacy should not be conditioned upon their payment of an additional fee for blocking service.

DGS: Just as there are many private subscribers who do not wish to have their numbers disclosed, there are certain SUNCOM numbers which are not published. If the business conducted on certain lines does not involve "security and safety," Southern Bell proposes to address requests to keep these numbers private on an individual basis. Processing a request would take approximately thirty days with the customer having the right to "appeal" an adverse decision to this Commission.

STAFF ANALYSIS: Customers who request that their number be omitted from the directory, but available through directory assistance have an "unlisted" number. When a customer requests that their number not be available both through the directory and directory assistance, the number is "nonpublished." (Sims TR 196) Southern Bell states that there are approximately 830,000 customers having nonpublished numbers and approximately 210,000 customers having unlisted numbers in their service area. (Sims

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TR 197)

The effect of Caller ID on each service varies with that service. In the case of the subscriber with an unlisted number, should the called party know the name of the caller, the called party need only contact directory assistance to obtain the caller's number. Caller ID simply makes the number immediately available to the called party, saving them the added step of going to Directory Assistance. If the caller wishes not to reveal their name, their privacy is still compromised by the manifestation of their number on the Caller ID device.

In both the case of an unlisted number and a nonpublished number, the calling party's number is revealed on the Caller ID device; however, Caller ID has a much greater impact on those persons having nonpublished numbers. A call from a station with a nonpublished number will have that nonpublished number displayed on the called person's Caller ID device. Southern Bell maintains that the caller has thus rendered his previously nonpublished number "published". (Sims TR 202) However, it should be noted that whenever a person makes a collect call his number is stated on the called person's bill, or when giving ones number to a friend, business, or other entity, the number also becomes "published." Also, even if the called party has the number of a nonpublished customer, Directory Assistance will not release that customer's name or address.

One method of alleviating this concern, should Caller ID be approved, would be to make per-call blocking available (see Issue 9). By instituting per-call blocking the caller's number would not necessarily be revealed to the called party. Assuming the caller consistently used the blocking option, there would be little effect on this subscriber wanting to continue to be anonymous.

Not surprisingly, the positions of the parties vary considerably. Southern Bell's position is that those individuals wishing to remain anonymous can do so using the currently available options to circumvent Caller ID (see Issue 8). (Sims TR 99) Those persons subscribed to either nonpublished or unlisted service will still have the same benefit of not being listed in the directory or, as in the case of a nonpublished number, not being listed in the directory and not available from directory assistance. Consequently, blocking is unnecessary.

GTE states that nonpublished numbers will continue to offer

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protection from divulgence of the number to the general public should Caller ID be approved. GTE bases this argument on the contention that tariffs have advised that a condition for using telephone service is that the identity of the calling party should be disclosed to the called party. The availability of blocking would not serve that purpose. Southern Bell's witness Sims agreed, stating that the identification provision has been in Southern Bell's tariff since at least 1976. (EXH 10, p. 5)

Both Southern Bell and GTE have also expressed that including a blocking feature only serves to devalue the service. (Sims TR 109, Radin TR 483) For example, callers making harassing calls will find the blocking feature a benefit. (Sims TR 109) Persons making such calls usually wish to remain anonymous. With blocking they can continue to be anonymous, thus, Caller ID with blocking will have little deterrent effect on these types of calls. (Radin TR 442)

United sees no effect on nonpublished and unlisted numbers should free per-call blocking be approved. However, United also recognizes that even in areas where per-call blocking is not available, those individuals with nonpublished numbers will probably cancel the nonpublished service. (Sims TR 61-62)

The Attorney General, the Statewide Prosecutor, and FDLE concur with OPC that parties having nonpublished and unlisted numbers will experience some dilution in their privacy should Caller ID be approved without blocking. In addition, their position emphasizes the unfairness of charging a fee for nonpublished and unlisted numbers when these services are rendered less effective by Caller ID.

DGS remarked that the State has many SUNCOM numbers which are not published and the Department would not want the numbers going out at all. (Mayne TR 1063-1064) Southern Bell has recognized that certain governmental communications could require blocking. (Sims TR 73-74, 299) DGS's concern is that the decision to block should not be made by the company, but by the governmental agency.

Southern Bell filed a tariff concurrent with its Caller ID proposal to "clarify" when an unlisted or nonpublished number may be forwarded. The characteristics of unlisted and nonpublished numbers were not the subject of clarification, only that should Caller ID be approved these numbers will not enjoy the same degree of anonymity as they would without Caller ID.

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Staff does not agree with the general view of the LECs that instituting Caller ID without blocking would have little effect on unlisted and nonpublished numbers. For example, OPC offered testimony that persons having nonpublished and unlisted numbers were concerned with the loss of privacy Caller ID would create in terms of outgoing calls. (Cooper TR 606-608) This concern did not go unnoticed by Southern Bell and BellSouth, which had some intercompany disagreement regarding nonpublished customers during the decision phase on per-call blocking. (Sims TR 259-261). Staff does agree with the Attorney General, OSP, FDLE, and OPC that Caller ID does impact the public availability of nonpublished and unlisted numbers.

In addition, the record indicated that a number people who currently have a nonpublished or unlisted number are very interested in the Caller ID issue. This was borne out by the comments made during the customer hearings in Jacksonville, Orlando, and Miami. Although a distinct majority of the attendees were in favor of the service, some believed that instituting Caller ID will render their unlisted number useless. (EXH 3, p. 209; EXH 2, p. 119) Even then, some had found that with an unlisted number, which they expect to not be available, callers somehow manage to get that number. (EXH 3, pp. 105, 180, 230, 232; EXH 1, pp. 93-94) On the topic of blocking, some were concerned that blocking will be ineffective (EXH 3, pp. 45, 53) while others (again, a minority of the overall attendance) believe that if Caller ID is approved, blocking must be provided. (EXH 3, pp. 205, 269; EXH 1, pp. 62-64; EXH 2, pp. 139, 162) When the issue of having to pay for keeping their unlisted/nonpublished number from being displayed was raised, some participants were not impressed. (EXH 1, pp. 50-51; EXH 2, pp. 39, 85, 87, 100) Opinions as to the value or nonvalue of Caller ID differed for these individuals. The point is that they were all speaking from the position of having an unlisted or nonpublished number and wanting to maintain that level of privacy.

It must be recognized that Southern Bell's current level of subscription to nonpublished and unlisted numbers accounts for somewhere between 18% and 22.5% of the total number of access lines. (Sims TR 198-200) Consequently, the majority of subscribers continue to have published listed numbers. To these individuals, it is an annoyance to not be able to reach a subscriber on the network. It has been the position of the Commission that the phone system is a "public" system. Those who wish to take advantage of a nonpublished or unlisted service do

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so in Southern Bell's territory at a cost of \$1.75 per month and \$.80 per month, respectively.

Staff is aware that those subscribers having nonpublished or unlisted numbers are something of a burden to the "public" element of the network but believes these subscribers offset that burden through their paying for the services. Therefore, staff recommends that the Commission recognize that unlisted and nonpublished numbers will be affected should the Commission approve Caller ID. Staff also agrees with the Attorney General's Office, the Statewide Prosecutors office, and DGS that charging a fee for blocking is inappropriate. Consequently, if the Commission also approves free per-call blocking the effect on these subscribers will be substantially reduced.

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ISSUE 8: What alternatives to Caller ID blocking are available and do they sufficiently protect the customers' identity?

RECOMMENDATION: Pay telephone service, operator assistance, "Outward Only" lines, Answering services, "RingMaster" service, and Cellular telephone service are alternatives to Caller ID blocking. However, none of these alternatives can realistically protect customers' identities.

POSITION OF PARTIES

SOUTHERN BELL: Because of technological and economic constraints, there exists certain methods by which a caller may complete a call without causing the number associated with the caller's service to be transmitted to the called party. The calling party may dial "0" and either use a credit card or request the operator to dial the telephone number. Either method will cause a "0" to be transmitted to the called party. In addition, the caller may use RingMaster® service to cause a non-published telephone number to be transmitted to the called party. If the called party uses the transmitted number to call the customer back, the customer will know by a distinctive ring that the transmitted number is being used and can decide on how or whether to answer the telephone.

The calling party may also use an outgoing only line in order to prevent the called party from returning calls to the calling party. Furthermore, the calling party may use a cellular telephone which will transmit a zero or use a pay telephone which will transmit the number associated with the pay telephone. Finally, the calling party may call through a third party, such as an answering service or office PBX, in order to prevent the number associated with a calling party from being transmitted to the called party. In the rare circumstances in which the calling party requires that the telephone number not be transmitted, these technical limitations to Caller ID will sufficiently protect his anonymity.

GTEFL: Alternatives to Caller ID blocking are available that can provide calling parties some control over delivery of their primary telephone number to the called party.

GTE Florida's Protected Number Service ("PNS") can provide the calling party some control over delivery of their primary telephone number to the called party by forwarding a secondary number that, when redialed, provides a long-long ring that can be

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used to identify calls from individuals who received the number via Caller ID. Legitimate calls using the primary number will trigger a distinctive ring. PNS subscribers therefore can identify calls from parties to which they have voluntarily revealed their primary number and those parties that have received their secondary number via Caller ID. Based on the difference in rings, the PNS subscribers can choose to not answer calls to the secondary number, or to answer them in a special way.

Since operator-handled calls, credit card calls, and coin telephone calls do not deliver an identifying telephone number for Caller ID service, use of these services can permit calling parties to remain anonymous, at least with respect to their telephone numbers. In the future, use of special coded identifiers or calling party names may provide calling parties control over delivery of their telephone number. GTE Florida will support industry efforts to develop such alternative solutions.

UNITED: Numerous alternatives to Caller ID blocking which would allow a calling party not to reveal his or her telephone number are available and were discussed during the hearing in this Docket. Among the alternatives to blocking which were discussed were: placing calls through an operator, use of calling cards, use of pay telephones, processing calls through third parties such as answering services and office PBX's, use of out dial only lines, use of RingMaster type services, use of foreign central office or foreign exchange services, and use of cellular telephones.

All of the above listed alternatives allow a calling party to make a call in a Caller ID environment without revealing his or her telephone number.

United agrees with testimony of Southern Bell witness Sims that for the "vast majority of calls customers have no need or desire or anonymity," which she supported by citing a US West trial where customers activated per-call blocking only 143 times on a million calls.

In spite of United's belief that on the vast majority of calls customers will not need or desire to maintain confidentiality of their telephone numbers, United has proposed per-call blocking on request at no charge. Per-call blocking will provide convenience for customers in preserving the

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confidentiality of their telephone numbers in those few situations in which such confidentiality is desired.

OPC, FCADV: Southern Bell supports universal availability of Caller ID blocking as long as customers pay a fee to Southern Bell. These include the use of calling card calls (charged at 75 cents per call), operator assisted calls (charges at \$1 per call), cellular telephone calls, out-dial only lines, Ringmaster, and pay phones. The issue, then, is not whether per-call blocking should be made universally available, but instead whether customers will have to pay a fee to Southern Bell for per-call blocking. Universal per-call blocking should be made available free to all customers.

ATTORNEY GENERAL, OSP, FDLE, FPCA: Caller ID without free per-call blocking violates Florida law, as discussed in Issue 3, therefore no alternative to blocking is viable. In addition, the alternatives proposed by Southern Bell and GTEFL are inadequate to meet law enforcement needs.

FMA: Caller ID violates Florida and Federal law.

DGS: DGS respectfully suggests that the testimony at the hearing showed a distinct concern for more than simply providing anonymity through the alternatives to blocking. DGS and the Department of Law Enforcement share a concern over the security and privacy of communications within the Statewide 800 Megahertz Trunked Radio System for State Law Enforcement. The telephone patching capability of this System will be compromised without uniform line blocking. The industry has not suggested any alternative to this need.

Common sense dictates that none of the alternatives are as convenient as uniform, free line and call blocking. A pay phone costs a quarter, but the user needs the good fortune of finding a phone and a quarter concurrently. Operator assistance costs money; cellular phones cost money; outward-only services cost money. RingMaster and Protected Number Service cost money, and the inherent confusion of two different rings was highlighted by the Commission in its exchange with GTEFL witness Radin beginning on page 475 of the transcript. Obviously, these devices would be inappropriate in many instances, especially where children or frightened people would be expected to differentiate good rings from bad.

STAFF ANALYSIS: Southern Bell contends that there are several

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methods available that prevent the calling party's number from being transmitted. (Sims TR 65-66, 99) GTE and United have offered similar alternatives. (Radin TR 440-441, Jones 496-97) These companies also argue that anonymity is not necessarily a "right" of the calling party, a position supported by language to this effect in their tariffs. (Sims TR 60, United - Post hearing statement, GTE - post hearing statement) GTE also takes the position that their Protected Number Service (PNS), a feature functionally identical to RingMaster, eliminates any need for blocking. (Radin 445)

The Attorney General, OSP, and FDLE have taken the position that the alternatives listed by SBT, and supported by GTE and United, while offering some anonymity, do not adequately protect law enforcement and therefore are insufficient for use by law enforcement. (Tudor TR 846) The reasons for this position include the possibility of revelation of actual identity or suspicion of true identity, costs such as those associated with cellular phones, and the decrease in flexibility in meeting the dynamics of the underworld environment. (Tudor TR 833-36, 854) In addition, some domestic violence programs have expressed that the suggested options to blocking are inadequate as the location or identity of individuals seeking refuge in these locations could be revealed. (Phoenix 960-962, Brown 983-84, Dunn 1015-1016)

DGS, along with FDLE, showed concern over the compromise of private communications over the 800 Megahertz Trunked Radio System used by law enforcement. (Tudor TR 914-915, Mayne TR 1043, 1055) DGS also noted that the proposed alternatives are inconvenient compared to free per-line and per-call blocking.

Staff has examined the following alternatives to Caller ID blocking. Each offers customer anonymity, but to varying degrees. Additionally, all the listed alternatives require an expense on the part of the calling party, in terms of money and/or energy.

1. Pay Telephones: Pay telephones numbers will be transmitted. However, no names or addresses are associated with pay telephones and no information may be obtained on them from Directory Assistance. Consequently, the location of a pay phone can be difficult to surmise. (Sims 67) Objections have been raised by Law enforcement to this option as possibly yielding an unexpected number and thus provoking suspicion on the part of the subject of investigation. (Tudor 833) In addition, for the caller, should a

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pay phone not be immediately available, finding a pay phone may be a considerable inconvenience. Current rate: \$.25 per call.

2. Operator Assistance: Local operator assisted calls can be made by dialing either by 0+ or 0- and "out of area" signal will be delivered. (Long distance numbers will not be delivered in any case. Ubiquitous placement of the technology for doing so is still several years away). The reason for the "out of area" signal is that operator assisted calls fall outside of the capability of SS7. (Sims 100) Caller ID requires that the central office be equipped with SS7, thus, operator assistance calls are not recognized. (Sims TR 100) Again, for law enforcement, The display of an out of area signal to the called party for a call known to be local may alert the called party to the possibility of blocking. (Tudor 833) The current charge is \$1.00 per call for an operator assisted call. (Sims TR 100) As technology progresses, Commission intervention will be necessary to keep this a permanent alternative.
3. Calling Cards: Local calls placed through the use of a calling card will yield an out of service area symbol. (Sims TR 99) This is because calls placed in this fashion are switched outside the CLASS network and thus outside SS7. (Jones 496) Law enforcement believes that making calling cards available to their investigators increase costs and would be cumbersome to administer. (Tudor TR 834) The current charge for a calling card call is \$.75. (Sims TR 99)
4. "Outward-only" line: A recently approved item, Outgoing Only service, offers some anonymity. (Sims TR 65, Jones TR 496) A second telephone line, incapable of receiving calls, can be installed and the number nonpublished. All "sensitive" outgoing calls could be made from this line and any return calls would simply not be received. The called party could not obtain a name or address from Directory Assistance. Law enforcement has objected in that the location of the line can still be determined. (Tudor TR 833) Because the nonpublished number is displayed, the number can be cross checked to name and address where such listings are available. (EXH Miami 132) This

information can be obtained from such common sources as the local library. (EXH Miami 87-88) Current Rate: same as present line with nonpublished number.

5. Answering Services: This service is often used by physicians. A "sensitive" call may be placed through an answering service in this way: dial the answering service and ask them to "bridge" your call through to the number you choose. The number delivered will be the answering service's number, not the originating one. Current rate: varies depending of service. Many services charge on a per-call basis with the local rate around \$0.25 per call.
6. "RingMaster" Service: This Southern Bell service assigns two or more telephone numbers to a single exchange line. The primary number is the only number delivered. For example: the primary number is 999-1000. RingMaster adds 998-1234 and all calls to 998-1234 ring twice instead of the usual once. A customer keeps 998-1234 nonpublished and only answers the phone when it rings twice. Again, because the nonpublished number is displayed, the number can be cross checked to name and address where such listings are available thus, compromising the anonymity of the caller. Current rate: \$3.95 per month. Other companies do offer comparable services, among them United (SignalRing) and GTE (SmartRing/Protected Number Service).
7. Cellular telephones: The technology does not currently exist to deliver numbers from cellular phones. Cellular, like operator assistance, is not part of SS7. (Sims TR 101) For the caller, anonymity is very good and as long as the called party knows the call is from a cellular phone, no alarm is generated. For some, such as law enforcement, the cost of a cellular phone, as well as the service, may be excessive. (Tudor 834) It is estimated that the ability to deliver numbers will not be widely deployed until at least 1993. When it does become available, the Commission may then address whether these numbers should be delivered.

Staff has also examined PNS, a service highly promoted by GTE in this Docket as an alternative to blocking. (Radin TR 440-

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42, Kurtz TR 542, Phoenix TR 960-61, Dunn TR 1015-1016) PNS, like RingMaster, works by assigning two telephone numbers to a single line, the current existing number and a new nonpublished number. The number displayed on a call number identification device is the current number, not the new nonpublished number. When a call is placed to the new nonpublished number, the phone rings distinctively letting the called know it is probably a legitimate call. When the phone rings normally, the called party is alerted that someone is using the current number and that call may be unwanted. (Radin TR 440-441)

Like RingMaster, even if the delivered number is unlisted, it can still be cross checked against some other records. (Tudor TR 842) In addition, a concern of law enforcement is that a returned call could accidentally be answered. (Tudor TR 843)

Staff believes that the proposed alternatives to blocking are not synonymous with blocking. To clarify, none of the options offers the same degree of anonymity that blocking does. Also, all options foist an additional cost and/or inconvenience on to the end user. In particular, it may be very inconvenient to have to use a pay phone that is not located on the caller's immediate location and the cost of purchasing a cellular phone coupled with the cost of the service is excessive. Staff agrees with the LECs that anonymity is not a "right." However, staff does believe that while callers should identify themselves, that identification does not necessarily include giving out their phone number if doing so would compromise their security.

The major stumbling block here is that there are a myriad of circumstances where the forwarding of a telephone number could be dangerous to someone other than a law enforcement agent or domestic violence victim: diamond couriers, private investigators, reporters, the list is endless. Although this Commission has maintained that identification of all parties to a conversation should be the standard form of communication, we cannot realistically expect the public at large to understand or keep up with 0+ calls, cellular calls, what does and does not work this month, etc. when the average customer is having a hard time relearning how to use a pay phone. Therefore, although all of the items discussed in this issue could be used to circumvent Caller ID, staff does not believe that even a relatively sophisticated customer will be able to keep up with them when he/she legitimately needs to protect her/his security.

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ISSUE 9: Should the Commission allow or require the blocking of Caller ID? If so, to whom and under what circumstances?

RECOMMENDATION: Yes, the Commission should require the blocking of Caller ID free of charge to all customers on a universal, per-call basis. The Company should not be allowed to deploy Caller ID in any area that is not capable of providing this blocking feature.

The Company should also file semiannual reports for a period of 24 months (four total reports) to this Commission containing the following information: the total number of Caller ID subscribers; the number of nonpublished Caller ID subscribers; the frequency per-call blocking is used; the number and trend of annoyance call reports to the Company; and the status and time-to-availability of Anonymous Call Rejection (e.g. "Block the Blocker") technology. Southern Bell should file a tariff for this service as soon as it becomes available. The first report will be due 180 days following the issuance of the final order in this docket.

POSITION OF PARTIES

SOUTHERN BELL: In order to maximize the societal benefits offered by Caller ID to all customers, both those who subscribe and those who do not subscribe to the service, there should be no universal blocking.

GTEFL: As a general principle, the public interest is best served if some form of calling party identification is delivered to the called party on virtually all telephone calls. A widely-available offering enhances privacy rights in general and, at the same time, promotes the development and deployment of a widely-available advanced telecommunications/information network infrastructure. Any extensive offering of services that block Caller ID delivery will significantly reduce the level of privacy available to residence subscribers, the utility of Caller ID-based services to business subscribers, and the economic viability of SS7 based services in general.

UNITED: The FPSC should allow per-call blocking of Caller ID on request without charge.

Under United's proposal a customer would be allowed to request per-call blocking service from United. If the request was made during the initial sixty day offering period of United's

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ExpressTouchSM service or during an initial request for telephone service, the service order charge would be waived. If ordered outside the initial sixty day ExpressTouchSM offering period or other than an initial service request, the normal service order charge would apply. The service, once ordered, would be free of charge. No charge would be assessed for disconnection of the service.

OPC, FCADV: The Commission should allow free per-call and per-line blocking to all customers. Per-call blocking should not be available only for a fee.

ATTORNEY GENERAL, OSP, FDLE, FPCA: The Commission should require Southern Bell to provide universal per-call and per-line blocking at no charge to the calling party.

FMA: Caller ID violates Florida and Federal law.

DGS: The manifest weight of the evidence dictates that the Commission should require universal per-call and per-line calling number blocking at no cost uniformly throughout the State.

STAFF ANALYSIS: Once again the LECs provided a wide variety of opinions on this issue. Southern Bell and GTEFL both steadfastly maintained that per-call blocking to anyone so desiring it would have detrimental effects on Caller ID's potential for success. (Sims TR 84)

Southern Bell also testified that the alternatives to blocking offered by the Company to date, and they are numerous, are sufficient tools to not only protect the law enforcement and domestic violence agencies' security, but also to help law enforcement use Caller ID to its advantage. (Sims TR 66)

United, on the other hand, filed a tariff last fall proposing free per-call blocking to all customers. This proposal did not provide for universal per-call blocking from any and all phones in an exchange; a customer would need to sign up for the service to be able to access per-call blocking from her/his access line. United proposed to waive any nonrecurring charge for 60 days from implementation of Caller ID; after that time a secondary service order charge would apply. (Jones TR 50)

Centel's witness Kurtz, testifying for OPC, explained Centel's tariff proposal to offer free per-call blocking to all access lines without any need for presubscription. (TR 539;

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EXH 17)

The Attorney General, OPC, OSP, FDLE, FPCA, and DGS all proposed that per-call and free per-line blocking be mandated. Witnesses for those parties concluded that per-call blocking would suffice in most instances, but per-line blocking would provide a more secure avenue for those who wished to use it.

Several non-LEC witnesses testified as to the need for blocking. Witnesses Brown, Phoenix, and Dunn of FCADV all explained the serious nature of spouse abuse cases and the need for total security. They also did not believe that any of the proposed solutions from Southern Bell would sufficiently protect abuse victims from violent family members. They concluded that per-line blocking as well as per-call blocking would be the solution most acceptable. (Phoenix TR 949, 956, 959, 964; Brown TR 979-80, 987; Mayne TR 1037)

GTEFL's witness Elseewi and OPC's witness Cooper squared off in a contest of conflicting research studies. Witness Cooper testified that Caller ID's detriments will be minimized by per-call blocking, that the public is concerned about a loss of privacy from Caller ID, and that the service's viability will not significantly diminish if per-call blocking is instituted. (TR 633) Witness Elseewi countered with a study that essentially showed that although some customers may be wary of Caller ID at first, the number of people concerned with the privacy issues dropped dramatically once the service had been available in their area for a time. (TR 364-373)

Both witnesses countered each others' testimony with testimony on the difficulty and complications of conducting an impartial study, and alluded that each other's may not have been arranged to extract the most objective answers. (Cooper TR 638; Elseewi TR 384-87) Witness Elseewi's criticisms of Witness Cooper's studies are of particular note. Elseewi argued that "leading" questions used in Cooper's studies rendered the results biased and inaccurate. (TR 384-6, 409) She also criticized witness Cooper's use of an unscientific Glamour poll and other biased and incomplete data. (TR 385) She concluded that even with the results biased toward inciting privacy concerns, Cooper's study still showed that the majority of people, sometimes a vast majority, believed Caller ID to be a good idea and that it enhanced their privacy. (TR 387)

Staff's analysis of Witness Cooper's study results closely

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followed witness Elseewi's. The study provided in this docket was actually a summary of study information, with many of the questions paraphrased or deleted altogether. (Cooper TR 605-20) We also found questions to be "leading" the respondent towards a conclusion that there should be privacy concerns. (TR 605) Also, it is interesting that Cooper admitted that direct Caller ID/privacy questions were not asked of the Florida respondents. (TR 606) The only relevant data by Florida consumers showed that the largest percentage of respondents believed that forwarding the outgoing number would have no effect on their privacy (64%), and the largest percentage also believed that receiving the incoming number would increase their privacy. (TR 607)

Staff concluded after analyzing this testimony and the studies that while the studies may be useful when looking at the broad picture of customer perceptions, neither provided conclusive evidence. Also, neither necessarily reflects the attitudes of Florida's particularly unique population, since both studies were conducted mostly in other states.

FDLE's witness Tudor provided extensive testimony claiming that the absence of universal per-call blocking would become an insurmountable burden to Florida's undercover police operations. (TR 871, 886-90) Witness Tudor explained the difficulties an officer could encounter if the originating number were forwarded. He also mentioned that several cases had gone awry as a result of Caller ID in another state. (TR 822-23) However, the only evidence supplied by witness Tudor was a newspaper article from the Baltimore Sun titled Caller ID latest hit with high-technology drug dealers. (EXH 24) However this article did not state in any way that a law enforcement effort had been compromised by Caller ID. It stated that a Caller ID device had been seized in a drug raid, an obvious indication that the efforts were successful, and that Caller ID was simply the latest tool drug dealers were going to use to augment their current arsenal of pagers and cellular phones.

The one thing not presented in this case by any party was a reliable result from specific experience. The vast majority of the testimony here was supposition. Even the experiences cited used sketchy data at best. Witness Sims concurred by stating that both parties "are using speculation on this issue." (TR 212)

Staff believes that witness Tudor is genuinely concerned with law enforcement's ability to conduct investigations in a

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Caller ID environment. We do not believe, however, that the evidence provided in this docket by this witness warrants a policy of universal per-call blocking. The evidence supplied from New Jersey, the only state with significant experience with Caller ID, indicates that the law enforcement community and customers are quite pleased with unblocked Caller ID there. (Sims TR 295; EXH 22)

This does not mean staff does not recommend universal per-call blocking; we do. However, our recommendation is based on the following three criteria: (1) the Attorney General's strong opinion that Caller ID without per-call blocking is a statutory violation; (2) although no evidence was supplied, the possibility of an abuse victim or a law enforcement officer being harmed by not using an alternative to blocking and not being able to use per-call blocking, however remote, is appalling; and (3) the forthcoming development of Anonymous Call Rejection (ACR) technology.

The first reason is covered in staff's analysis of Issue 2 and will not be reiterated here. The possibility of harm, even though staff believes this possibility to be remote, should not be realized by the implementation of a simple telephone service. It is important to distinguish here that although the alternatives to blocking outlined in Issue 8 should be sufficient in just about every case, technological developments and public awareness do not make them an immediate substitute for per-call blocking. Technological advancements may eliminate the feasibility of some of the alternatives in the near future. This will necessitate Commission intervention, holding back such advances, to maintain privacy for those who need it. As previously discussed, the public cannot be expected to keep up with these alternatives. The average customer is having a hard enough time relearning how to use a pay telephone; she/he simply will not be able to keep up with the alternatives to blocking in the "real world."

The size and scope of Florida's drug interdiction efforts also pose peculiar concerns. The Drug Enforcement Administration's largest office nationwide is located in Miami. (Tudor TR 921) Florida's drug trafficking and interdiction activities are believed to be significantly larger than those in states such as New York and New Jersey. (Tudor TR 923) These activities escalate the chances that Florida could end up as the first with a tragedy resulting from Caller ID.

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Per-call blocking will alleviate those concerns and provide an interim solution until "true" balance is achieved in telephone use. ACR is a service currently under development that will route a blocked call to an automated intercept recording stating that the called party is not accepting calls from blocked numbers. (EXH 10, p. 6) ACR is expected to be available sometime later this year. (see Attachment C)

Advocates of per-call blocking assert that blocking will provide a balance of called vs. calling party privacy. (Cooper TR 595) This is simply not true. Per-call blocking will keep the preponderance of privacy with the calling party. Only if each customer has the same ability to reject a private number call as another customer has to make one will both parties have equal management of their own privacy.

Staff is not recommending per-line blocking on a universal basis (see Issues 10 and 11). Staff has two reasons for this recommendation. First, no compelling evidence was offered that would necessitate this Commission mandating per-line blocking for anyone who wanted it. Second, per-line blocking assumes calling party anonymity as the standard form of communication, where per-call blocking requires the calling party to make a conscious denial of permission on each call. This Commission in past Caller ID proceedings made it clear that calling party anonymity should not be the standard. (Order Nos. 22397 @ p. 4, 22704 @ p. 3) Also, most LECs' tariffs have for several years had statements requiring calling party identification on all calls. (EXH 10, p. 5)

Staff is also recommending that there be no presubscription for per-call blocking, as proffered by United. Witness Tudor emphasized that undercover operatives are not always at home or near a familiar phone when paged to return an unknown call. (TR 871-72, 888)

Staff recommends that universal per-call blocking be made available to all customers for no charge. The Company should also file semiannual reports for a period of 24 months (four total reports) to this Commission containing the following information: the total number of Caller ID subscribers; the number of nonpublished Caller ID subscribers; the frequency per-call blocking is used; the number and trend of annoyance call reports to the Company; and the status and time-to-availability of Anonymous Call Rejection technology. Southern Bell should file a tariff for this service as soon as it becomes available.

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The reports will help staff monitor the use of per-call blocking as well as the status of ACR technology. The information gathered will help staff determine whether per-call blocking is being used, if abusive call reports decline, and when to expect Southern Bell's ACR tariff.

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ISSUE 10: What special arrangements, if any, should be made regarding Caller ID for law enforcement personnel?

RECOMMENDATION: Southern Bell should continue working with law enforcement agencies to find specific solutions to their unique problems. Per-line blocking should be made available to any law enforcement agency's office lines at no charge. Southern Bell should be allowed to recover any reasonable costs associated with any other implemented solution from the agency requesting it.

POSITION OF PARTIES

SOUTHERN BELL: Southern Bell believes that based on its discussions with law enforcement, the special arrangements offered by Southern Bell to law enforcement agencies would adequately meet their safety concerns.

GTEFL: Protected Number Service will provide adequate protection in most situations, while operator-handled calls, credit card calls, and coin telephone calls may be viable solutions in other cases. Caller-activated blocking of Caller ID delivery could also be made available to enhance inaccessibility as required. However, Caller ID blocking does not control delivery of ANI and no technical means exists to control ANI delivery. PNS avoids problems raised by ANI delivery in that it will not deliver the subscriber's "real" number.

UNITED: The goal of United is to provide law enforcement with the necessary alternatives to ensure that the safety of their personnel and informants is not jeopardized by the offering of Caller ID service.

Per-call blocking on request as proposed by United offers significant protection for law enforcement personnel and their informants.

In addition to per-call blocking on request, United will make special arrangement with law enforcement agencies for the use of calling cards, SignalRingSM (which is similar to the RingMaster and PNS services of Southern Bell and GTE-Florida), outward only services, foreign exchange and foreign central office service. Additional methods not presently thought of may become available in the future, and unique needs of law enforcement in particular situations may require unique solutions. United will continue to work with law enforcement to provide solutions to unique situations and to develop other

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special arrangements.

United is troubled by the proposal which would transmit numbers from other locations as the calling party's number. United opposes the substitution of telephone numbers in use by the general public for those of the calling law enforcement entity which might result in harm or danger to a member of the general public.

OPC, PCADV: The Commission should make free, per-call and per-line blocking available to the public at large, as requested by law enforcement personnel.

ATTORNEY GENERAL, OSP, FDLE, FCCA: Should it be determined that Caller ID does not violate Florida law, law enforcement should be extended call block capability at no charge.

FMA: Caller ID violates Florida and Federal law.

DGS: Free universal statewide per-call and per-line calling number blocking are the only special arrangements needed for state law enforcement operations and personnel in the event Caller ID is implemented.

STAFF ANALYSIS: With the approval of per-call blocking in Issue 9, little else should be needed for law enforcement agencies. OPC, DGS and the law enforcement parties requested that per-line blocking also be made available.

Although staff does not recommend that universal per-line blocking be made available, we do recommend that free per-line blocking at a law enforcement agency's offices should be approved. Although staff does not believe this feature will make a significant difference to any agency, Southern Bell's costs are minimal to implement the service and the agencies requesting it seem to think it will enhance their ability to train officers on the use of blocking and prevent any "mistakes" by investigators making a voluminous number of private calls. It should be noted that the use of per-line blocking will be adversely affected once ACR is implemented because an access line with per-line blocking will not be able to call an access line with ACR (all calls are private/all private numbers are intercepted).

Throughout this proceeding, Southern Bell has developed or proposed several customized call management configurations to disguise Caller ID numbers for law enforcement agencies.

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Although rejected by FDLE as a complete substitute for per-call blocking, the proposals were well-received as good disguises for certain applications. (Tudor TR 871, 886) And although FDLE's witness expressed extreme frustration at the level of cooperation from Southern Bell regarding various alternatives, Southern Bell should be recognized for having expended considerable effort in developing many solutions that could be utilized by law enforcement agencies to aid their investigative work. (Tudor TR 883)

Staff recommends that Southern Bell continue to work with law enforcement agencies to develop customized services that will help the agencies use Caller ID to their advantage. Southern Bell should be expected to be able to recover any reasonable expenses it incurs for these services, as it has in the past for other customized telecommunications services for law enforcement.

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ISSUE 11: What special arrangements, if any, should be made regarding Caller ID for any other group or groups?

RECOMMENDATION: Domestic violence intervention agencies, both publicly funded and private, nonprofit agencies, should have the availability of free per-line blocking for any access lines at established shelters. No other arrangements are necessary for any other group or groups.

POSITION OF PARTIES

SOUTHERN BELL: Southern Bell has offered to provide free optional per-line blocking to entities or individuals that establish that the divulgence of their telephone numbers could cause personal harm. Southern Bell has properly addressed the concerns of these persons.

GTEFL: Protected Number Service could provide number delivery control for police undercover agents, spousal abuse centers, or other special groups with justification to control delivery of their "real" telephone number. PNS would provide this control for Caller ID services based on SS7 technology, as well as for ANI-based services.

For others with a special interest in controlling delivery of their number, operator-handled calls, credit card calls, and coin telephone calls may be viable solution. Calls placed via these methods would provide number delivery control for Caller ID services based on SS7 technology, as well as for ANI-based services.

For the limited number of subscribers with compelling security concerns, such as authorized violence intervention and law enforcement personnel, limited caller activated blocking of Caller ID delivery could be made available to enhance inaccessibility as required. However, the Commission should understand that, other than the use of PNS, no technical means exists to control problems associated with ANI delivery.

UNITED: As in the case of law enforcement, per-call blocking on request as proposed by United offers significant protection for social service organizations, their employees, and clients. Per-call blocking on request also eliminates the need to certify any particular organization or individual as qualifying for blocking.

To the extent that per-call blocking on request does not satisfy the requirements of social service organizations, United

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will provide special arrangements which would correspond closely with those developed for law enforcement and discussed in Issue 10 above.

OPC, PCADV: Universal per-call and per-line blocking should be made available to the public at large, as requested both by spouse abuse centers and the State of Florida. In addition, Call Trace should be made universally available and charged solely on a usage basis at a rate of no more than \$1 per call.

ATTORNEY GENERAL, OSP, FDLE, FPCA: Free per-line and per-call blocking should be available.

FMA: Caller ID violates Florida and Federal law.

DGS: As noted in Issue 6 above, the Governor and Cabinet have adopted DGS' policy on per-call and per-line blocking as the State's official policy. Under this policy, no additional arrangements need to be made for State agencies or the SUNCOM Network.

STAFF ANALYSIS: With the approval of staff's recommendation for per-call blocking in Issue 9, no other arrangements are necessary for most groups. However, domestic violence intervention agencies should have the option for free per-line blocking as will law enforcement agencies under staff's proposal. This arrangement, again at minimal cost to Southern Bell, will provide added protection in shelters.

Per-call blocking will protect shelter workers when making calls from home, and all other groups requiring anonymity. Again it should be noted that per-line blocking could be adversely affected once ACR is implemented.

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ISSUE 12: Is Caller ID in the public interest?

RECOMMENDATION: Yes, with the restrictions approved by the Commission in this docket, Caller ID is in the public interest.

POSITION OF PARTIES

SOUTHERN BELL: As thoroughly explained in Issue 5, Caller ID will provide numerous benefits to both residential and business customers and thus is clearly a service in the public interest.

GTEFL: Yes, Caller ID is in the public interest.

UNITED: Caller ID is in the public interest. It offers significant benefits to the public, which are discussed in Issue 5 above. The detriments identified by opponents of Caller ID, which are also discussed in Issue 5 above, are substantially lessened, if not eliminated, by the offering of per-call blocking on request without charge and the other alternatives to per-call blocking which are available to law enforcement agencies and social service organizations.

With per-call blocking on request, the many benefits of Caller ID can be made available to the Citizens of the State of Florida, with little, if any, effect of the identified detriments.

Caller ID should be approved with per-call blocking on request.

OPC, FCADV: Yes, but only if offered with universal, free per-call and per-line blocking available to all customers.

ATTORNEY GENERAL, OSP, FDLE, FPCA: Caller ID, with the implementation of universal blocking at no charge to the calling party, is in the public interest.

FMA: Caller ID violates Florida and Federal law.

DGS: In the event that Issues 2, 3 and 4 above are answered in the negative, Caller ID, with proper implementation, should be in the public interest. As outlined in Issues 5 and 11 above, proper implementation must include blocking. Given this consideration, DGS believes Caller ID can enhance the delivery of governmental services for the public good.

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STAFF ANALYSIS: All parties agreed, with the exception of FMA, that Caller ID is in the public interest. Southern Bell and GTEFL asserted that Caller ID is in the public interest without per-call blocking, and had no stated position on the service with blocking. Staff can conclude by the other LECs' testimony and the fact that Caller ID can still be marketed in some fashion with per-call blocking that both Southern Bell and GTEFL would agree that it will be in the public interest, at some level, with blocking provisions.

All other parties agreed, except FMA, that Caller ID with universal blocking is in the public interest. FMA maintained that Caller ID is a statutory and constitutional violation. (Brief, pp. 1-5)

Given the preponderance of evidence and the fact that all parties needs, if not desires, have been adequately covered by staff's proposals in other issues, staff believes that with the restrictions staff has recommended in other issues, Caller ID is in the public interest.

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ISSUE 13: What further action should be taken on Southern Bell's tariff filings introducing Caller ID (T-89-507) and changing the conditions under which nonpublished number information will be divulged (T-90-023)? What should be the effective date of such action?

RECOMMENDATION: Both tariffs should be denied. Southern Bell should be directed to refile the tariffs following the guidelines established in this docket.

POSITION OF PARTIES

SOUTHERN BELL: All appropriate steps needed to address Southern Bell's Caller ID tariff revisions on September 29, 1989, by which it added Caller ID to the Touchstar features and proposed clarifications regarding the divulgence of non-published telephone numbers.

In recognition of the needs of law enforcement and domestic violence intervention agencies and individuals concerned for their personal safety, Southern Bell is prepared to file a tariff amendment setting the following criteria for blocking:

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

Southern bell is prepared to file this revised tariff immediately and believes that the effective date of such a tariff revision should be within sixty days of the date of the Commission order.

GTEFL: GTEFL believes that the Commission should permit initiation of Caller ID services on a permanent basis as of March 4, 1991, the date set for issuance of the order in this

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proceeding. This permission should extend to all companies who have filed Caller ID tariffs. While Caller ID service should not be subject to universal blocking requirements, PNS would be offered to law enforcement and other agencies with a legitimate need for anonymity.

UNITED: United takes no position on action which should be taken on Southern Bell's tariff.

OPC, FCADV: The Commission should offer free per-call and per-line blocking to all customers and make Call Trace available on a usage basis at a rate of no more than \$1 per call. In addition, the Commission should allow sufficient time before making Caller ID available in order to allow law enforcement personnel and other agencies to take reasonable steps to prepare for the introduction of Caller ID.

ATTORNEY GENERAL, OSP, FDLE, FMA, FCCA: Southern Bell's tariff filing should be rejected.

DGS: In addition to maintaining its original position that, if implemented at all, Caller ID should have uniform application statewide, DGS respectfully requests that sufficient lead time be allowed for preparation, training and education prior to such implementation.

STAFF ANALYSIS: Southern Bell should refile its Caller ID tariff (T-89-507, Attachment D) implementing all decisions made in this docket. Staff is not recommending a time frame for this revision. We recognize this is a discretionary service, Southern Bell may require some time to install per-call blocking in its switches, and customer demand should provide all the necessary motivation for the Company.

Tariff T-90-023 (Attachment E) should also be denied and refiled. The filing is over one year old and contains information that has since become outdated (e.g., No Sales Solicitation Listing information).

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April 8, 1991

ISSUE 14: Should the Commission grant the Office of Public Counsel's Motion to Consolidate Consideration of Caller ID Tariff Filings and to Conduct Generic Proceeding?

RECOMMENDATION: No, the Commission should deny OPC's Motion.

STAFF ANALYSIS: On September 24, 1990, OPC filed a Motion to Consolidate Consideration of Caller ID Tariff Filings and to Conduct Generic Proceeding (Motion) (Attachment F). This Motion was considered by the Prehearing Officer at the Prehearing Conference on November 15, 1990. The Prehearing Officer denied the Motion as reflected in Order No. 23791, issued November 21, 1990.

At the beginning of the hearing on November 28, 1990, OPC asked the full Commission to reconsider the Prehearing Officer's decision. The Commission declined to entertain reconsideration at that point, but suggested that it would be appropriate for OPC to renew the Motion after the hearing had concluded.

At the close of the hearing on November 29, 1990, OPC renewed the Motion. The Commission took the Motion under advisement, to be ruled upon at the time the recommendation from the hearing was submitted.

OPC's Motion requests that the Commission receive evidence from all local exchange telephone companies in Florida before ruling upon Southern Bell's tariff proposal. As grounds for this request, OPC cites the need for a uniform policy on Caller ID and Caller ID blocking throughout the state. To bolster this argument, OPC points to the differences between the Southern Bell Caller ID tariff presently under consideration in this docket, and the Centel Caller ID tariff that remains pending.

It is staff's recommendation that OPC's Motion be denied. The Commission has received an enormous volume of evidence in this proceeding. The evidence received here is more than enough to allow the Commission to set appropriate policies for Caller ID and Caller ID blocking through the vehicle of this tariff filing. Although this docket concerns only the tariff of Southern Bell, this will not prevent the Commission from enacting uniform policy throughout the state. Rather, after the Commission takes action in this docket, it will then undertake consideration of other Caller ID proposals on an individual basis as other tariffs are filed. If those tariffs differ from this one, the Commission can approve, suspend, or deny those tariffs as it sees fit.

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Additionally, since Caller ID is a new technology, it seems especially appropriate to utilize a case-by-case approach in this area.

In summary, granting OPC's Motion would not result in any benefit or opportunity for any party, including the ratepayers, that is not already available through case-by-case adjudication. At best, granting the Motion would only serve to delay a decision in this docket, while adding nothing substantive. Accordingly, the Motion should be denied.

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ISSUE 15: Should the Commission grant the Office of Public Counsel's Motion to Strike portions of the Brief filed by GTEFL?

RECOMMENDATION: Yes, the Commission should grant OPC's Motion and strike certain portions of GTEFL's brief.

ALTERNATIVE RECOMMENDATION: No, the Commission should deny OPC's Motion as staff did not rely upon the disputed portion of GTEFL's brief in making its recommendation; therefore, at the most, GTEFL has made a harmless error.

STAFF ANALYSIS: On December 11, 1990, the Director of Records and Reporting sent a copy of a letter and attached "testimony" to all parties of record. The memorandum from the Director of Records and Reporting stated that "the attached communication was received by the members of this Commission on November 6, 1990. This letter is being made a part of the record in this proceeding and you may file a response to it, with this office, within 10 days of receipt of this notice." Attached to the cover memorandum was a letter dated November 5, 1990, from Melvin Tucker, Chief of Police of Tallahassee, to then Chairman Michael Wilson, along with what purported to be "testimony" from Chief Tucker.

On January 18, 1991, OPC filed a Motion to Strike (Motion) (Attachment G). On January 25, 1991, GTEFL filed its Response to OPC's Motion to Strike (Response) (Attachment H).

OPC's Motion requests the Commission to strike portions of the post hearing brief filed by GTEFL. Specifically, OPC requests that references by GTEFL to the "Tucker direct testimony" be stricken from its brief. As grounds for this request, OPC asserts that the referenced material is not competent, substantial evidence upon which the Commission may base its decision. In its Response, GTEFL asserts that its references to "Mr. Tucker's testimony" are proper, given that the communication from Chief Tucker was made a part of the record of this proceeding.

Staff recommends that the Commission grant OPC's Motion and strike the references by GTEFL to the "Tucker direct testimony." The fact that this material was made a part of the record of this proceeding does not make it evidence that can be relied upon, much less competent, substantial evidence sufficient to support a finding of fact. Any reliance by GTEFL on such an item is misplaced reliance. Accordingly, these references should

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be stricken from GTEFL's brief.

ALTERNATIVE STAFF ANALYSIS: Staff did not rely upon any of the information in question in formulating its recommendation to the Commission. The Commission cannot utilize the "Tucker testimony" in making its decision in this matter. As long as the Commission is cognizant of this fact, the citations by GTEFL can be viewed as harmless error, obviating the need to strike the offending portions of the brief.

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April 8, 1991

ISSUE 16: Should the Commission grant GTEFL's Motion to Strike portions of the testimony of Dr. Mark Cooper?

RECOMMENDATION: No, the Commission should deny GTEFL's Motion.

STAFF ANALYSIS: On November 29, 1990, GTEFL made an oral Motion to Strike certain portions of the prefiled direct testimony of Dr. Mark Cooper. (Motion) (TR 559-592) The basis of this objection was "hearsay, due process, inability to engage in any intelligent cross examination of the stricken portions of his testimony." As grounds for this objection, GTEFL asserted that the documents underlying the disputed areas of Dr. Cooper's testimony were proprietary documents that were not made available to GTEFL. GTEFL conducted voir dire of the witness to demonstrate the basis of the objection to the testimony. Following this procedure, GTEFL's objection to the testimony was overruled and the Motion to Strike was denied. At the conclusion of the hearing, GTEFL renewed its Motion.

A review of GTEFL's post hearing brief shows that GTEFL was not prejudiced in putting on its own case. The arguments made by GTEFL regarding Dr. Cooper's testimony go to the weight of the evidence, not its admissibility. Accordingly, the Motion should be denied.

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ISSUE 17: Should the Commission grant the Office of Public Counsel's Petition to Require the Offering of Call Trace Service to All Customers at Reasonable, Usage Based Rates?

RECOMMENDATION: If the Commission adopts staff's recommendation in Issue 6, the result will be to grant in part and deny in part the Petition filed by OPC.

STAFF ANALYSIS: On September 21, 1990, OPC filed its Petition to Require the Offering of Call Trace Service to All Customers at Reasonable, Usage Based Rates (Petition) (Attachment I). On September 26, 1990, the Attorney General filed a letter in support of OPC's Petition (Attachment J). On October 11, 1990, GTEFL filed its Answer (Attachment K). On October 11, 1990, Southern Bell filed its Response to OPC's Petition (Attachment L).

The merits of restructuring Call Trace are set forth at length in Issue 6. If the Commission approves staff's recommendation for Issue 6, the result will be to grant in part and deny in part the Petition filed by OPC. If the Commission denies staff's recommendation regarding Call Trace in Issue 6, the result will be to deny OPC's Petition altogether.

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ISSUE 16: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed upon the issuance of the final order in this docket, if no reconsideration is requested.

STAFF ANALYSIS: With the Commission's approval of Issues 1-13, this docket may be closed.



State of North Carolina

LACY H. THORNBURG
ATTORNEY GENERAL

Department of Justice
P.O. BOX 629
RALEIGH
27602-0629

RECEIVED
March 15, 1991
MAR 18 1991

Office of
Public Counsel

Ms. Geneva T. Thigpen, Acting Chief Clerk
North Carolina Utilities Commission
Post Office Box 29510
Raleigh, North Carolina 27626-0510

Re: Caller ID, Docket No. P-55, Sub 925

Dear Ms. Thigpen:

Attached is the Attorney General's and Public Staff's joint filing in response to the Commission's Order of March 5th, 1991 requesting information on the status of Caller ID throughout the country. This filing contains the results of a survey made in the past week of Caller ID activities in the 50 states and the District of Columbia.

The information was elicited by faxing a survey to consumer advocates and/or commissions in each jurisdiction. A copy of the survey questionnaire is incorporated in the filing. Further, one copy only of the individual responses is presented for filing with you for reference by the Commission or any party. Of particular interest in the background documents are two status reports prepared by United Telephone and dated January 28 and February 25, 1991. Though not used as the source of the attached report and neither inclusive of all states nor of events of recent weeks (in Indiana, New York, Massachusetts and Vermont), the United documents are excellent cross-references.

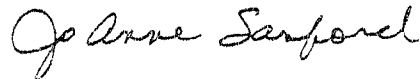
By copy of this letter we are serving all parties of record with our report.

Ms. Geneva T. Thigpen
March 15, 1991
Page 2

Thank you for your assistance.

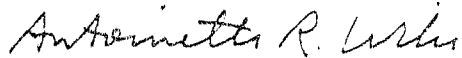
Very truly yours,

LACY H. THORNBURG
Attorney General



Jo Anne Sanford
Special Deputy Attorney General

ROBERT P. GRUBER
Executive Director of Public Staff



Antoinette Wike, Chief Counsel
Public Staff
P. O. Box 29520
Raleigh, NC 27626-0520

JAS/jw

Enclosures

cc: Parties of Record

CALLER ID QUESTIONNAIRE FOR _____

(Please respond by return FAX (919/733-9565) on this sheet to N. C. Attorney General by Monday, March 11)

1. Has a Caller ID tariff been filed? If so, by which company(s) and when?
2. If the service has been approved:
 - (a) What was the approval date?
 - (b) Does it include per-call blocking?
 - (1) If so, is it for all customers or only for "vulnerable" or "at risk" groups such as law enforcement?
 - (2) Is it free?
 - (3) If not, what is the cost?
 - (c) Does it include per-line blocking?
 - (1) Is it for all customers or only for "at risk" groups?
 - (2) Is it free?
 - (3) If not, what is the cost?
 - (d) Is the matter on appeal or has a motion for reconsideration been made? If so, by whom and on what basis?
3. If the service has not yet been approved, please state whether each company's filed proposal includes:
 - (a) Per-call blocking? _____ For all customers or limited to "certain" groups? _____ At what cost? _____
 - (b) Per-line blocking? _____ For all customers or limited to "certain" groups? _____ At what cost? _____
4. If any of your telcos or BOCs have announced an intention to file for Caller ID approval, have they announced a plan for blocking? _____ If so, is it to be per call and/or per line? Free or at a charge? (Circle correct answers)
5. Has legislation concerning Caller ID been announced or filed in your state? Briefly, what does it provide?

SUMMARY OF CALLER-ID ACTIVITY
NORTH CAROLINA ATTORNEY GENERAL
AND PUBLIC STAFF
MARCH 15, 1991

U. S. Congress

Last session: Sen. Kohl (WI) introduced a bill to amend the Electronic Communications Privacy Act (ECPA) to allow CID but to require blocking. Companion bill was introduced by Rep. Kastenmeier (WI) in House, but neither came to a vote.

This session: Sen. Kohl offering an amended version of the previous bill, which amends the ECPA. It would require that free blocking be available to block receipt of any identifying information, presumably either name, number or picture. (S.652) Titled the "Telephone Privacy Act of 1991," it was introduced this week.

Rep. Markey's (MA) H.R. 1305 would amend the Communications Act (instead of the ECPA) to require free per call blocking. This approach differs from Sen. Kohl's in that it would direct the FCC to promulgate rules requiring free per call blocking.

FCC

Joseph Baer has petitioned the FCC to permit use of alternate identity codes in lieu of directory or billing numbers for non-published subscribers. He further requests an FCC stay of all state action pending resolution of his petition. No decision yet.

Corporate Policies [Note: These are policies that companies support, not necessarily those followed by PUC's in service area.]

Regional Bell Operating Companies

NYNEX (7 states)	Proposes free per-call blocking
S.W. Bell (5 states)	Proposes free per-call blocking
U.S. West (14 states)	Proposes free per-call blocking
PacTel (2 states)	Proposes free per-call blocking
Bell South (9 states)	Proposes "All Number Delivery"
Ameritech (5 states)	Proposes "All Number Delivery"
Bell Atlantic (7 states)	Proposes "All Number Delivery"

Centel	Proposes free per-call blocking
Contel	Proposes unrestricted Caller ID
GTE	Proposes unrestricted Caller ID; offers Protected Number Service for privacy concerns.
Rochester Tel.	Supports free per call blocking (Though as a N.Y. company, is subject completely to March 1991 PUC order which sets forth the requirements of free per-call and per-line blocking).
United	Favors unrestricted Caller ID but varies between "no blocking" and free per-call blocking among filings in four states.

States

Attached

CID	CID	UNIVERSAL	CHARGE	CID	UNIVERSAL	CHARGE	CID	UNIVERSAL	CHARGE	PROPOSED/	FILED	COMMENTS
FILED	APPROVED	PER-CALL	PER-LINE	PER-CALL	PER-LINE	PER-CALL	PER-LINE	PER-CALL	PER-LINE	PER-CALL	PER-LINE	
STATE	FILED	PER-CALL	PER-LINE	PER-CALL	PER-LINE	PER-CALL	PER-LINE	PER-CALL	PER-LINE	PER-CALL	PER-LINE	
AL	7/17/90	12/4/90	YES	YES	FREE	YES	FREE	NO	NO	NO	NO	SOUTH CENTRAL BELL ALLOWED ONE YEAR TRIAL IN BIRMINGHAM. BLOCKING ORDERED OVER BELL'S OBJECTION. COMPANY'S MOTION FOR RECONSIDERATION OR REHEARING PENDING.
AK	NO	--	--	--	--	NO	--	NO	--	NO	NO	NO ARIZONA-SPECIFIC ANNOUNCEMENT. BUT U.S. WEST WAS ANNOUNCED A CORPORATE POLICY TO PROPOSE FREE PER-CALL BLOCKING IN SERVICE AREA.
AI	NO	--	--	--	--	NO	--	NO	--	NO	NO	NO ARIZONA-SPECIFIC ANNOUNCEMENT. BUT U.S. WEST WAS ANNOUNCED A CORPORATE POLICY TO PROPOSE FREE PER-CALL BLOCKING IN SERVICE AREA.
AR	CONTEL	14/21/92	--	--	--	YES	YES	NO	--	NO	NO	CONTEL REQUESTED CID SERVICE ON AN INTERIM BASIS. COMMISSION STAFF RECOMMENDED PER-CALL BLOCKING. S.W. BELL'S CORPORATE POLICY IS TO PROPOSE FREE PER-CALL BLOCKING. NO ARKANSAS-SPECIFIC ANNOUNCEMENT YET
CA	PROCELL	11/9/90	--	--	--	YES	YES	NO	FREE	YES	YES	LEGISLATION REQUIRING FREE BLOCKING PASSED IN 1989. THREE BILLS NOW PROPOSED TO REQUIRE FREE PER-CALL BLOCKING AS WELL.
CA	CONTEL	12/28/90	--	--	--	YES	YES	NO	FREE	YES	YES	LEGISLATION REQUIRING FREE BLOCKING PASSED IN 1989. THREE BILLS NOW PROPOSED TO REQUIRE FREE PER-CALL BLOCKING AS WELL.
CA	GENERAL	1/31/91	--	--	--	YES	YES	NO	FREE	YES	YES	LEGISLATION REQUIRING FREE BLOCKING PASSED IN 1989. THREE BILLS NOW PROPOSED TO REQUIRE FREE PER-CALL BLOCKING AS WELL.
CO	NO	--	--	--	--	NO	--	YES	YES	NO	NO	U.S. WEST'S CORPORATE POLICY IS TO PROPOSE FREE PER-CALL BLOCKING. FILING EXPECTED LATE 1991 - 1992. CO. HAD ONE TRIAL OF "WHO'S CALLING" -- SYNTHESIZED VOICE ANNOUNCEMENT OF NAME OF CALLER.
CT	NO	--	--	--	--	NO	--	NO	--	NO	NO	BELL ATLANTIC'S CORPORATE POLICY IS "ALL NUMBER DELIVERY."
DE	DIAMOND	1/91	YES	NO	FREE	NO	--	--	--	NO	NO	PUC TO MONITOR TECHNOLOGY RE AUTOMATIC REJECTION OF UNIDENTIFIED CALLS. ANNUAL REPORTS REQUIRED OF DIAMOND STATE TELEPHONE.
DC	CAF	1/30/90	YES	NO	FREE	YES	YES	--	--	NO	NO	CHESAPEAKE & POTOMAC (BELL ATLANTIC) OPPOSED BLOCKING. PEOPLE'S COUNSEL FILED APPLICATION FOR RECONSIDERATION ON 3/1/90 BASED ON: VIOLATION OF ELECTRONIC COMMUNICATIONS PRIVACY ACT AND VIOLATION OF C & P NON-PUBLISHED NUMBER TABLE.

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STATE	CID FILED	CID APPROVED	PER-CALL BLOCK	PER-LINE BLOCK	FOR BLOCKING	APPLA/ NOTION	PROPOSAL PENDING	PER-CALL BLOCK	PER-LINE BLOCK	FOR BLOCKING	CID PROPOSAL ANNOUNCED	PER-CALL BLOCK	PER-LINE BLOCK	FOR BLOCKING	FILED LEGISLATION	COMMENTS
IL	CENTEL 11/9/90	--	--	--	--	--	YES	YES	NO	FREE	--	--	--	--	YES	LEGISLATION REQUIRING FREE PER-CALL BLOCKING FILED. UNRESTRICTED CID (AMERITECH'S POLICY) IS BEING STRONGLY CONTESTED.
	ILL. BELL 12/4/90	--	--	--	--	--	YES	NO	NO	--	--	--	--	--		
IN	BELL 5/90	--	--	--	--	--	YES	NO	NO	--	--	--	--	--	NO	BELL REQUEST AWAITING PUC DECISION. GTE'S REQUEST TO CONDUCT TRIAL REJECTED DUE TO LACK OF BLOCKING COMPONENT. PUC HAS AUTHORIZED CO. TO REFILE ONLY IF IT OFFERS: UNIVERSAL FREE, PER-CALL BLOCKING; AND UNIVERSAL PER-LINE BLOCKING FOR \$5.00, NON-RECURRING CHARGE; AND CALL TRACE ON DEMAND AT \$1.00/ACTIVATION.
	GTE 3/26/90	NO	--	--	--	--	--	--	--	--	--	--	--	--		
IA	NO	--	--	--	--	--	NO	--	--	--	U.S. WEST CENTEL GTE CENTEL	YES YES NO NO	NO NO NO NO	FREE FREE -- --	NO	
KS	NO	--	--	--	--	--	NO	--	--	--	YES	YES	NO	FREE	NO	
KY	GTE 4/90	10/8/90	YES	NO	FREE	NO	--	--	--	--	--	--	--	--	NO	
LA	NO	--	--	--	--	--	NO	--	--	--	NO	--	--	--	NO	
NE	NET 10/11/90	11/20/90	YES	NO	FREE	YES	--	--	--	--	--	--	--	--	YES	NEW ENGLAND TEL. HAS ONE YEAR TRIAL. LEGISLATION REQUIRING FREE PER-CALL BLOCKING PROPOSED. NYNEX'S CORPORATE POLICY WAS CHANGED IN SEPT. 1990 TO ONE OF PROPOSING FREE, PER-CALL BLOCKING. "TECHNICAL SOLUTIONS" AVAILABLE FOR FOR "AT-RISK" GROUPS.
ND	CAP 8/31/89	9/27/89 12/90	YES	NO	FREE	YES	--	--	--	--	--	--	--	--		INITIALLY WAS NO BLOCKING, BUT ON COMMISSION STAFF'S MOTION FOR RECONSIDERATION, PUC ORDERED FREE PER-CALL BLOCKING. MOTION FOR RECONSIDERATION OF THAT DECISION DENIED. BELL ATLANTIC'S POLICY IS "ALL NUMBER DELIVERY."
HA	NET 5/11/91	--	--	--	--	--	YES	YES	NO	FREE	--	--	--	--	NO	

STATE	LD FILED	LD APPROVED	UNIVERSAL PER-CALL BLOCK	UNIVERSAL PER-LINE BLOCK	CHANGE FOR BLOCKING	APPEAL/ NOTION	LD PROPOSAL PENDING	UNIVERSAL PER-CALL BLOCK	UNIVERSAL PER-LINE BLOCK	CHANGE FOR BLOCKING	LD PROPOSAL ANNOUNCED	UNIVERSAL PER-CALL BLOCK	UNIVERSAL PER-LINE BLOCK	CHANGE FOR BLOCKING	PROPOSED/ FILED LEGISLATION	COMMENTS
HI	NO	--	--	--	--	--	NO	--	--	--	YES	YES	NO	FREE	NO	
HI	NO	--	--	--	--	--	NO	--	--	--	NO	--	--	--	NO	
MO	NO	--	--	--	--	--	NO	--	--	--	YES	YES	NO	FREE	NO	SOUTHWESTERN BELL'S ANNOUNCED CORPORATE POLICY IS TO PROPOSE FREE PER-CALL BLOCKING.
MT	NO	--	--	--	--	--	NO	--	--	--	NO	--	--	--	NO	
NE	U.S. WEST 9/90	9/90	YES	NO	FREE	NO	--	--	--	--	--	--	--	--	NO	APPROVED FOR ONE YEAR TRIAL.
	LINCOLN TEL 9/90	10/90	YES	NO	FREE	NO	--	--	--	--	--	--	--	--	--	
NY	CENTEL 3/90	8/20/90	YES	YES	FREE	NO	--	--	--	--	YES	YES	NO	FREE	NO	PER-LINE BLOCKING AVAILABLE (ONLY) TO ALL RESIDENTIAL CUSTOMERS. BLOCKING IS FREE FOR NEW CUSTOMERS AND FOR EXISTING CUSTOMERS DURING WINDOW PERIOD. PACTEL'S ANNOUNCED CORPORATE POLICY IS TO PROPOSE UNIVERSAL, FREE PER-CALL BLOCKING.
HI	NO	--	--	--	--	--	NO	--	--	--	NO	--	--	--	NO	HYNEX'S ANNOUNCED CORPORATE POLICY IS TO PROPOSE FREE PER-CALL BLOCKING. NET HAS MADE NO NEW HAMPSHIRE SPECIFIC ANNOUNCEMENT.
HI	H.J. BELL	10/89	NO	NO	--	NO	--	--	--	--	--	--	--	--	NO	BELL: ARRANGEMENTS MADE FOR "AT RISK" AGENCIES ONLY ON A CASE BY CASE BASIS.
	UNITED 5/4/90 7/17/90	8/31/90	NO	NO	--	NO	--	--	--	--	--	--	--	--	--	UNITED: 1 YEAR EXPERIMENT IN ONE EXCHANGE.
HI	NO	--	--	--	--	--	NO	--	--	--	YES	YES	NO	FREE	NO	U.S. WEST'S ANNOUNCED CORPORATE POLICY IS TO PROPOSE FREE PER-CALL BLOCKING. THERE IS NO H.M.-SPECIFIC ANNOUNCEMENT, BUT EXPECTATION IS FOR U.S. WEST OFFERING OF UNIVERSAL, FREE PER-CALL AND LIMITED FREE PER-LINE.
NY	R.Y. TEL	NO	--	--	--	--	NO	--	--	--	--	--	--	--	NO	ROCHESTER TEL CONDUCTED A TRIAL WITH FREE, UNIVERSAL PER-CALL AND PER-LINE BLOCKING. P.S.C. DENIED BOTH CO'S TARIFFS ON 3/5/91, DIRECTING THEM TO PROVIDE FREE, UNIVERSAL PER-CALL AND PER-LINE
	ROCHESTER	NO	--	--	--	--	NO	--	--	--	--	--	--	--	--	

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STATE	CID FILED	CID APPROVED	UNIVERSAL PER-CALL BLOCK	UNIVERSAL PER-LINE BLOCK	CHARGE FOR BLOCKING	APPEAL/ MOTION	CID PROPOSAL PENDING	UNIVERSAL PER-CALL BLOCK	UNIVERSAL PER-LINE BLOCK	CHARGE FOR BLOCKING	CID PROPOSAL ANNOUNCED	UNIVERSAL PER-CALL BLOCK	UNIVERSAL PER-LINE BLOCK	CHARGE FOR BLOCKING	PROPOSED/ FILED LEGISLATION	COMMENTS
NO	SO. BELL 10/20/89	--	--	--	--	--	YES	NO	NO	--	--	--	--	--	NO	BELL (A BELL SOUTH CO.) AGREES TO FREE PER-LINE BLOCKING FOR LAW ENFORCEMENT, NON-PROFIT SOCIAL SERVICE OR INTERVENTION-TYPE AGENCIES AND FOR GOVERNMENTAL AGENCIES. UPON CERTIFICATION BY AGENCY HEAD, PER-LINE BLOCKING WILL BE AVAILABLE FOR AGENCY, EMPLOYEES, VOLUNTEERS AND CLIENTS.
	LEXINGTON 3/11/91	--	--	--	--	--	YES	YES	NO	FREE	--	--	--	--		
NO	NO	--	--	--	--	--	NO	--	--	--	NO	--	--	--	YES	U.S. WEST'S ANNOUNCED CORPORATE POLICY IS TO PROPOSE FREE PER-CALL BLOCKING. THERE IS NO N.D.- SPECIFIC ANNOUNCEMENT. PROPOSED LEGISLATION WOULD PROVIDE FREE, PER-CALL BLOCKING.
ON	BELL 3/20/90	--	--	--	--	--	YES	NO	NO	--	NO	--	--	--	NO	ALL NINE INTERVENORS EITHER OPPOSE OUTRIGHT OR OPPOSE UNLESS BLOCKING OFFERED.
OK	S.N. BELL 1/17/91	--	--	--	--	--	YES	YES	NO	FREE	NO	--	--	--	NO	S.N. BELL REQUESTED ONE YEAR TRIAL FOR ONE EXCHANGE. CORPORATE POLICY IS FREE PER-CALL BLOCKING.
OR	NO	--	--	--	--	--	NO	--	--	--	NO	--	--	--	YES	LEGISLATION PROPOSED TO REQUIRE FREE BLOCKING.
PA	BELL 1/18/89	11/9/89	NO	NO	--	YES	YES	--	--	--	NO	--	--	--	YES	COMMONWEALTH COURT FOUND CID ILLEGAL ON STATUTORY AND CONSTITUTIONAL GROUNDS. APPEAL PENDING IN PA. SUPREME COURT. BELL INTRODUCED LAST YEAR TO REQUIRE FREE BLOCKING IF CID ALLOWED.
RI	NO	--	--	--	--	--	NO	--	--	--	NO	--	--	--	NO	
SC	BELL 12/6/89	4/19/90	NO	NO	--	YES	YES	--	--	--	NO	--	--	--	NO	
	CHESNEE 1/13/91	--	--	--	--	--	YES	YES ?	YES ?	\$2.00 - \$2.50/NO					NO	BELL: CONSUMER ADVOCATE APPEALED ON LEGALITY VIS-A-VIS TRAP AND TRACE LAW. NOV. 26, 1990 COURT ORDER FOUND SERVICE TO BE LEGAL; C.A. APPEALED TO SUPREME COURT.
SD	NO	--	--	--	--	--	NO	--	--	--	NO	--	--	--	NO	U.S. WEST'S ANNOUNCED CORPORATE POLICY IS TO PROPOSE FREE PER-CALL BLOCKING. THERE IS NO S.D.- SPECIFIC ANNOUNCEMENT.
TH	BELL 9/29/89	11/1/89	NO	NO	--	NO	--	--	--	--	NO	--	--	--	NO	

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STATE	CID FILED	CID APPROVED	PER-CALL BLOCK	PER-LINE BLOCK	FOR BLOCKING	APPEAL/ ACTION	PROPOSAL PENDING	PER-CALL BLOCK	PER-LINE BLOCK	FOR BLOCKING	CID PROPOSAL ANNOUNCED	PER-CALL BLOCK	PER-LINE BLOCK	FOR BLOCKING	FILED LEGISLATION	COMMENTS
TX	NO	--	--	--	--	--	NO	--	--	--	YES	--	--	--	YES	S.W. BELL'S ANNOUNCED CORPORATE POLICY IS TO PROPOSE FREE PER-CALL BLOCKING. THERE IS NO TEXAS-SPECIFIC ANNOUNCEMENT. LEGISLATION TO ELIMINATE WIRETAP LAW OBSTACLE TO CID DISCUSSED.
UT	NO	--	--	--	--	--	NO	--	--	--	NO	--	--	--	NO	U.S. WEST'S ANNOUNCED CORPORATE POLICY IS TO PROPOSE FREE PER-CALL BLOCKING. THERE IS NO UTAH-SPECIFIC ANNOUNCEMENT YET.
VT	N.E. TEL 3/90	4/90	YES	NO	FREE	YES	--	--	--	--	--	--	--	--	YES	-UNDER CONTINUING INVESTIGATION; HEARINGS HELD MARCH 12-13, 1991. CONSUMER ADVOCATES REQUESTING ADDITION OF UNIVERSAL PER-LINE BLOCKING. -INITIALLY WAS NO BLOCKING; NYNEX CHANGED CORPORATE POLICY IN SEPT., 1990 TO ONE OF FREE PER-CALL BLOCKING. -LEGISLATION PROPOSED WHICH WOULD REQUIRE "FAIR AND EQUITABLE PROVISIONS FOR THE TREATMENT OF CUSTOMER PRIVACY INTERESTS."
VA	C & P 9/1/89	10/1/89	NO	NO	--	NO	--	--	--	--	--	--	--	--	YES	S.B. 181, 1990 SESSION, WOULD HAVE REQUIRED FREE BLOCKING - IT FAILED TO PASS.
	UNITED 8/1/90	9/1/90	NO	NO	--	NO	--	--	--	--	--	--	--	--		
WA	NO	--	--	--	--	--	NO	--	--	--	YES	YES	NO	FREE	YES	U.S. WEST'S ANNOUNCED CORPORATE POLICY IS TO PROPOSE FREE PER-CALL BLOCKING. THERE IS NO WASHINGTON-SPECIFIC ANNOUNCEMENT. P.U.C. HAS ADVISED LEGISLATURE THAT IT WILL REQUIRE OPTIONAL, FREE PER-CALL BLOCKING. LEGISLATION CONSIDERED TO AMEND TRAP AND TRACE LAW TO ALLOW CID.
WV	C & P 5/89	8/89	NO	NO	--	NO	--	--	--	--	--	--	--	--	NO	
WI	NO	--	--	--	--	--	NO	--	--	--	NO	--	--	--	YES	AMERITECH'S POLICY IS UNRESTRICTED CID. A LEGISLATIVE COMMITTEE ON PRIVACY IS RECOMMENDING: (1) FREE PER-LINE BLOCKING AS THE STANDARD - CUSTOMER HAS TO OPT TO BE UNBLOCKED, AND (2) "DOUBLE-BLOCKING" - IF CALLER BLOCKS THEN RECIPIENT'S CID DEVICE REFUSES CALL.

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STATE	CID FILED	CID APPROVED	UNIVERSAL PER-CALL BLOCK	UNIVERSAL PER-LINE BLOCK	CHARGE FOR BLOCKING	APPEAL/ NOTION	CID PROPOSAL PENDING	UNIVERSAL PER-CALL BLOCK	UNIVERSAL PER-LINE BLOCK	CHARGE FOR BLOCKING	CID PROPOSAL ANNOUNCED	UNIVERSAL PER-CALL BLOCK	UNIVERSAL PER-LINE BLOCK	CHARGE FOR BLOCKING	PROPOSED/ FILED LEGISLATION	COMMENTS
NY	NO	--	--	--	--	--	NO	--	--	--	NO	--	--	--	NO	U.S. WEST'S ANNOUNCED CORPORATE POLICY IS TO PROPOSE FREE PER-CALL BLOCKING. THERE IS NO NYONGING- SPECIFIC ANNOUNCEMENT.

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AVAILABILITY OF CALLERS' NUMBERS

1. Billing Information for Any LEC-Provided Usage-Sensitive Service: Any service which is billed on a per use basis (eg. LMS, MTS, 976) must have the billing number recorded.

2. Automatic Number Identification (ANI): This provides the customer's billing number. It is a feature which is a standard part of Feature Group C or D access and which is optional with Feature Group B. It is provided to IXC's to provide routing and billing information. However it can be and is being resold by ISCs via their interstate tariffs. Because Florida has several intrastate IXC tariffs which are add-ons to the interstate tariffs, this feature is available on intrastate calls in Florida. An example of how this is used is by American Express to attach a customer's 800 phone call to his billing record.

3. Identified Outward Dialing (IOD): This feature is available to PBX trunk subscribers, and provides the number of the station dialing an outward call to the PBX equipment (or operator position) for use in call management (who made what call) by the PBX owner.

4. Trap and Trace: Although Call Trace is an automated feature available through Touchstar (See Calling Number Identification), the traditional Trap and Trace requires physical and manual implementation and monitoring of calls made to a particular number. A court order is required before a Trap and Trace is placed, and this is generally a last resort, after some period of customer monitoring and a changed phone number has been tried.

5. Permanent Trap and Trace: There is no charge for traditional Trap and Trace (see item 4.), which is expected to be very occasional. When an entity, such as the Okaloosa County School Board, wants a permanent trap on a line, there is a monthly charge in Centel's tariff. No other LEC has a permanent Trap and Trace service.

6. Enhanced 911: The customer's phone number (billing number) is transmitted with the call to the 911 tandem. This principally is used to 1) determine to which Public Safety Answering Point (PSAP) the call will be sent and 2) match up to an Automatic Location Identification (ALI) data base to provide the customer's place address.

7. Calling Number Identification (CNID): This is a service which is available only with Signalling System 7. It is part of the Touchstar family of services in Southern Bell's territory, and has other names in Centel, General and United territories. CNID provides the calling customer's phone number to be read by a specialized piece of equipment at the called person's premises. This is the issue before the Commission right now. Along with CNID are related services such as Return Calling and Call Trace, which use the number of the last person who called. (Incidentally, Call Trace sends the call to the telephone company security department. No action is taken on using the number without a court order, similar to traditional Call Trace.)

8. Proposal for Provision of ANI with FGB to Storefinders: This is out of the access tariff and would use ANI to route calls from the Dominos Pizza customer to the nearest Dominos store. No other information is derived from the call.

9. ANI with Universal Access Number: This provides ANI, using the same technology providing it to IXC's in the access tariff, to customers subscribing to Universal Access Number (UAN) service. Because of the privacy concern similarities in this service, which is available to anyone who purchases UAN, compared to Caller ID services, ANI with UAN has not yet been approved in Florida.

10. Standard Message Desk Interface (SMDI): This is a service available with the Comparably Efficient Interconnection (CEI) tariff Southern Bell offers in order to be able to provide voice mail service in its territory. It provides the phone number of the person subscribing to voice mail (and call forwarding busy and don't answer) to the voice mail provider for the purpose of depositing the message of the caller to the subscriber's voice mail box.

11. TicketTaker: This is a service available to cable television companies, which permits their subscribers to call in to a particular phone number to be able to watch and be billed for a pay-per-view movie. The subscriber is billed by the cable company, but the telephone number is the cue for who to bill.

12. ANI provided to AAA over ESSX with ISDN trial: As part of the ISDN trial in Heathrow, AAA's international headquarters has ISDN via and ESSX system. It also receives incoming 800 service via the interstate/intrastate tariff, from which it purchases ANI. This ANI is used to find customer records in AAA's files. A glitch has been discovered as a result of the ISDN provisioning, which means that ANI is transported with all incoming calls. Apparently the ANI cannot be disconnected except on an ESSX systemwide basis.

► 'Rejection' is name of new Caller ID game

AT&T and Northern Telecom are working on a new solution to the continuing privacy battle over Caller ID. The planned service is generally known as block-block, or block the blocker. With its availability, the privacy debate will then have a new twist. But when will the twisting end?

Implementation of Caller ID started in 1987 when Bell Atlantic began offering the pure service, with no blocking, in New Jersey. Expansion of the service began slowly, with its "epicenter" on the East Coast. But as more and more telcos became interested in providing the service and filing tariffs for it, the Caller ID issue exploded across the country—most noticeably in the past year. Hardly a week passes without the industry reading something about the service in trade publications.

The "war" is being fought primarily on the state level where the issue on the table is privacy. It has two battle fronts, however: one struggle is over

"It's a concept we've been throwing around for awhile, but we waited for a customer to come to us."

—Foncine Wood, AT&T

whether telcos should provide "blocking" with the service, and the other, more critical battle occurring in at least one state (Pennsylvania) is whether the service is even legal.

It is the first battle that seems to have an endless front—perhaps circular. Privacy advocates say the service infringes on a caller's right to privacy when using the telephone. The negotiating tool remains when and how and to whom to provide blocking.

With Caller ID per-line or per-call blocking, a person making a call can choose not to have his or her number

displayed on the called party's machine. This satisfies many privacy advocates, but not some of the telcos, which say blocking negates the original purpose of Caller ID.

This blocking battle is being fought throughout the country. California has adopted a law that states Caller ID cannot be offered without blocking. Bell Atlantic, which at first was stolidly firm about no blocking, has had to kneel to the pressure. Its C&P telephone subsidiary recently reached an agreement with the District of Columbia Public Service Commission for per-call blocking. Elsewhere, Southwestern Bell, the last to join the Caller ID age (*see related story*), has decided upfront to offer free per-call blocking wherever it offers the service.

Now to the next phase: Telephone companies upset with the new rules in some states requiring blocking for Caller ID could soon be able to offer this "block-block" service, perhaps as early as mid-year. AT&T's offering is called Unidentified Call Rejection; Northern Telecom's is Anonymous Caller Rejection.

What the feature does is allow called parties to block in return any incoming calls from parties who have blocked their phone numbers from being displayed. The call is routed to a recorded message that says the called party does not accept calls with blocked numbers. The call is terminated. The caller must call again if he or she wishes to release the phone number.

The block-block service provides a way for telcos to keep Caller ID customers who wouldn't want it if blocking is available, said AT&T's Foncine Wood, service manager for CLASS and CCS7.

"It's a concept we've been throwing around for awhile, but we waited for a customer to come to us" she said. The first interest from telephone companies has been just in the past six months, she said, adding that AT&T has received "several inquiries" from RBOCs and Independents. She would not specify which ones.



AT&T will offer its Unidentified Call Rejection capability beginning in the second quarter of this year for both its 1AESS and 5ESS end offices. Northern Telecom hopes to begin offering Anonymous Caller Rejection by "mid-summer," a spokesman from Northern said.

The back-and-forth motion of the Caller ID battle is exhaustive, but it doesn't end here. The next "counter" move would be an interactive block-block service, in which calling parties (if their calls are rejected because they block their number) can punch in a code to release their numbers after listening to the message, Wood said. However, AT&T does not yet have the capability for such an offering. Northern Telecom said it currently is not pursuing that option.—Dianne Hammer, associate editor

► New survivability a 'plus' for U S West

U S West Communications is touting an expanded version its self-healing network service that it introduced last spring.

The RBOC's Self-Healing Alternate Route Protection (SHARP) service, slated to be offered in five metropolitan areas by July 1991, is marketed to customers with medium to large amounts of data, voice and video traffic.

It provides backup electronics and two physically separate fiber optic paths through two central offices. However, SHARP offers protection only up to the central office, a U S West spokeswoman said.

The expanded service, SHARP Plus, is designed for interoffice facilities protection, offering end-to-end survivability for high-capacity services to large business, carrier and government

continued on page 34



Southern Bell

A. M. Lombardo
Assistant Vice President-
Regulatory Relations

150 West Flagler Street, Suite 1901
Miami, Florida 33130
305 530-5330

January 10, 1990

Mr. Walter D'Haeseleer
Director, Division of Communications
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

Dear Mr. D'Haeseleer:

Pursuant to Florida Statute 364.05 we are filing herewith revisions to our General Subscriber Service Tariff. Following are the affected pages:

General Subscriber Service Tariff

- Section A13 - Fourth Revised Page 36
- First Revised Page 36.1
- Fourth Revised Page 38

The purpose of this filing is to revise the TouchStar[®] Service tariff to include optional blocking of calling number delivery to specified customer groups.

The following attachments provide additional supporting and explanatory information for the proposed tariff revisions. These attachments constitute a comprehensive package which fulfills the basic requirements for supporting data specified in Rule 25-9.05.

- Attachment A - Executive Summary
- Attachment B - Service Description
- Attachment C - Customer Effects
- Attachment D - Cost Information

*Registered Service Mark of BellSouth Corporation

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Acknowledgment, date of receipt, and authority number of this filing are requested. A duplicate letter of transmittal is attached for this purpose.

Your consideration and approval will be appreciated.

Yours very truly,

A handwritten signature in cursive script, appearing to read "A M Lombardo".

Assistant Vice President -
Regulatory Matters

Registered Service Mark of BellSouth Corporation

ISSUED: January 10, 1990
BY: Vice President
Miami, Florida

A13. MISCELLANEOUS SERVICE ARRANGEMENTS

A13.19 TouchStar® Service (Cont'd)

A13.19.2 Definitions of Feature Offerings (Cont'd)

E. Call Block (Cont'd)

If the customer also subscribes to Preferred Call Forwarding and/or Call Selector and the same telephone numbers appear on those screening lists, Call Block will take precedence.

This feature will not work if the incoming call is from a telephone number in a multi-line hunt group, unless the telephone number is the main telephone number in the hunt group, or is Telephone Number identified.

F. Call Tracing

Call Tracing enables the customer to initiate an automatic trace of the last call received.

Upon activation by the customer, the network automatically sends a message to the Company's Security Department indicating the calling number, the time the call was received, and the time the trace was activated. The customer using this feature would be required to contact the local business office for further action. The customer is not provided the traced number.

Only calls from within the same TouchStar® service capable area are traceable using Call Tracing.

This feature will not work if the incoming call is from a telephone number in a multi-line hunt group, unless the telephone number is the main telephone number in the hunt group, or is Telephone Number identified.

If the customer makes or receives another call after hanging up from the annoying call, prior to activating the trace, Call Tracing will not record the correct number.

G. Caller ID

This feature enables the customer to view on a display unit the Directory Number (DN) on incoming telephone calls.

When Caller ID is activated on a customer's line, the Directory Numbers of incoming calls are displayed on the called CPE during the first long silent interval of the ringing cycle.

Any customer subscribing to Caller ID will be responsible for the provision of a display device which will be located on the customer's premises. The installation, repair, and technical capability of that equipment to function in conjunction with the feature specified herein will be the responsibility of the customer. The Company assumes no liability and will be held harmless for any incompatibility of this equipment to perform satisfactorily with the network features described herein.

If the incoming call is from a caller served by a PBX, only the main number of the PBX is transmitted and available for display.

If the incoming call originates from a multi-line hunt group, the telephone number transmitted will always be the main number of the hunt group.

Caller ID is not available on operator handled calls.

H. Calling Number Delivery Blocking

This feature enables the customer to prevent the transmission of his telephone number, on outgoing calls, to subscribers of TouchStar® service Caller ID. Calling Number Delivery Blocking is in operation on a continuous basis and cannot be deactivated by the customer. The feature is applicable on all outgoing calls placed from the customer's line.

(N)

(N)

(M)

ISSUED: January 10, 1990
BY: Vice President
Miami, Florida

A13. MISCELLANEOUS SERVICE ARRANGEMENTS

A13.19 TouchStar® Service (Cont'd)

A13.19.3 Regulations and Limitations of Service (Cont'd)

A. The following limitations apply:

1. TouchStar® service is provided subject to the availability of facilities. Additionally, the features described will only operate on calls originating and terminating within TouchStar® service equipped offices. Also, feature screening lists can only contain telephone numbers of subscribers served out of TouchStar® service capable offices. (M)
2. The service is available to all single party customers who have rotary or Touch-Tone service. The Caller ID feature is available to single exchange line residence and business customers. Caller ID is not available for lines equipped with Rotary (Grouping) arrangements. (M)
3. The service will not work on an originating basis with Company provided Public and Semi-Public Telephone Service, party-line service, Toll Terminals, Trunks, or some Remote Switching Locations.
4. Appropriate service order charges apply except during Company designated periods of special promotion.
5. This Tariff sets forth minimum and maximum rates for TouchStar® service as described in A13.19.4. The applicable rates are those specified in the current price list on file with the Public Service Commission and available at all customer center locations.
6. The Company may increase or decrease rates within the specified ranges in this Tariff following thirty days notice to the commission and existing customers.
7. Subscribers to Prestige® Single Line, I and II must have Touch-Tone in order to subscribe to TouchStar® service.
8. The Company will deliver all numbers, subject to technical Limitations, including telephone numbers associated with Non-Published Listing Service as described in Section A6. of this Tariff.
9. Telephone numbers transmitted via Caller ID are intended solely for the use of the Caller ID subscriber. Resale of this information is prohibited by this Tariff.
10. Optional blocking of calling number delivery is available upon request, at no charge, to the following entities: (a) private, non-profit, tax-exempt, domestic violence intervention agencies; and (b) federal, state, and local law enforcement agencies. The Company's limits of liability are described in A2.5.1 of this Tariff. (N)

Material appearing on this page previously appeared on page(s) 36 of this section
*Registered Service Mark of BellSouth Corporation

A13. MISCELLANEOUS SERVICE ARRANGEMENTS

A13.19 TouchStar® Service (Cont'd)

A13.19.4 Rates and Charges (Cont'd)

C. Business - Single or First Service Features (Cont'd)

(2) Repeat Dialing¹

	MONTHLY RATE		Current	USOC
	Minimum	Maximum		
(a) Per line	\$3.50	\$6.00	\$4.50	NSQ
(3) Call Selector				
(a) Per line	3.50	6.00	4.50	NSK
(4) Preferred Call Forwarding				
(a) Per line	3.50	6.00	4.50	NCE
(5) Call Block				
(a) Per line	3.50	6.00	4.50	NSY
(6) Call Tracing				
(a) Per line	3.50	6.00	5.00	NST
(7) Caller ID				
(a) Per Line	7.00	20.00	10.00	NSD
(8) Calling Number Delivery Blocking ²				
(a) Per Line	-	-	-	NQB (N)

D. Business - Additional Service Features (Second and Subsequent Features)

(1) Call Return ¹				
(a) Per line	2.50	5.00	3.50	NX8
(2) Repeat Dialing ¹				
(a) Per line	2.50	5.00	3.50	NX9
(3) Call Selector				
(a) Per line	2.50	5.00	3.50	NX2
(4) Preferred Call Forwarding				
(a) Per line	2.50	5.00	3.50	NX6
(5) Call Block				
(a) Per line	2.50	5.00	3.50	NX5
(6) Call Tracing				
(a) Per line	3.50	6.00	5.00	NST
(7) Caller ID				
(a) Per Line	7.00	20.00	10.00	NSD

Note 1: Due to technological limitations, in some locations Call Return and Repeat Dialing cannot be ordered separately.

Note 2: Calling Number Delivery Blocking should not be included in the determination of applicable rates when ordered in association with other TouchStar® service features. (N)

ISSUED: January 24, 1990

BY: Vice President

Miami, Florida

October 13, 1990

A6. DIRECTORY LISTINGS

A6.4 Non-Published (Private) Listing (Cont'd)

- E. The telephone number, name and address of the calling party may be displayed at a Public Safety Answering Point (PSAP) located on the premises of a customer subscribing to 911 Service, on a call-by-call basis only, for the purpose of responding to emergency calls from non-published numbers. The subscriber forfeits his right to privacy upon making a call to 911. (T)(M)
- F. For accounting purposes, the telephone number, name, and address of a subscriber with a non-published listing will be provided to the Long Distance Carrier(s) which furnishes the subscriber long distance message telecommunications service. (T)(M)
- G. The telephone number of the customer will, by necessity, be associated with data passed to CATV companies who subscribe to Pay Per View Service for the exclusive purpose of validating telephone order transactions of their clients. (M)

A6.4.2 Rate Application

A. Non-published listing

1. Where charge applies

(a) each

Monthly
Rate

\$1.75

USOC

NPU

2. Where charge does not apply

(a) each

- Service used primarily by a certified hearing/speech impaired person
- Additional service furnished to the same subscriber who has other service listed in the directory in the same name at the same address.
- Additional service furnished to the same subscriber who has service listed in the directory in the same name at a different address provided the listed service is in the same local exchange.
- Service to a subscriber living in a hotel, hospital, retirement complex, apartment, boarding house or club if the subscriber is listed under the telephone number of the PBX, Centrex, ESSX® service, ESSX-1 or Semipublic Telephone Service furnished to such establishments.
- Temporary service

A6.4.3 Reserved for Future Use

Deleted

A6.5 Non-Listed (Semiprivate) Listing

A6.5.1 General

- A. A non-listed listing is not listed in the alphabetical section of the Company's directory, but is maintained on directory assistance records and will be furnished upon the request of a calling party. (T)(M)
- B. The acceptance by the Company of the subscriber's request to furnish a non-listed listing does not create any relationship or obligation, direct or indirect, to any person other than the subscriber. (T)(M)
- C. In the absence of gross negligence or willful misconduct, no liability for damages arising from publishing a non-listed telephone number in the directory shall attach to the Company. Where such a number is published in the directory, the Company's liability shall be limited to and satisfied by a refund of any monthly charges which the Company may have made for such non-listed listing. The subscriber indemnifies and saves the Company harmless against any and all claims for damages caused or claimed to have been caused, directly or indirectly, by the publication of a non-listed listing. (T)(M)
- D. Telephone numbers transmitted via Caller ID are intended solely for the use of the Caller ID subscriber. Resale of this information is prohibited as described in Section A13. of this Tariff. (N)

Deleted

Tariff Revisions
Legislative Format
Not for Approval

SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

ISSUED: January 24, 1990
BY: Vice President
Miami, Florida

October 13, 1988

A6. DIRECTORY LISTINGS

A6.7 Miscellaneous Listing (Cont'd)

A6.7.12 Mobile and Paging Service Listing

- A. A Mobile Telephone Carrier, a Cellular Carrier, a Radio Common Carrier, or a Paging Company may be furnished a listing for their clients as specified.
- B. Rate Application
1. Listing

(a) each

Monthly
Rate

\$1.20

USOC

MSZ

A6.7.13 "No Sales Solicitation Calls" Listing

- A. General
1. A residence subscriber who does not wish to receive unsolicited consumer telephone calls may have the words "No Sales Solicitation Calls" added to their published directory listing at the regular rate for additional listing.
2. The Company shall not be liable in any manner for any error or omission in the listing provided in connection with this service.
3. The listing is accepted for a minimum chargeable period of the life of the directory in which the listing first appears not to exceed one year from the effective date of this listing. Listings shall be self renewing.
- B. Telephone numbers transmitted via Caller ID are intended solely for the use of the Caller ID subscriber. Resale of this information is prohibited as described in Section A13. of this Tariff.
- C. Rate Application
1. Listing

(a) each

1.20

XLLSX

A6.7.14 Reserved for Future Use

A6.7.15 Paging Service Listing

See Mobile and Paging Service Listing, A6.7.12

A6.7.16 RingMaster Service Listing

- A. One listing for each RingMaster service number will be furnished on a listed or non-listed basis at no charge to the subscriber.
- B. A RingMaster service listing must be either business or residence as identified by the class of service.
- C. Other listings may be provided at the rates and regulations specified in this Tariff.

A6.7.17 Sharing and Resale of Basic Local Exchange Service Listing

See Section A23 of this Tariff

A6.7.18 Special Text Listing (Business)

- A. A special text listing provides instructions for directing incoming calls after hours during specific time periods or calling information for a specific service/department.

Example:

For The Following Zip Codes 30506 30408 30532 30533 30534

*Material appearing on the page previously appeared on page 4, 1, 2
of this section*

*Material previously appearing on the page now appears on page 15
of this section*

Tariff Revisions
Legislative Format
Not for Approval

SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

ISSUED: January 24, 1990
BY: Vice President
Miami, Florida

A1. DEFINITION OF TERMS

NETWORK INTERFACE

- a. The Network Interface is a standard Registration Program Jack or equivalent provided by the Company as a part of exchange access, WATS, or Private Line Services.¹
- b. The Network Interface will be located inside the subscriber premises.
- c. All premises services will connect to the telecommunications network through the Network Interface.

Denotes a portable plug-ended device, without active elements, consisting of a multiwinding transformer and manual line switches designed to bridge two or more, but not to exceed five, of the lines appearing on four-button and six-button key telephone stations equipped with both hold and illumination features.

NON-LISTED (SEMIPRIVATE) TELEPHONE LISTING

(C)

A non-listed listing is not in the alphabetical section of the Company's directory, but is maintained on directory assistance records and will be furnished upon request of a calling party.

(C)

NON-PUBLISHED (PRIVATE) TELEPHONE LISTING

(C)

A non-published listing is not listed in either the alphabetical section of the Company's directory or directory assistance records and will not be furnished upon request of a calling party.

(C)

PARTY LINE SERVICE

See "Exchange Service".

PATRON

The term "Patron" as used in connection with composite data service, denotes a subscriber to the data switching services of a Composite Data Service Vendor.

PERSON-TO-PERSON CALL

See "Long Distance Message Telecommunications Service".

PREMISES (SAME)

The term "Same Premises" shall be interpreted to mean: (a) the building or buildings, together with the surrounding land occupied or used in the conduct of one establishment or business, or as a residence, and not intersected by a public thoroughfare or by property occupied by others; or (b) the portion of the building occupied by the subscriber, either in the conduct of his business or as a residence, and not intersected by a public corridor or by space occupied by others; or (c) the building or portion of a building occupied by the subscriber in the conduct of his business and as a residence provided both the business and the residence bear the same street address; or (d) the continuous property operated as a single farm whether or not intersected by a public thoroughfare.

PRIMARY INSTRUMENT

Primary Instrument includes both wall mounted and desk set types of rotary dial and Touch-Tone telephone instruments or such other instrument approved under tariff by the Commission.

Note 1: When any Network Interface other than a miniature-modular type is used in the provision of a Network Interface, the current charge for such Network Interface will apply.

SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

ISSUED: January 24, 1990 ~~October 15, 1988~~
BY: Vice President
Miami, Florida

A6. DIRECTORY LISTINGS

A6.2 Business Listing (Cont'd)

A6.2.2 Business Designation (Cont'd)

B. Personal Name (Cont'd)

2. A designation that conveys the same meaning as a title, educational degree or suffix is not permitted.

Example:

Smith Joe DDS dntst

A6.2.3 Trade Name

A trade name, the name of a commodity or service, will be included as part of the listing when the subscriber shows satisfactory evidence of authorization to do business under the requested name. In the case of listings for time/temperature/weather announcement services, a generic listing will be accepted.

Examples which require proof of authorization are:

Smith Avon Distributor 123 Main 555-1234

Jones Buick 2914 E 23rd 329-5864

Any Flower Shop 710 Heather Mall 669-2121

A6.3 Residence Listing

A6.3.1 General

Generally, a residence listing consists of a surname, given name or dual name, and/or initials, the address, and the telephone number. When a single name listing is requested by the subscriber, the Company may require satisfactory evidence as to the validity of the requested name. The main listing is ordinarily the name of the individual who subscribes for the service, but the listing may be in the name of a second party residing at the address where service is provided if so designated by the subscriber.

A6.3.2 Reserved for Future Use

~~Deleted~~

A6.3.3 Reserved for Future Use

~~Deleted~~

A6.4 Non-Published (Private) Listing

A6.4.1 General

- A. A non-published listing is not listed in either the alphabetical section of the Company's directory or directory assistance records and will not be furnished upon request of a calling party. However, when a call is placed from a telephone number associated with a non-published listing, the number may be disclosed if the called party has the necessary equipment for receiving and/or disclosing incoming telephone numbers.
- B. An incoming call to a subscriber with a non-published listing will be completed by the Company only when the calling party places the call by number. The Company will adhere to this practice notwithstanding any claim of emergency the calling party may present. The acceptance by the Company of the subscriber's request to furnish a non-published telephone number does not create any relationship or obligation, direct or indirect, to any person other than the subscriber.

(M)

~~material appears on the same previously approved page(s) 3, 4 of this section.~~
~~material previously appearing on this page now appears on page(s) 3, 4 of this section.~~

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Tariff Revisions
Legislative Format
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Material previously appearing on this page now appears on page(s) 2.0.1 of this section

A6. DIRECTORY LISTINGS

A6.4 Non-Published (Private) Listing (Cont'd)

A6.4.1 General (Cont'd)

- C. In the absence of gross negligence or willful misconduct, no liability for damages arising from publishing a non-published telephone number in the directory or disclosing said number to any person shall attach to the Company. Where a non-published listing is published in the directory, the Company's liability shall be limited to and satisfied by a refund of any monthly charges which the Company may have made for such listing. The subscriber indemnifies and saves the Company harmless against any and all claims for damages caused or claimed to have been caused, directly or indirectly, by the publication of a non-published listing or the disclosing of said listing information to any person. (M)
- D. Telephone numbers transmitted via Caller ID are intended solely for the use of the Caller ID subscriber. Resale of this information is prohibited as described in Section A13 of this Tariff. (N)

Dated

SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

ISSUED: January 24, 1990

BY: Vice President

Miami, Florida

A1. DEFINITION OF TERMS

NETWORK INTERFACE

- a. The Network Interface is a standard Registration Program Jack or equivalent provided by the Company as a part of exchange access, WATS, or Private Line Services.¹
- b. The Network Interface will be located inside the subscriber premises.
- c. All premises services will connect to the telecommunications network through the Network Interface.

Denotes a portable plug-ended device, without active elements, consisting of a multiwinding transformer and manual line switches designed to bridge two or more, but not to exceed five, of the lines appearing on four-button and six-button key telephone stations equipped with both hold and illumination features.

NON-LISTED (SEMIPRIVATE) TELEPHONE LISTING

~~A non-listed listing is not in the alphabetical section of the Company's directory, but is maintained on directory assistance records and will be furnished upon request of a calling party.~~ (C)

NON-PUBLISHED (PRIVATE) TELEPHONE LISTING

~~A non-published listing is not listed in either the alphabetical section of the Company's directory or directory assistance records and will not be furnished upon request of a calling party.~~ (C)

PARTY LINE SERVICE

See "Exchange Service".

PATRON

The term "Patron" as used in connection with composite data service, denotes a subscriber to the data switching services of a Composite Data Service Vendor.

PERSON-TO-PERSON CALL

See "Long Distance Message Telecommunications Service".

PREMISES (SAME)

The term "Same Premises" shall be interpreted to mean: (a) the building or buildings, together with the surrounding land occupied or used in the conduct of one establishment or business, or as a residence, and not intersected by a public thoroughfare or by property occupied by others; or (b) the portion of the building occupied by the subscriber, either in the conduct of his business or as a residence, and not intersected by a public corridor or by space occupied by others; or (c) the building or portion of a building occupied by the subscriber in the conduct of his business and as a residence provided both the business and the residence bear the same street address; or (d) the continuous property operated as a single farm whether or not intersected by a public thoroughfare.

PRIMARY INSTRUMENT

Primary Instrument includes both wall mounted and desk set types of rotary dial and Touch-Tone telephone instruments or such other instrument approved under tariff by the Commission. (F)

Note 1: When any Network Interface other than a miniature-modular type is used in the provision of a Network Interface, the current charge for such Network Interface will apply.

Tariff Revisions
Legislative Format
Not for Approval

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

LEGAL DIVISION

In re: Proposed tariff filings by)
 SOUTHERN BELL TELEPHONE AND TELEGRAPH) Docket No. 891194-TI
 COMPANY clarifying when a nonpublished) Filed: September 24, 1990
 number can be disclosed and introducing)
 Caller ID to TouchStar Service)

**MOTION TO CONSOLIDATE CONSIDERATION OF CALLER ID
 TARIFF FILINGS AND TO CONDUCT GENERIC PROCEEDING**

The citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, move the Commission to consolidate consideration of the Caller I.D. tariff filings made by Southern Bell Telephone and Telegraph Company ("Southern Bell") and Central Telephone Company ("Centel"). In addition, the Citizens request the Commission to consider the issue of Caller ID blocking on a generic basis for all local exchange companies in Florida.

1. The Commission recently decided to hold both public hearings and evidentiary hearings on Southern Bell's proposal to introduce Caller I.D. service in Florida.

2. Southern Bell's most recent proposal would not generally offer customers the ability to block transmission of calling party number identification. Instead, only certain at-risk customers would have this ability, as defined by earlier Commission orders.

3. On August 6, 1990 Centel filed a tariff to offer Caller I.D. to its subscribers. Unlike the filing by Southern Bell, Centel's filing would offer all customers the ability to block the transmission of their phone number on a per-call basis. Centel would offer this service to all customers without charge.

4. Although neither GTE Florida, Inc., nor United Telephone Company of Florida have filed Caller I.D. tariffs, both of these companies filed petitions to intervene in Southern Bell's docket. Centel, on the other hand, has not filed a petition to intervene in Southern Bell's docket.

5. The Commission should receive evidence from all telephone companies -- including evidence from Centel about its proposal to offer free per-call blocking to all customers -- before ruling on Southern Bell's proposal. A diversity of views from various telephone companies and others will provide the Commission the best information to decide what is in the public interest. In addition, the Citizens of Florida would be best served by application of a consistent policy on Caller I.D. blocking throughout the state. The Commission can do this most efficiently and economically in one generic proceeding.

WHEREFORE, the Citizens request the Commission to consolidate consideration of the Caller I.D. tariff filings made by Southern Bell and Centel and to consider the issue of Caller I.D. blocking on a generic basis for all local exchange companies in Florida.¹

Respectfully submitted,

JACK SHREVE
PUBLIC COUNSEL

/s/
Charles J. Beck
Assistant Public Counsel

Office of Public Counsel
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Room 812
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Attorneys for the Citizens
of the State of Florida

¹Southern Bell's more recent filing for bulk calling line identification should also be included in this docket, since it is essentially a Caller I.D. tariff for multi-line business users.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

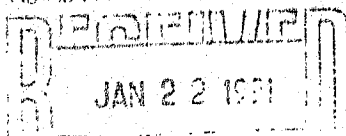
In re: Proposed tariff filings by)	
SOUTHERN BELL TELEPHONE AND TELEGRAPH)	Docket No. 891194-TI
COMPANY clarifying when a nonpublished)	Filed: January 18, 1991
number can be disclosed and introducing)	
Caller ID to TouchStar Service)	

MOTION TO STRIKE

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, move the Commission to strike page 43, line 14, through page 44, line 2 of the brief filed by GTE Florida, Incorporated, on January 11, 1991.

1. On December 11, 1990 the Director of Records and Reporting at the Florida Public Service Commission sent a copy of a letter and attached testimony to all parties of record. The memorandum from the Director of Records and Reporting stated that "this is to inform you that the attached communication was received by the members of this Commission on November 6, 1990. This letter is being made a part of the record in this proceeding and you may file a response to it, with this office, within 10 days of receipt of this notice."

2. The attachment itself had a stamped notation indicating that it had been received on November 6, 1990 in the office of



1

DOCUMENT NUMBER-DAYE

00641 JAN 18 1991

FD-RECORDS/REPORTING

LEGAL DIVISION

Commissioner Wilson. It consisted of a letter dated November 5, 1990 from Melvin L. Tucker, Chief of Police in Tallahassee, to Chairman Michael Wilson, and it transmitted "testimony" of Chief Tucker in the format usually reserved for prefiled testimony: twenty-five numbered lines per page, a question and answer format, and an exhibit providing the qualifications of the witness.

3. On December 19, 1990 the Public Counsel sent a letter to the Director of Records and Reporting noting that his memorandum did not state why copies of the communication were distributed after the evidentiary hearings held on November 28 and 29, 1990, nor why the memorandum was distributed more than 15 days after the communication was received by the Commission. The letter went on to ask the Director of Records and Reporting to advise the Public Counsel whether this and one other communication represented all known ex parte communications to or from members of the Commission about matters at issue in this docket.

4. On December 21, 1990 the Director of Records and Reporting responded to the Public Counsel's letter. That response claimed that, as indicated in the earlier correspondence, the Commissioner to whom the communication was directed never saw the communication in question. Moreover, the December 21, 1990 letter did not respond to the Public Counsel's question about ex parte communications from members of the Commission. It stated only that

letters sent to the Commission could be viewed in the Division of Records and Reporting.

5. Page 43, line 14, through 44, line 2 of the brief filed by GTE Florida, Inc., cites the "Tucker direct testimony at 1-3" to support an argument made in its brief. The "Tucker direct testimony," however, was never placed in evidence in this proceeding.

6. Section 350.042, Florida Statutes (1990) states that if a Commissioner knowingly receives an ex parte communication relative to a proceeding, the Commissioner must place on the record of the proceeding copies of all written communications received, all written responses to communications, and a memorandum stating the substance of all oral communications received and all oral responses made, within 15 days of the date of such communications. Written notice must be provided to all parties, and any party who desires to respond to an ex parte communication may do so within 10 days after receiving notice that the ex parte communication has been placed in the record.

7. These provisions of the new ex parte statute do not raise ex parte communications to the level of competent, substantial evidence upon which the Commission may base its decision. Accordingly, the reference to the "Tucker direct testimony" in the

brief filed by GTE Florida, Incorporated, is improper, and arguments presented based on that reference should be stricken.

WHEREFORE, the Citizens respectfully request the Commission to strike page 43, line 14, through page 44, line 2 of the brief filed by GTE Florida, Incorporated.

Respectfully submitted,

/s/

Jack Shreve
Public Counsel

/s/

Charles J. Beck
Assistant Public Counsel

Office of Public Counsel
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111 West Madison Street
Room 812
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Attorneys for the Citizens
of the State of Florida

In re: Proposed Tariff Filing by)
Southern Bell Telephone and Telegraph) Docket No. 891194-TL
Company Clarifying When a Nonpublished) Filed: 1-25-91
Number Can Be Disclosed and Introducing)
Caller ID to TouchStar Service.)

GTE Florida Incorporated ("GTEFL") hereby files its response to the Motion to Strike filed by the Office of Public Counsel ("Public Counsel") on January 18, 1991, in the above-captioned proceeding.

Public Counsel's motion seeks to strike a portion of GTEFL's brief filed in this case on January 11, 1991. Specifically, Public Counsel takes issue with a reference to the direct testimony of Tallahassee Police Chief Melvin L. Tucker. This reference, noting Mr. Tucker's enumeration of examples in which law enforcement has circumvented new technologies or used them to its advantage, appears at page 43, lines 18-22 of GTEFL's brief. Public Counsel is thus incorrect in stating that "[p]age 43, line 14, through 44, line 2 of the brief filed by GTE Florida, Inc., cites the 'Tucker direct testimony at 1-3'" Motion to Strike at 3. In fact, much of the material it asks to be stricken cites testimony of Florida Department of Law Enforcement witness Ronald Tudor, rather than Mr. Tucker's testimony.

Aside from inaccuracy in reporting the location of the citation to Mr. Tucker's testimony, GTEFL does not understand Public Counsel's rationale underlying the motion. The motion first relates the sequence of events surrounding the Commission's receipt and subsequent distribution of Mr. Tucker's testimony, and provides an account of Public Counsel's communications with the Director of Records and Reporting. Next, Public Counsel recites its construction of the procedural requirements of Fla. Stat. § 350.042 (1990), concerning ex parte communications. Finally, the motion asserts, without elaboration, that these procedural requirements forbid the Commission to consider ex parte documents in its decision-making process.

GTEFL takes no position on Public Counsel's interpretation of the ex parte statute. GTEFL continues to believe, however, that its reference to Mr. Tucker's testimony was appropriate. As Public Counsel's motion points out, the December 11, 1990, memorandum from the Director of Records and Reporting to all parties of record stated specifically that Mr. Tucker's communication "is being made a part of the record in this proceeding...." Motion to Strike at 1, quoting Memorandum of Director of Records and Reporting. Given this unambiguous declaration that Mr. Tucker's testimony had been placed in the record, there is no room to argue that GTEFL's reference to the testimony was in any way improper.

For the foregoing reasons, GTE Florida Incorporated respectfully requests the Commission to deny the Motion to Strike filed by the Office of Public Counsel.

Respectfully submitted this 25th day of January, 1991.



Thomas R. Parker
Associate General Counsel
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Tampa, FL 33601-0110
Telephone: 813-228-3087

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed tariff filings by)
SOUTHERN BELL TELEPHONE AND TELEGRAPH)
COMPANY clarifying when a nonpublished)
number can be disclosed and introducing)
Caller ID to TouchStar Service)

Docket No. 891194-TI
Filed: September 21, 1990

**PETITION TO REQUIRE THE OFFERING OF CALL-TRACE SERVICE
TO ALL CUSTOMERS AT REASONABLE, USAGE BASED RATES**

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, petition the Commission to require those local exchange companies in Florida offering call-trace service to offer the service to all of their subscribers at reasonable, usage based rates.

1. Call-trace is one of a number of new services using the common channel signaling system 7 network to provide a host of new capabilities to customers.

2. Call-trace allows the receiver of a call to forward the calling party's telephone number to the telephone company. From there the telephone company can provide the number to law enforcement authorities for further disposition. This new call-trace allows the customer to implement the service immediately by using the star symbol and two digits to activate the service from their phone.

3. In any prosecution for illegal obscene or harassing phone calls, call-trace provides a means to provide independent verification of the number from which an obscene or harassing phone call was made.

4. In New Jersey call-trace was made available to all customers at the same time Caller I.D. was introduced. Under the rate structure proposed and adopted in New Jersey, all customers automatically have call-trace available, and the customer is charged one dollar for each use of call-trace.

5. On the other hand, in Florida Southern Bell requires customers to presubscribe to call-trace before it is made available, and it then charges a monthly fee of four dollars per month for the availability of the service whether it is used or not. This rate structure and rate level discourages wide use and availability of the service. Centel offers the service automatically to all of its customers, but at a rate of four dollars per use. The Citizens recommend that call-trace be offered at a rate of one dollar per use throughout Florida, similar to the rate in effect in New Jersey.

6. Call trace offers an effective means to combat obscene and harassing phone calls. If made available generally to all customers at reasonable, usage based rates, every would-be obscene or harassing phone caller would know that the called party has

call-trace available to forward the calling party's number to authorities for further legal action. A rate of no more than one dollar per use would be a fair rate, consistent with the public service provided by call-trace.

WHEREFORE, the Citizens request the Commission to require those local exchange companies in Florida offering call-trace service to offer the service to all of their subscribers at reasonable, usage based rates.

Respectfully submitted,

/s/
Jack Shreve
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/s/
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R E R

Attachment J
Page 1 of 1



STATE OF FLORIDA

OFFICE OF ATTORNEY GENERAL

ROBERT A. BUTTERWORTH

FPSC-RECORDS/REPORTING

RECEIVED

September 21, 1990

SEP 21 1990

Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0850

FLORIDA PUBLIC SERVICE COMM.

Commissioner Wilson
Florida Public Service Commission

Re: Docket No. 891194-TI
891194-TI

DECEMBER
SEP 27 1990

Dear Chairman Michael Wilson and PSC Members:

From both a consumer protection viewpoint and a law enforcement viewpoint, the Office of the Attorney General wholeheartedly endorses the September 21, 1990 motion by Public Counsel Jack Shreve in the above-referenced docket.

Mr. Shreve proposes that the Commission adopt a position of requiring Florida telephone companies to offer the service of "Call-Trace" to their customers at a reasonable rate based on actual usage.

The public counsel points out that the Call-Trace system generates written documentation of a telephone call's origin and he correctly observes that such documentation would give law enforcement and prosecutors a powerful weapon in protecting citizens against obscene and other harassing phone calls.

If the telephone industry in Florida is sincere about assisting the victims of obscene and other harassing calls, they should offer their customers affordable Call-Trace service rather than the relatively expensive Caller ID concept being promoted.

This office has very serious concerns about the Caller ID concept. These concerns include:

--Caller ID is a boiler room operator's dream. Unfortunately, our office handles hundreds of complaints each year from consumers defrauded by telephone-bank operations peddling everything from deceptive travel packages to phony precious metals certificates. We have no doubt whatsoever that the con artists operating such schemes will welcome Caller ID as

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DOCUMENT 08598

SEP 26 1990

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed Tariff Filing by)
Southern Bell Telephone and Telegraph) Docket No. 891194-TL
Company Clarifying when a nonpublished) Filed: 10-11-90
Number can be Disclosed and Introducing)
Caller ID to TouchStar Service.)

ANSWER OF GTE FLORIDA INCORPORATED

GTE Florida Incorporated ("GTEFL"), pursuant to Commission Rule 25-22.037, Fla. Admin. Code, hereby submits its answer to the petition of Public Counsel which seeks to require Florida local exchange companies ("LECs") to offer ubiquitous call tracing service at usage sensitive rates of no more than one dollar. GTEFL submits that Public Counsel's petition is inappropriate and should be summarily denied. In support thereof, GTEFL states as follows:

1. Initially, it is necessary to point out a fundamental procedural defect apparent on the face of Public Counsel's petition. The petition pertains solely to call tracing and seeks to impose specific requirements upon the LECs' provision of this service. Except for the required caption, nowhere does the petition even mention Caller ID. Nevertheless, the filing has been submitted, without explanation, in the instant proceeding which will determine the terms and conditions upon which Caller ID may be offered.¹

¹ See Order on Prehearing Procedure in this docket, September 6, 1990, at page 5 ("List of Issues").

Call tracing service and Caller ID are, of course, wholly distinct offerings with differing features and applications. A request for the Commission to formulate generic call tracing rules in the context of the Caller ID proceeding simply makes no sense. Its submission in this docket is thus best viewed as an inappropriate attempt to inject irrelevant matter into the Caller ID proceeding. Additionally, it would be unfair to permit introduction of wholly new matters at this stage, when direct testimony has already been filed. Indeed, Public Counsel has not met the requirements of Commission Rule 25-22.035(2), Fla. Admin. Code, to consolidate his petition into this proceeding.

GTEFL submits that the Commission should decline to entertain the petition, consistent with the goal of avoiding unnecessary delay and complication of the issues properly presented in this proceeding. Should the Commission determine that an in-depth examination of call tracing issues is warranted, initiation of a separate docket would be proper.

Despite GTEFL's belief that the petition is procedurally misplaced, the company will briefly respond to the matters it raises in order to aid the Commission to expeditiously dispose of the filing.

2. As noted above, Public Counsel urges the Commission to require those LECs offering call tracing to do so at usage sensitive rates of no more than one dollar per use. Under-

lying this request is the broad assumption that it is technically and economically feasible for all LECs to provide call tracing service on a per use (as opposed to subscription) basis. As set forth below, this basic premise is seriously flawed for a number of reasons.

In the process of developing its new Call Tracing Service, it quickly became apparent to GTEFL that ubiquitous, usage-based service would be impractical, due to technical constraints.² A chief difficulty in this respect stems from the fact that an unlimited, usage sensitive tracing service would necessitate the permanent allocation of memory to each subscriber's line. This ubiquitous distribution of central processor capability would impede the ability of the switch to record certain essential information about the call and otherwise place undue loads on the switch. Specifically, the majority of GTEFL's central offices do not have the ability to record the time at which a call was made, when that call is the first to be traced after a seven to eight day period of no trace activity. Since a principal feature of Call Tracing Service is its ability to produce official documentation for use in prosecuting nuisance callers, this limitation undermines the utility of the service and its attractiveness for subscribers.

² GTEFL recently requested Commission permission to offer Call Tracing Service in Florida. See proposed General Services Tariff revision A.13.14.4b(8), filed on October 9, 1990.

In comparison, there are no such problems with a subscription offering, where there is no requirement of universal memory allocation. Under these circumstances, all information will be recorded on all calls. Call tracing on an ubiquitous, usage sensitive basis is thus an inferior service relative to the subscription version of the offering. Furthermore, universal memory allocation would place additional demands on the central office, thus reducing capacity which could be better used for other functions.

Modification of GTEFL's switches to remedy the problems associated with usage sensitive call tracing are certain to be expensive and unreasonably protracted. For instance, generic changes to the existing System Version Releases would need to be developed and implemented, a process which would take an extended period of time.

3. A second, major technical obstacle to GTEFL's ability to offer call tracing on a per use basis concerns the billing functions necessary to accommodate this type of offering. GTEFL's billing system currently is unable to render billings for per use tracings. Activation of usage sensitive Call Tracing Service will cause unique Automatic Message Accounting ("AMA") recordings to be produced, thus requiring the billing system to be modified in several respects. First, the billing system will need to be enhanced to: (1) recognize the new Call Tracing Service AMA recordings, (2) create a new internal record format, (3) process

the information, and (4) pass the record along to toll for rating. Second, alterations to the toll system will be necessary to rate each Call Tracing Service record. Third, Customer Records and Billing ("CRB") will have to be enhanced to display the Call Tracing Service charges on the customer's bill. Fourth, all enhancements to the present toll/CRB operations will, in turn, need to be made to the planned Customer Billing Services System. As in the case of the necessary switch alterations, current preliminary estimates reveal that these modifications will be very costly and unable to be implemented without substantial delay.

This discussion assumes that billing will occur for each activation of Call Tracing Service, whether or not the trace is successfully completed. GTEFL is unaware of automated means through which it is possible to bill for successful traces only. The need to bill for unsuccessful traces will lead to certain consumer dissatisfaction and reduced attractiveness of the service -- in short, a service that is inferior to a subscription offering.

4. Further analysis would be necessary to determine with complete accuracy the total, additional costs of providing ubiquitous, usage sensitive call tracing versus the preferred subscription offering. Nonetheless, the magnitude of the changes required compels the conclusion that an ubiquitous, usage-based service is prohibitively expensive for the benefits provided, assuming that the technical problems can

be overcome. There are no grounds upon which to justify the time, effort and expense involved in providing per use tracing, especially when the relative benefits of doing so remain merely speculative. Indeed, Public Counsel's petition merely assumes that subscribers would prefer per call pricing, rather than a flat rate; it offers no support for the assertion that the current Florida Southern Bell subscription rate structure and rate level for call tracing discourage "wide use and availability of the service."³ GTEFL believes that costly and unnecessary alterations to the service as planned can only raise the price of the offering for all users.

Although the foregoing discussion has been limited to matters dealing with equipment expenses, it should also be noted that Public Counsel's request, if adopted, will increase administrative and personnel expenses. For instance, implementation of an ubiquitous call trace service will require staffing additions to existing Security Department personnel beyond reasonable levels. This problem will not arise under the subscription approach, which includes a certain "take rate" by the potential population base.

5. Given the level of expense involved in tailoring operations to allow an ubiquitous, usage sensitive call tracing service, the unreasonableness of Public Counsel's suggested one dollar per use charge for this service becomes

³ Public Counsel's petition at 2, para. 5.

immediately apparent. No complex calculations are necessary to determine that a one dollar charge is not within the realm of economic possibility under these circumstances. Even assuming away the increased costs flowing from a usage-based offering, there is simply no plausible basis for proposing a \$1.00 per use figure.

It has long been the policy of this Commission to price discretionary services at levels which support universal service. Under Public Counsel's proposal, the Company would have to deploy a tremendous amount of capacity, investment and expense "up front," with recovery obtained only if the service is utilized. GTEFL submits that it will never receive a return of its investment under the proposal contained in Public Counsel's petition.

6. The foregoing discussion demonstrates that Public Counsel's proposal to mandate usage sensitive call tracing service at a one dollar rate is devoid of merit. Due to technical limitations, usage sensitive call tracing is currently infeasible. The cost of removing these limitations and instituting other, necessary changes would render this type of offering economically infeasible. Finally, the suggested one dollar charge is arbitrary and unreasonable.

Given the lack of any factual basis to support the numerous assumptions upon which the petition is based, GTEFL believes it warrants no further consideration. However, if the Commission wishes to formulate rules to govern call

tracing, that objective would best be served by initiating a docket separate from this Caller ID inquiry. The inefficiencies inherent in defining call tracing requirements in the present proceeding can only result in delay in bringing new technology to the public.

Respectfully submitted this the 11th day of October, 1990.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed tariff filings by)	Docket No. 891194-TL
Southern Bell Telephone and)	
Telegraph Company clarifying when)	Filed: October 11, 1990
a non published number can be)	
disclosed and introducing Caller)	
ID to Touchstar Service)	

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY'S
 RESPONSE TO PUBLIC COUNSEL'S PETITION TO
 REQUIRE THE OFFERING OF CALL-TRACE SERVICE TO
CUSTOMERS AT REASONABLE, USAGE BASED RATES

COMES NOW Southern Bell Telephone and Telegraph Company ("Southern Bell" or "Company"), pursuant to Rule 25-22.037, Florida Statutes, and files its Response to the Office of Public Counsel's ("Public Counsel") Petition to Require the Offering of Call-Trace [sic] Service to all Customers at Reasonable, Usage Based Rates (hereinafter "Petition").

1. Southern Bell filed its Florida General Subscriber Services Tariff ("GSST") A.13.19 for TouchStar™ services on June 7, 1988. The tariff became effective on August 8, 1988. Call Tracing was one of six TouchStar services approved by the Commission. As explained in the tariff, Call Tracing enables a customer, for a monthly rate, to initiate an automatic trace of the last call received. The rates for Call Tracing, which have now been in effect for more than two years, are \$4.00 per month for a residential line and \$5.00 per month for a business line. Call Tracing is being addressed in the Caller ID docket as a result of one of the issues set forth in the Order on Prehearing

Procedure. Issue 6 states:

Are there any existing CLASS Services (e.g., Call Trace, [sic] Call Return, Call Block, etc.) that have similar functions and/or benefits as Caller ID; if so, what are their detriments? Is their rate structure appropriate?

Order No. 23445, Attachment "A".

2. On September 21, 1990, Public Counsel filed its Petition recommending that Call Tracing be offered at a rate of one dollar per use throughout Florida. In support of its recommendation, Public Counsel referred to the pricing for a similarly named service offered by Bell Atlantic in New Jersey.

3. At the current subscription rate of \$4.00 per month, a residential customer may use Call Tracing as many times as she wishes during the month without incurring additional charges. On the other hand, if a per use charge were applied, a victim of repeated harassing calls who would thus be required to use Call Tracing many times would incur a substantially higher total charge for this service during a one month period. Accordingly, a per charge pricing scheme could have a repressive effect upon the use of Call Tracing and thereby reduce its societal value. The per month charge of \$4.00 gives a customer the freedom to use Call Tracing as often as necessary without concern that she may incur extraordinarily high charges.

4. Southern Bell believes that Call Tracing should continue to be offered at a flat monthly rate. Experience of the past two

- 2 -

years, during which Call Tracing has been offered at the \$4.00 per month rate, has shown that the rate is reasonable, customers do not object to the rate, and that the service is universally available to those customers who want this form of protection against obscene, harassing and threatening telephone calls.

5. Southern Bell would note that on September 21, 1990, the Attorney General for the State of Florida sent to the members of the Commission a letter in support of Public Counsel's Petition. For the reasons set forth above, Southern Bell does not believe Public Counsel's Petition is "pro-consumer", but rather would likely be harmful to the public and should therefore be rejected.

WHEREFORE, Southern Bell requests that the Commission deny Public Counsel's Petition to Require the Offering of Call-Trace Service to all Customers at Reasonable, Usage Based Rates.

Respectfully submitted,

SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY

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