

FLORIDA PUBLIC SERVICE COMMISSION
FLETCHER BUILDING
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TALLAHASSEE, FLORIDA 32399-0850

M E M O R A N D U M

DECEMBER 7, 1989

TO : DIRECTOR OF RECORDS AND REPORTING

FROM : DIVISION OF COMMUNICATIONS [LONG] *[Signature]*
DIVISION OF LEGAL SERVICES [GREEN] *[Signature]*

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

AGENDA : DECEMBER 19, 1989 - CONTROVERSIAL - PARTIES MAY PARTICIPATE

PANEL : FULL COMMISSION

CRITICAL DATES: 60 DAY SUSPENSION DEADLINE: NOVEMBER 27, 1989
COMPANY REQUESTED EFFECTIVE DATE: DECEMBER 22, 1989

ISSUE AND RECOMMENDATION SUMMARY

ISSUE 1: Does Caller ID violate Florida's wiretap statute or any other provision of Florida or federal law?

RECOMMENDATION: No, Caller ID is not violative of any provision of Florida or federal law.

ALTERNATIVE RECOMMENDATION: The Commission should suspend the tariff until the Florida Supreme Court rules on the Motion for Rehearing and/or Clarification filed by the Attorney General's Office in Shaktman.

DOCUMENT NUMBER-DATE

11831 DEC-7 1989

FPSC-RECORDS/REPORTING

DOCKET NO. 891194-TL
DECEMBER 7, 1989

ISSUE 2: Should the proposed tariff by Southern Bell Telephone and Telegraph Company clarifying the circumstances under which nonpublished numbers will be divulged (T-89-506) be approved?

RECOMMENDATION: Yes, the proposed tariff by Southern Bell Telephone and Telegraph Company clarifying the circumstances under which nonpublished numbers will be divulged should be approved.

ISSUE 3: Should the proposed tariff filing by Southern Bell Telephone and Telegraph Company introducing Caller ID to TouchStar Service (T-89-507) be approved?

RECOMMENDATION: Yes. The proposed tariff filing by Southern Bell Telephone and Telegraph Company introducing Caller ID to TouchStar Service should be approved. The company should follow previously approved TouchStar procedures for banded rate changes and reports. Additionally, Southern Bell should file quarterly reports on the status of Caller ID for a period of one year from the date of implementation of the tariff which include: which exchanges the feature is offered, the number of published subscribers, the number of nonpublished subscribers, total revenues, and the number and nature of any and all complaints regarding the feature.

DOCKET NO. E91194-TL
DECEMBER 7, 1989

ISSUE 4: Should Southern Bell be required to add to its tariff an offering of optional blocking at no charge to the customer for the following entities: (a) private, non-profit, tax-exempt domestic violence intervention agencies; and (b) federal, state, and local law enforcement agencies?

RECOMMENDATION: Yes, Southern Bell should be required to add to its tariff an offering of optional blocking at no charge to the customer for the following entities: (a) private, non-profit, tax-exempt domestic violence intervention agencies; and (b) federal, state, and local law enforcement agencies. The changes should be filed no later than 10 days from the effective date of the Caller ID tariff.

ISSUE 5: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed.

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, 1989. One of the features offered during this trial was Call Monitor (now called Caller ID), a feature whereby a caller's telephone number was displayed to the called party after the first ring. The usage sensitive rate structure of Call Monitor coupled with the difficulty in obtaining the required CPE restricted this service to a very few subscribers.

When TouchStar was reimplemented on a permanent basis in August 1988 (Docket No. 880791-TL), Call Monitor was not included. Southern Bell Telephone and Telegraph Company (Southern Bell) 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 adds Caller ID to its TouchStar features; the other filing proposes clarifications regarding the divulgence of nonpublished telephone numbers.

Staff has several concerns with the appropriateness of this filing. Among the concerns discussed in the body of this recommendation are the usefulness of the service, its affect on nonpublished subscribers, the privacy concerns, and its compliance with state and federal wiretapping/trap-and-trace laws

DISCUSSION OF ISSUES

ISSUE 1: Does Caller ID violate Florida's wiretap statute or any other provision of Florida or federal law?

RECOMMENDATION: No, Caller ID is not violative of any provision of Florida or federal law.

ALTERNATIVE RECOMMENDATION: The Commission should suspend the tariff until the Florida Supreme Court rules on the Motion for Rehearing and/or Clarification filed by the Attorney General's Office in Shaktman.

STAFF ANALYSIS: When Southern Bell filed its Caller ID tariff, staff was concerned with the legality of this offering. In particular, staff questioned whether either Florida's wiretap statute or the State's constitutional privacy provision were implicated by this filing. In response to our concerns, Southern Bell waived the statutory tariff suspension deadline to allow staff additional time to research this issue. Staff has concluded that there is no Florida or federal law which would prohibit offering Caller ID.

Our initial question was whether Caller ID could be considered a "trap and trace device" so as to trigger Section 934.31, Florida Statutes, which is the general prohibition on pen register and trap and trace device use. Section 934.02(21), Florida Statutes, defines a trap and trace device as follows:

"Trap and trace device" means 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.

DOCKET NO. 891194-TL
DECEMBER 7, 1989

Clearly, Caller ID is not a "device which captures" "impulses which identify the originating number" Rather, Caller ID itself is programming within the central office. Further, even if Caller ID could be classified as a trap and trace device, it falls squarely within a statutory exception to the general prohibition against the use of trap and trace devices. This exception also covers the argument that could be made to the effect that even if Caller ID itself is not a trap and trace device, that the CPE used in conjunction with Caller ID would be. Section 934.31, Florida Statutes, provides:

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

Thus, there is no legal problem with the use of trap and trace devices, or pen registers for that matter, where the consent of the user of the communication service has been obtained. The user who must consent will differ, depending upon whether it is a pen register or trap and trace device that is under consideration. For a pen register, the user who must consent is the person dialing the call. For a trap and trace device, the user who must

consent is the person receiving the call. This is the only interpretation that makes sense when you consider what these devices are used for when they are used secretly. A pen register would be used to gather information about calls going out, while a trap and trace device would monitor calls coming in.

Further, staff believes it is important to remember that the whole intent of the wiretap statute is to prevent third party surveillance, not to interfere with ordinary telephone service provided to and used by law-abiding citizens in their daily affairs. This conclusion is bolstered when one considers the definition contained in Section 934.02(4), Florida Statutes:

- (4) "Electronic, mechanical, or other device" means any device or apparatus which can be used to intercept a wire, electronic, or oral communication other than:
 - (a) Any telephone or telegraph instrument, equipment, or facility, or any component thereof:
 - 1. Furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by such subscriber or user for connection to the facilities of such service and used in the ordinary course of its business.

Thus, Caller ID is no more a trap and trace device than an extension telephone would be an eavesdropping device.

Florida's wiretap statute is modeled after the Electronic Communications Privacy Act of 1986, 18 USCA § 2510, the federal wiretap

DOCKET NO. 891194-TL
DECEMBER 7, 1989

statute. The legislative history of the federal act makes it clear that the act aims to prevent third party intrusions. 1986 U.S. Code Cong. & Admin. News 3557. The states of Maryland, Pennsylvania, Virginia, and West Virginia all have wiretap statutes that virtually mirror the federal act like Florida's statute does, and all four of these states have approved Caller ID. New Jersey has a very similar wiretap act, but without the separate trap and trace section, and New Jersey has also approved Caller ID.

In addition to concerns about the wiretap statute, there appeared to be one other law that Caller ID might violate: Florida's constitutional right of privacy. Article I, Section 23, of the Florida Constitution provides:

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

The key to interpretation of this provision is that it provides protection from governmental intrusion into one's private life. While the Florida Supreme Court has interpreted this provision very broadly, See In re I.W., 14 Fla. L. Weekly 497, 498-9 (Fla. 1989) (reviewing the history of interpretation of this section), we do not believe it would apply here because Caller ID does not involve a governmental intrusion. Assuming for a moment that Article I, Section 23 did apply, then one is forced to ask, "whose privacy has been invaded?" Following this through to its logical conclusion

DOCKET NO. 891194-TL
DECEMBER 7, 1989

would require one to assert the proposition that there is a recognizable, protected interest in being able to place anonymous calls, and further, that this interest would override any expectations of privacy on the part of the party receiving calls. Obviously, the citizens of Florida intended no such result when they adopted Article I, Section 23.

The only case which has been discovered which arguably sheds light on the question of the legality of Caller ID is the recent opinion of the Florida Supreme Court in Shaktman v. State, 14 Fla. L. Weekly 522 (Fla. 1989). (Attachment A). In Shaktman, the Court held that installation of a pen register by law enforcement did implicate Article I, Section 23, of the Florida Constitution. The Court further held that to justify such an intrusion, the compelling state interest test must be satisfied. That test was satisfied in Shaktman, the Court found, because law enforcement had a founded suspicion and had met the criteria in Section 119.011, Florida Statutes.

Staff does not believe Shaktman creates any question about the legality of Caller ID. If anything, staff believes that Shaktman reinforces the interpretation that only governmental intrusions are prohibited by Article I, Section 23. Staff also notes that Shaktman was decided before Chapter 934 was amended, effective October 1, 1988, to add a separate section dealing with the requirements which must be met by law enforcement before installation of a pen register or trap and trace device.

In summary, staff does not believe that Caller ID violates any

DOCKET NO. 891194-TL
DECEMBER 7, 1989

provision of Florida or federal law and staff recommends that this tariff be approved, subject to policy considerations raised in other issues.

ALTERNATIVE STAFF ANALYSIS: The Florida Supreme Court filed its opinion in Shaktman on October 12, 1989. On October 27, 1989, the Florida Attorney General's Office (AGO) filed a Motion for Rehearing and/or Clarification of the Shaktman decision. The AGO's Motion raises several points regarding the effect of this decision on certain aspects of criminal law and procedure. However, at the end of the Motion, the Court is specifically asked to clarify the applicability of Shaktman to Caller ID (Attachment B).

While staff is satisfied with the legal analysis presented in the primary recommendation, staff believes it would be remiss if it did not bring the AGO's pending Motion to the Commission's attention. While staff counsel does not believe Shaktman bears upon this tariff, staff counsel is not so pretentious as to claim that her opinion is necessarily the only correct opinion, or that it should be accepted on faith alone. Rather, the Commission's act of approving this tariff filing should be based upon careful examination and weighing of all the facts before it. In light of the questions raised in the AGO's Motion, the Commission might find it prudent to defer ruling upon the legality of this tariff until the Florida Supreme Court rules on the AGO's Motion, in which case the Commission should suspend the tariff pending such a ruling.

DOCKET NO. 891194-TL
DECEMBER 7, 1989

ISSUE 2: Should the proposed tariff by Southern Bell Telephone and Telegraph Company clarifying the circumstances under which nonpublished numbers will be divulged (T-89-506) be approved?

RECOMMENDATION: Yes, the proposed tariff by Southern Bell Telephone and Telegraph Company clarifying the circumstances under which nonpublished numbers will be divulged (T-89-506) should be approved.

STAFF ANALYSIS: Southern Bell filed a tariff concurrently with its Caller ID proposal to "clarify" when a nonlisted or nonpublished number may be forwarded (Attachment C). The company claims that the intent of the tariff was always to only allow customers the option of having their numbers omitted from directory assistance and/or the directory listings. They state that it was not the intent to make nonpublished numbers unavailable "to the general public", as the tariff presently states. Staff disagrees that this was always the intent of the tariff, but recognizes that the intent of any offering may change over time.

Southern Bell's proposed changes allow a customer to have his/her number omitted from the directory only (nonlisted) but available through directory assistance, or to have it omitted from both the directory and directory assistance (nonpublished). This is essentially how the service works today (hence the company's claim of "clarification"), except that the technology has been unavailable to obtain the number in another fashion. With the availability of services such as Caller ID, this is no longer the case.

DOCKET NO. 891194-TL
DECEMBER 7, 1989

The problem with allowing all nonpublished numbers to be blocked is the service will be rendered ineffective. Anyone wishing to continue committing crimes over the telephone would simply need to subscribe to a nonpublished number.

New Jersey Bell's experience with Caller ID is that nonpublished customers do not object to having their number forwarded. Surprisingly, the majority of Caller ID customers there are reportedly nonpublished subscribers as well. The primary purpose the vast majority of nonpublished customers have when subscribing to the service is the avoidance of harassing or solicitous calls. Caller ID enhances this purpose in that the customer can see the number calling before answering. His/her number will only be forwarded to places called; strangers or cold-calling salesmen will still have no way to obtain the number. Of course, RingMaster service as described in Issue 3 will alleviate the problem altogether.

Florida subscribers have another avenue to curb cold-calling solicitors. A customer may subscribe to a "No Sales Solicitation Calls" listing to further thwart salesmen.

As mentioned previously, there is little history with regard to Caller ID. The trial in Orlando did not automatically forward nonpublished numbers. Staff has received several calls concerning this service, with some from present and past nonpublished customers. These customers were in favor of Caller ID because of its ability to allow them to screen incoming calls

DOCKET NO. 891194-TL
DECEMBER 7, 1989

without answering. Staff has received no unfavorable calls from nonpublished customers.

We recognize the potential controversy this service may have with nonpublished customers once implemented. We have recommended a report schedule for a period of one year that will allow staff to analyze any possible complaints and make a determination whether this service needs to be revisited (see Issue 3).

Staff recommends approval of this tariff as filed. Nonpublished subscribers will still have their privacy protected; blocking all nonpublished numbers will only render the service ineffective.

DOCKET NO. 891194-TL
DECEMBER 7, 1989

ISSUE 3: Should the proposed tariff filing by Southern Bell Telephone and Telegraph Company introducing Caller ID to TouchStar Service (T-89-507) be approved?

RECOMMENDATION: Yes. The proposed tariff filing by Southern Bell Telephone and Telegraph Company introducing Caller ID to TouchStar Service should be approved. The company should follow previously approved TouchStar procedures for banded rate changes and reports. Additionally, Southern Bell should file quarterly reports on the status of Caller ID for a period of one year from the date of implementation of the tariff which include: which exchanges the feature is offered, the number of published subscribers, the number of nonpublished subscribers, total revenues, and the number and nature of any and all complaints regarding the feature.

STAFF ANALYSIS: On September 29, 1989 Southern Bell Telephone and Telegraph Company (Southern Bell) filed proposed revisions to its General Subscriber Service Tariff adding Caller ID to its TouchStar service (T-89-507, Attachment D). Caller ID was previously available as Call Monitor with TouchStar during its trial in Orlando from 1984-1988. However, the feature was deleted when Southern Bell reintroduced TouchStar last year.

Caller ID is a central office based feature that allows the calling party's number to be forwarded to the terminating address of the call. A display unit is required and is placed in-line between the jack and telephone. The terminal device displays the number to the called party and depending on the device purchased, stores the time and originating number in a revolving memory that can recall the last 25 or more numbers.

DOCKET NO. 891194-TL
DECEMBER 7, 1989

Southern Bell is restricted from the manufacture and sale of these units. They state, however, that the devices are readily available from private vendors at a cost to an end user of between \$50 and \$80.

Caller ID, like all TouchStar features, is dependent upon the new Common Channel Signalling System Seven (CCS7) technology to function. When a call is placed, the originating digits are forwarded to the terminating number's central office. The terminating office completes the call, and upon determining that the customer is a Caller ID subscriber, forwards the originating number after the first ring. The company's proposed tariff does not allow any originating numbers to be blocked from the terminating address.

Caller ID, because it is dependent on CCS7 to function, will only forward numbers within and among CCS7-equipped central offices. No long distance numbers or numbers from non-CCS7 will be forwarded at the present time. As CCS7 is implemented throughout the state, more numbers will be available for transmission. Southern Bell does not have plans to transmit any long distance numbers in the immediate future. However, as technology progresses and CCS7 becomes ubiquitous among LECs throughout the state and/or nation, long distance transmission of numbers may occur.

Caller ID is somewhat different from its predecessor, Call Monitor in the Orlando trial. Call Monitor did not automatically forward nonpublished numbers. Another feature, Display Delete, could be added to allow the originating caller (subscribing to TouchStar) to restrict his/her number from being forwarded. Caller ID as filed forwards all calls with no blocking by the originating caller allowed (staff has proposed some blocking be allowed in Issue 4).

DOCKET NO. 891194-TL
DECEMBER 7, 1989

The trial in Orlando did not prove fruitful for Call Monitor/Caller ID; very few customers subscribed to the feature and the company did not gain much experience with it. The company cited the low availability of CPE and its usage sensitive rate structure (\$10.00 per month plus \$.05 per incoming number forwarded) as contributors to its low take rate. Southern Bell did not, however, receive any complaints about the feature while it was available in Orlando.

The company did not offer Caller ID when it reintroduced TouchStar in August of last year. Southern Bell was still conducting market research and restructuring Caller ID's rates at that time, as well as monitoring its legal concerns (see Issue 1) in other regional Bell territories.

Southern Bell's costs for Caller ID were developed using a resource cost methodology. These costs include long run incremental costs for the feature plus an allocated portion of the joint incremental costs associated with TouchStar service. An example of a joint cost in the Caller ID cost study is the feature package right-to-use fee. Although the fee is expensed when the TouchStar package is installed, its cost is allocated among the separate features of the service. The monthly costs per line for Caller ID are \$3.77 for residential customers, and \$3.62 for business customers.

Southern Bell developed a banded rate structure (flat rate, no usage charges) for Caller ID similar to other TouchStar features, but at a higher rate due to its higher costs and anticipated market value:

DOCKET NO. 891194-TL
 DECEMBER 7, 1989

FEATURE	MIN	MAX	CURRENT
First Feature Ordered (Call Return, Repeat Dialing, Call Selector, Preferred Call Forwarding, Call Block)			
Residential	\$ 2.50	\$ 6.00	\$ 4.00
Business	3.50	6.00	4.50
Call Tracing (as 1st feature)			
Residential	\$ 2.50	\$ 6.00	\$ 4.00
Business	3.50	6.00	5.00
<u>Proposed</u> Caller ID (as 1st feature)			
Residential	\$ 5.00	\$12.00	\$ 7.50
Business	7.00	20.00	10.00
Each additional feature (except Call Tracing)			
Residential	\$ 2.50	\$ 5.00	\$ 3.00
Business	2.50	5.00	3.50
Call Tracing (as additional feature)			
Residential	\$ 2.50	\$ 5.00	\$ 4.00
Business	3.50	6.00	5.00
<u>Proposed</u> Caller ID (as additional feature)			
Residential	\$ 5.00	\$12.00	\$ 7.50
Business	7.00	20.00	10.00

Southern Bell believes that its proposed structure is market based and will provide the company with maximum contribution. Although staff is concerned that the proposed rates may be a bit high, the Commission's policy for discretionary services such as TouchStar is to allow the company to market price these services to maximize their contribution to local service. As long

as Caller ID remains an ancillary service, this policy is prudent. However, if Caller ID ever becomes so popular or necessary as to be closely associated with local exchange service (as TouchTone is becoming), then a rate more closely tied to its costs may be justified.

Caller ID's engineering, function, rates, and cost methodology appear appropriate in this filing. Staff's major concern with this tariff, along with its companion in Issue 2, is the relative merits of the calling party's privacy vs. the called party's privacy.

The called party's privacy was of primary concern when the telephone industry was in its infancy. An operator connected all calls, rang the terminating number and announced to the called party who was on the line. Because the telephone was used primarily by businesses at the time, the telephone operator was used much like the receptionist is today. Although practices varied widely among companies, this continued until traffic volumes increased and operator time became more valuable. Speed became more important and the operators increasingly connected calls without any announcement to the called party. Finally, when direct dialing became available, although it was (and is) still a common courtesy to announce one's identity upon connection, the privacy of the person receiving the call began to fade. Through the years the emphasis has shifted to the privacy of the calling party. Anonymous phone tips, hotlines, abuse shelters, undercover police, etc. are all perceived now as "legitimate" cases of calling party anonymity. Society has grown accustomed to the inherent disadvantage the called party is under with present technology.

DOCKET NO. 891194-TL
DECEMBER 7, 1989

Caller ID, if approved, may help return privacy to the called party. This will undoubtedly change the way each subscriber perceives his/her telephone and its use. Each time the contemplation to make a call arises, the person must realize that his/her number may be forwarded to the number called.

This feature will make it much more difficult to commit crimes over the telephone. The fear alone of having one's number displayed should significantly reduce the number of attempted harrassing and obscene calls. In New Jersey, where the service has been in effect for about one year, the penetration rate statewide is much less than 10% for Caller ID yet there has been a 49% decrease from the previous year in the number of harrassing/obscene call complaints to New Jersey Bell's offices.

The legitimate privacy concerns of doctors, shelters, law enforcement, etc. should not be ignored. The following examples are ways that these entities may protect their privacy without necessitating blocking by the local exchange company:

EXAMPLE 1: A law enforcement agency conducts drug transactions and calls informants over a nonpublished line. In this case the agency may subscribe to an outward-only trunk with a nonpublished number. Although the number would still be forwarded, the called party could not look the number up in the telephone book or a cross-reference directory (Southern Bell does not sell nonpublished numbers to outside parties) and could not return the call, making

DOCKET NO. 891194-TL
DECEMBER 7, 1989

the Caller ID function useless to the called party. Outward only trunks are available to law enforcement agencies and other entities who would request one for these purposes.

EXAMPLE 2: A psychologist deals with emotionally unstable patients. She employs an answering service to allow her to return the calls of upset patients without their knowledge of her personal nonpublished number. To avoid her number from being forwarded, she may instruct the answering service to bridge the call through to her or she may subscribe to Southern Bell's RingMaster service, and have two numbers associated with her line. The primary number is the only one forwarded. She may choose to hook an answering machine to the primary number (and do away with her answering service) or not answer it. The secondary number could be given to friends and relatives just like a nonpublished number is today. This is available to all residential subscribers so it is conceivable that obscene callers could try this approach. However, the called party has the primary number and can initiate an investigation by giving it to the company's security department.

In either of the above cases or any other, a call from a payphone or through an operator would also circumvent Caller ID. Although there are ways to get around it, statistics in New Jersey and other states suggest that obscene callers are much less likely to make an attempt in a Caller ID-available territory.

DOCKET NO. 891194-TL
DECEMBER 7, 1989

Critics of the feature state that it does nothing that other TouchStar features, namely Call Return and Call Tracing, do not do already. Call Return automatically calls back the number that last called you. This is done by dialing XX* before another call comes in. The terminating address will ring, but the digits are not displayed or audible to the call originator. This allows the return of a call with no idea who it was that called you. Call Tracing sends a message to the security department of Southern Bell that a number needs to be traced. Again this is activated by dialing XX* before another call comes in. The subscriber must follow up the action with a complaint to the company before the number will actually be retrieved and investigated. Again the called party does not know what number just called.

It is true that the combination of these features will aid in the identification of harrassing callers, however staff does not believe they perform the identical function of Caller ID. Call Return, although it is handy when you just miss that call when returning home, does not lend itself well to controlling obscene calls. Call Tracing activation followed by a complaint may eventually apprehend the harrassing caller, but the victim is subject to repeated calls until the perpetrator is disconnected or he/she would have to subscribe to another feature, Call Blocking, to avoid such calls (Call Blocking is limited to blocking only three numbers).

These features fail to provide possibly the most valuable service of

DOCKET NO. 891194-TL
DECEMBER 7, 1989

Caller ID: the ability to make an informed decision before answering the call. As stated before, staff believes that it was never the intent of Alexander Graham Bell to provide for anonymous phone calls over the network. This phenomenon was simply a byproduct of the technology developed at the time. If Caller ID were invented concurrently with direct dialing, it is reasonable to believe that it would be inconceivable for many people to answer a call without knowing the number calling them today as it is inconceivable to expect someone to open their door if someone had covered the peephole.

Caller ID, because it is a TouchStar feature, should be subject to the same requirements this Commission has imposed upon TouchStar service. Namely the company should include Caller ID in any and all reports on TouchStar service that are presently required. Additionally, because this feature has relatively little history behind it and could be highly controversial, staff recommends that Southern Bell file quarterly reports on the status of Caller ID which include the following: which exchanges the feature is offered, the number of published and nonpublished subscribers, total revenues, and the number and nature of any and all complaints regarding this feature. These reports should be filed for one year from the date of implementation of the tariff. Staff will analyze these reports and any complaints filed with the Commission and determine in one year whether this feature needs revisiting.

Staff believes Southern Bell's Tariff filing is appropriate. The rates and cost methodology are consistent with other TouchStar features, and the service provides additional privacy to the called party that is not

DOCKET NO. 891194-TL
DECEMBER 7, 1989

currently offered. Because of these reasons and the others contained in this recommendation, staff believes That the company's Caller ID filing should be approved with the reporting requirements mentioned above and provided it makes the amendments requested in Issue 4 concerning blocking.

DOCKET NO. 891194-TL
DECEMBER 7, 1989

ISSUE 4: Should Southern Bell be required to add to its tariff an offering of optional blocking at no charge to the customer for the following entities: (a) private, non-profit, tax-exempt domestic violence intervention agencies; and (b) federal, state, and local law enforcement agencies?

RECOMMENDATION: Yes, Southern Bell should be required to add to its tariff an offering of optional blocking at no charge to the customer for the following entities: (a) private, non-profit, tax-exempt domestic violence intervention agencies; and (b) federal, state, and local law enforcement agencies. The changes should be filed no later than 10 days from the effective date of the Caller ID tariff.

STAFF ANALYSIS: Although the company has presented several alternatives that legitimate entities may use to circumvent the service without the necessity for blocking, staff believes that there may be some instances where such an agency may require some blocking to effectively conduct its business. Abuse shelters may be unable to maintain communication between an abuse victim and the family without the number being blocked. Law enforcement agencies may as well be unable to effectively conduct investigations if their number is forwarded. In these instances, if the company cannot provide one of these customers with a mutually agreed-upon service without blocking, the customer should have the choice of having some or all of its numbers blocked at no charge. Southern Bell should file this provision no later than 10 days from the effective date of the Caller ID tariff.

DOCKET NO. 891194-TL
DECEMBER 7, 1989

ISSUE 5: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed.

STAFF ANALYSIS: With the approval of staff's recommendations in Issues 1 through 4, this docket may be closed.

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subtracts and additur adds.

The second factor, cited by the majority opinion is the pivot on which the decision turns. "the apportioning of liability [the determination of comparative negligence by percentage] is a matter peculiarly within the province of the jury." Slip op. at 5. This statement is also true, but it has no significance here unless as a corollary the determination of damages is a matter *not* peculiarly within the province of the jury so that the trial court may order remittitur on the basis of a mere disagreement with the jury's damages verdict. As it happens, the decision cited by the majority opinion for the proposition that determination of comparative negligence by percentage is a matter peculiarly within the province of the jury actually stands for the broader proposition that determination of damages is a matter peculiarly within the province of the jury. In *Ashcroft v Calder Race Course, Inc.*, 492 So.2d 1309, 1313-14 (Fla. 1986), we held in pertinent part:

The trial judge's broad discretion is exercised in the context of determining whether a jury's verdict is against the manifest weight of the evidence or was influenced by consideration of matters outside the record. We agree with petitioner that the trial judge abused his discretion in ordering remittitur and granting a new trial as an alternative. There is nothing in the jury's verdict. There are no reasons given to support the notion that the verdict was against the manifest weight of the evidence or that the jury was influenced by matters outside the record. Instead, the judge appears to have simply reached different conclusions than the jury on whether petitioner was negligent² and on the amount of damages to be awarded. A trial court's discretion, while broad, is not unbridled.

In tort cases damages are to be measured by the jury's discretion. The court should never declare a verdict excessive merely because it is above the amount which the court itself considers the jury should have allowed. The verdict should not be disturbed unless it is so inordinately large as obviously to exceed the maximum limit of a reasonable range within which the jury may properly operate.

Bould v Touchette, 349 So.2d 1181, 1184-85 (Fla. 1977).

²The jury specifically found in a special verdict interrogatory that petitioner was not negligent.

We directly held in *Ashcroft* that the determination of damages is a matter peculiarly within the province of the jury and the trial judge should not order remittitur as an alternative to a new trial unless a new trial is required because the damages verdict was against the manifest weight of the evidence or the jury was improperly influenced by matters outside the record.³ We indirectly held, or strongly suggested, that a jury's determination on comparative negligence is a component of its damages verdict. We did not hold that percentages of comparative negligence are a component of liability.⁴

Under the majority decision, a successful plaintiff loses entirely the benefits of a favorable jury verdict on liability and damages measured in terms of comparative negligence. Traditionally, remittitur preserves the right of a plaintiff to a jury trial while offering, as an alternative, a reduced damages award which is not contrary to the manifest weight of the evidence or was not influenced by matters outside the record. The majority's decision to mandate a new trial on liability under such circumstances, without the option of remittitur, is not in the interests of plaintiffs or the courts that must retry such cases from the beginning. I would approve the decision below.⁵

¹This is sometimes referred to as shocking the conscience of the court. *St. Pierre v. Public Gas Co.*, 423 So.2d 949 (Fla. 3d DCA 1982), also offers scant authority for the proposition at issue. *St. Pierre* is one of the conflict cases on which we base our jurisdiction.

²It should be noted that the legislature has subsequently addressed remittitur and additur, thus giving these devices a statutory basis. Ch. 64-164, § 69, Laws of Fla. (codified at § 768.74, Fla. Stat. (1987)).

Criminal law--Search and seizure--Privacy rights--Use of pen registers to record numbers dialed from telephone--Constitutional privacy interests are implicated when government gathers telephone numbers through use of pen register--Privacy interest must yield to compelling interests of state--Legitimate, ongoing criminal investigation satisfies compelling state interest test when clear connection is demonstrated between illegal activity and person whose privacy is to be invaded--In order to justify use of pen register, state must show reasonable founded suspicion that targeted telephone line was being used for a criminal purpose and that least intrusive means have been employed

BERNARD SHAKTMAN, et al., Petitioners, vs. STATE OF FLORIDA, Respondent. Supreme Court of Florida. Case No. 72,272. October 12, 1989. Application for Review of the Decision of the District Court of Appeal--Certified Great Public Importance. Mel Black, Miami, Florida; Alan Naran, Miami, Florida; Martin Saxon, Miami, Florida; Alan E. Weinstein, Miami Beach, Florida; Harvey N. Shenberg, Miami, Florida; and Nathaniel Barot, Jr., Coral Gables, Florida, for Petitioners. Robert A. Bulterworth, Attorney General and Michele L. Crawford, Assistant Attorney General, Miami, Florida; and Janet Reno, State Attorney and Joel P. Rosenblatt, Assistant State Attorney, Eleventh Judicial Circuit, Miami, Florida, for Respondent. (BARKETT, J.) We have for review *Shakman v. State*, 529 So.2d 711, 719 (Fla. 3d DCA 1988), in which the district court certified the following two questions to be of great public importance:¹

- (1) Whether article I, section 23, of the Florida Constitution² is implicated when a law enforcement agency installs a pen register device³ on the telephone of an individual?
- (2) If the answer to (1) is yes, then is the compelling state interest test satisfied if the law enforcement agency involved in the installation has founded suspicion and meets the criteria established by sections 119.01(3)(a), (b), (c) and 119.02(4), Florida Statutes (1983)?

We approve the decision of the district court and, in the context of this case, answer both questions in the affirmative.

Petitioners were charged by information on November 17, 1984, with violation of the Racketeer Influenced and Corrupt Organization statute,⁴ conspiracy to violate that statute, bookmaking,⁵ and conspiracy to commit bookmaking. The Miami Beach Police Department received information from an undisclosed person that petitioner Shakman, a probationer from a prior bookmaking conviction,⁶ was again engaged in similar criminal activity. An investigation was conducted to determine whether Shakman was involved in illegal gambling. During the physical surveillance of Shakman on October 12, 1983, investigators observed him at a Miami Beach cafe conversing with petitioner Mart, who was known to police for his gambling and bookmaking activities, and with petitioner Rothman, who was known to police to have a lengthy felony record. Shakman was overheard discussing illegal gambling activities. Physical surveillance was thereafter extended to petitioner Mart.

On November 28, 1983, the circuit court approved the state's motion for a lease line for pen register operation on three instruments located in petitioner Mart's Miami Beach apartment.

Pen register activity was provided from December 6, 1983, until January 17, 1984, when the state received court approval of its application to intercept wire and oral communication. Ultimately, the information obtained from that intercept, together with the information obtained from a concurrent investigation by the Metro-Dade Police Department, led to the filing of formal charges.

The circuit court denied petitioners' consolidated motions to suppress evidence and to dismiss the information. The district court affirmed the circuit court and concluded that although article I, section 23 of the Florida Constitution applies to the facts of this case, the governmental intrusion by a criminal justice agency as defined in section 15.011(4), for the purposes defined in section 15.011(3), was permitted because the government satisfied the compelling state interest test. *Shaktman*, 529 So.2d at 716. We approve.

In *Olmstead v. United States*, 277 U.S. 438 (1928), Justice Brandeis wrote:

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. . . . They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men.

Id. at 478 (Brandeis, J., dissenting).

Fifty-two years later, while legal scholars continued to debate whether the federal constitution provided express or implied privacy protections, the people of Florida unequivocally declared for themselves a strong, clear, freestanding, and express right of privacy as a constitutional fundamental right. This provision was approved by the voters as article I, section 23 of the Florida Constitution, adopted in 1980, when the people exercised their sovereign power to amend the state's organic law.

This right ensures that individuals are able "to determine for themselves when, how and to what extent information about them is communicated to others." A. Westin, *Privacy and Freedom* 7 (1967). See also T. Emerson, *The System of Freedom of Expression* 548 (1970) (arguing that "the main thrust of any realistic system for the protection of privacy" must be the prevention of "outside persons from obtaining information about individuals seeking privacy"). One of its ultimate goals is to foster the independence and individualism which is a distinguishing mark of our society and which can thrive only by assuring a zone of privacy into which not even government may intrude without invitation or consent.

The right of privacy assured to Florida's citizens, demands that individuals be free from uninvited observation of or interference in those aspects of their lives which fall within the ambit of this zone of privacy unless the intrusion is warranted by the necessity of a compelling state interest. In an opinion which predated the adoption of section 23, the First District aptly characterized the nature of this right:

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.

Bryon, Heston, Schaffer, Ruhl & Assoc., Inc. v. State ex rel. Schellenberg, 360 So.2d 83, 92 (Fla. 1st DCA 1978), *quashed and remanded on other grounds*, 379 So.2d 633 (Fla. 1980). Because this power is exercised in varying degrees by differing individuals, the parameters of an individual's privacy can be dictated only by that individual. The central concern is the inviolability of one's own thought, person, and personal action. The inviolability of that right assures its pre-eminence over "majoritarian sentiment" and thus cannot be universally defined by consensus.

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. As the Supreme Court of Colorado noted:

The concomitant disclosure to the telephone company, for internal business purposes, of the numbers dialed by the telephone subscriber does not alter the caller's expectation of privacy and transpose it into an assumed risk of disclosure to the government. . . . [I]t is somewhat idle to speak of assuming risks in a context where, as a practical matter, the telephone subscriber has no realistic alternative.

People v. Sportleder, 666 P.2d 135, 141 (Colo. 1983) (citations omitted).

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. See *Winfield v. Division of Pari-Mutuel Wagering*, 477 So.2d 544, 548 (Fla. 1985). This gathering of private information clearly affects a manner within that zone of privacy. Accordingly, we adopt the analysis of the district court and answer the first certified question in the affirmative.⁹

Having found that petitioners were entitled to the protections of article I, section 23, the district court nevertheless permitted the installation of pen registers, concluding that the compelling state interest test required by article I, section 23, had been satisfied in this case. *Shaktman*, 529 So.2d at 718.

Like all of our other fundamental rights, the fundamental right of privacy is not absolute. In *Winfield*, the Court found that "while a citizen may enjoy a privacy interest in his or her bank records", that privacy interest must yield to the interest of the state under certain circumstances. Justice Adkins, writing for the Court, explained that

[t]he right of privacy is a fundamental right which we believe demands the compelling state interest standard. This test shifts the burden of proof to the state to justify an intrusion on privacy. The burden can be met by demonstrating that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means.

Winfield, 477 So.2d at 547 (citations omitted). The Court recognized in *Winfield* that the compelling state interest test represented a strong standard of review, one of the most demanding placed upon the government.¹⁰

We agree with the district court that the compelling state interest test articulated in *Winfield* must be applied to the issue before us. Because the pen register intrudes upon fundamental privacy interests, the state has the burden of demonstrating both that the intrusion is justified by a compelling state interest and that the state has used the least intrusive means in accomplishing its goal.

We also agree with the state that a legitimate, ongoing criminal investigation satisfies the compelling state interest test when it demonstrates a clear connection between the illegal activity and the person whose privacy would be invaded. To justify the intrusion into private lives by the use of a pen register, article I, section 23 requires that the state demonstrate two things. First, it must show a reasonable founded suspicion¹¹ that the targeted telephone line was being used for a criminal purpose. We are satisfied on this record that the law enforcement agencies had such a reasonable founded suspicion.

Second, the state must show that the least intrusive means have been employed. Petitioners contend that the state has failed to demonstrate that the use of the pen register was the least intrusive means available to accomplish its goal. Petitioners urge that the procedural requirements imposed by current federal¹² and state¹³

statutes offer more enhanced protection than that offered under then-controlling law, thereby demonstrating that less intrusive means were available. Specifically, petitioners argue that the trial court omitted from its order a limit on the duration of its use, the type of information sought, a statement demonstrating founded suspicion, and the making of periodic reports to the authorizing court.

As a crucial component of the second prong of this analysis, article I, section 23 requires adherence to procedural safeguards which, at a minimum, necessitate judicial approval prior to the state's intrusion into a person's privacy. Thus, in analyzing whether the least intrusive means were utilized, one must consider procedural safeguards in conjunction with the extent of the actual intrusion into privacy. There is no question that the law enforcement agencies in this case applied for pen register operation in accordance with established state procedures at the time of the request and that the authorizing court complied with those procedures.

We find from the record that the order which authorized the pen register application was based upon reasonable founded suspicion. Furthermore, although the order did not set a time limit for the duration of the pen register, pen register surveillance continued for a period of time less than that authorized by the current legal requirement.¹⁹ Considering all the circumstances, we find that the pen register installed here was the least intrusive means and we are satisfied that there was no procedural violation which would defeat the application of this standard.

Accordingly, for the reasons expressed, we answer the certified questions in the affirmative and approve the decision of the district court.

It is so ordered. (OVERTON, McDONALD, SHAW, GRIMES AND KOGAN, JJ., Concur. EHRLICH, C.J., Concur specially with an opinion.)

¹⁹We have discretionary jurisdiction. Art. V, § 3(b)(4), Fla. Const.

²⁰That section provides:

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

²¹The Florida Statutes define a pen register as:

a device which records or decodes electronic or other impulses which identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached . . .

§ 934.02(20), Fla. Stat. (Supp. 1986). See also 16 U.S.C. § 3126(2) (1988); United States v. New York Tel. Co., 434 U.S. 159, 161 n.1 (1977); United States v. Clarendon, 485 U.S. 735, 749 n.1 (1978) (Powell, J., concurring in part and dissenting in part). See generally J. Carr, *The Law of Electronic Surveillance* § 3.2(c)(2)(3) (1988); 2 G. Tushnet, *Privacy Law and Practice* § 11.04(8) (1988).

²²§ 89.083, Fla. Stat. (1985).

²³§ 89.25, Fla. Stat. (1985).

²⁴*Shelton v. State*, 413 So.2d 567 (Fla. 3d DCA 1983).

²⁵L. Tribe, *American Constitutional Law* 133 (2d ed. 1988).

²⁶We add that the district court concluded and the petitioners now concede that article I, section 12 of the Florida Constitution, is not implicated by the facts of this case.

²⁷Such a standard is entirely appropriate in view of the fact that the drafters of article I, section 23 intended to make the right to privacy as strong as possible. *Winfield v. Division of Pari-Mutuel Wagering*, 477 So.2d 544, 548 (Fla. 1985). See also *Cape, To Be Let Alone: Florida's Proposed Right of Privacy*, 9 Fla. St. U. L. Rev. 476, 764-59 (1975).

²⁸In deciding whether police had founded suspicion of criminal activity sufficient to justify a stop of a motor vehicle, the Court has looked to "the cumulative impact of the circumstances perceived by the officers." *Kehoe v. State*, 533 So.2d 824, 827 (Fla. 1988). *Alford Turner v. State*, 484 So.2d 383, 384 (Fla. 1986). We find that definition to be suitable for the inquiry at hand, when coupled with the added requirement that such suspicion must be reasonable.

²⁹18 U.S.C.A. §§ 721-727 (West Supp. 1986) (effective ninety days after October 21, 1986 Pub. L. No. 99-508, § 302, 1986 U.S. Code Cong. & Admin. News (80 . . .) 1872).

³⁰§§ 934.27-33, Fla. Stat. (Supp. 1988) (effective October 1, 1988, Ch. 88-184, § 11, Laws of Fla.).

³¹We add that there is no statutory requirement for the making of periodic reports relative to pen register operation; however, the issuing court may require periodic reports in connection with the interception of wire, oral, or electronic communication. § 934.09(c), Fla. Stat. (Supp. 1988).

(EHRLICH, C.J., concurring specially.) I concur. I write only to emphasize the method by which we determine the applicability of article I, section 23, of the Florida Constitution. In *Winfield v. Division of Pari-Mutuel Wagering*, 477 So.2d 544, 548 (Fla. 1985), this Court stated:

The citizens of Florida opted for more protection from governmental intrusion when they approved article I, section 23, of the Florida Constitution. This amendment is an independent, freestanding constitutional provision which declares the fundamental right to privacy. Article I, section 23, was intentionally phrased in strong terms. The drafters of the amendment rejected the use of the words "unreasonable" or "unwarranted" before the phrase "governmental intrusion" in order to make the privacy right as strong as possible. Since the people of this state exercised their prerogative and enacted an amendment to the Florida Constitution which expressly and succinctly provides for a strong right of privacy not found in the United States Constitution, it can only be concluded that the right is much broader in scope than that of the Federal Constitution.

The words "unreasonable" or "unwarranted" harken back to the federal standard of "reasonable expectation of privacy," which protects an individual's expectation of privacy only where society recognizes that it is reasonable to do so. The deliberate omission of such words from article I, section 23, makes it clear that the Florida right of privacy was intended to protect an individual's expectation of privacy regardless of whether society recognizes that expectation as reasonable.

However, this emphasis on each individual's expectations of privacy does not mean that the individual's subjective expectations are dispositive of the applicability of article I, section 23. In *Winfield*, this Court characterized the interest protected as "an individual's legitimate expectation of privacy." *Id.* (emphasis added). Therefore, the zone of privacy covered by article I, section 23, can be determined only by reference to the expectations of each individual, and those expectations are protected provided they are not spurious or false. A determination of whether an individual has a legitimate expectation of privacy in any given case must be made by considering all the circumstances, especially objective manifestations of that expectation; for example, in cases where disclosure of purportedly private information is sought, circumstances such as the kind of information, where it is kept, who has access to it and under what circumstances.

In this case, the information sought was the telephone numbers dialed by an individual. Access to this information is very limited. Although the telephone company has the information, its records are not open to the public. As with the bank records at issue in *Winfield*, the individual certainly expected that the information would not be released without authorization. Such personal and private information comes within the zone of privacy protected by article I, section 23, of the Florida Constitution.

IN THE SUPREME COURT OF FLORIDA

CASE NUMBER 72,272

FILED
SID J. WHITE

OCT 27 1989

CLERK, SUPREME COURT
By: [Signature]
Deputy Clerk

BERNARD SHAKTMAN, et al.,)
Petitioner,)
vs.)
STATE OF FLORIDA,)
Respondent.)

MOTION FOR REHEARING
AND/OR CLARIFICATION

RESPONDENT, the State of Florida, by and through the undersigned counsel, pursuant to Rule 9.330, Fla.R.App.P., files this Motion for Rehearing and/or Clarification and as reasons therefore says:

1. By this Court's Opinion of October 12, 1989, the Court has approved the decision of the District Court of Appeal, Third District, in Shaktman v. State, 529 So.2d 711 (Fla. 3d DCA 1988), and expressly answered in the affirmative the two questions certified as being of great public importance, to wit:

(1) WHETHER ARTICLE I, SECTION 23, OF THE FLORIDA CONSTITUTION IS IMPLICATED WHEN A LAW ENFORCEMENT AGENCY INSTALLS A PEN REGISTER DEVICE ON THE TELEPHONE OF AN INDIVIDUAL?

(2) IF THE ANSWER TO (1) IS YES, THEN IS THE COMPELLING STATE INTEREST TEST SATISFIED IF THE LAW ENFORCEMENT AGENCY INVOLVED IN THE INSTALLATION HAS FOUNDED SUSPICION AND MEETS THE CRITERIA ESTABLISHED BY SECTIONS 119.011(3)(a), (b), (c) AND 119.011(4)?

2. In rendering its Opinion, Respondent respectfully suggests this Court has overlooked and misapprehended the 1982 Amendment to Article I, Section 12 of the Constitution of Florida and the interrelationship of that provision with Article I, section 23 of the Constitution of Florida. Indeed, the only reference to Article I, section 12 in this Court's Opinion is contained in footnote 8 on page 5 as follows:

We add that the district court concluded and the petitioners now concede that Article I, section 12 of the Florida Constitution, is not implicated by the facts of this case.

Such a statement is a misinterpretation of the position of the Petitioner and of the District Court below, and is in direct contravention of the language of Article I, Section 12 and the case law of this State.

3. At trial and in the District Court below, Petitioners strenuously argued that the obtaining of a pen register without a search warrant was in direct contravention of Article I, Section 12, even though it satisfied the Fourth Amendment. In its Brief to this Court, at page 14, however, Petitioners finally conceded that the use of a pen register without a court order did not violate Article I, Section 12 of the Florida Constitution or the Fourth Amendment.

In its opinion below, the District Court expressly rejected the Petitioners' contention that the use of pen registers without a warrant subverted the broader scope of Article I, Section 12 (529 So.2d at p. 714-715), or that it violated Article I, Section 12 (529 So.2d at 717). However, it was expressly because of the interrelationship between Article I, Sections 12 and 23, that the District Court certified its questions to this Court (529 So.2d at 716-719).

There is a substantial difference between asserting that Article I, Section 12, is not violated and saying that it is not implicated. The express wording of Article I, Section 12 reflects otherwise.

4. Section 12. Searches and seizures. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things

to be seized, the communication to be intercepted, and the nature of evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

The underlined portions of Article I, Section 12, set out above, clearly reflect its applicability in the area of interception of communications. The applicability of Article I, Section 12 is more than merely incidental. Indeed in Tollett v. State, 272 So.2d 490 (Fla. 1973), this Court noted that the 1968 revision of the Constitution of Florida had modified the former provision of the Declaration of Rights set out in Section 22 of the 1885 Constitution of Florida. Instead of a provision which merely mirrored the Fourth Amendment, the new 1968 Constitution expressly granted the protection of privacy in the area of communications. Likewise, in State v. Sarmiento, 397 So.2d 643 (Fla. 1981), Article I, Section 12 was looked to as the basis for affording greater privacy in the area of intercepted communications than afforded under the United States Constitution.

Accordingly, when Article I, Section 23 was added to the Constitution of Florida in 1980, the majority of commentators noted that the new provision on privacy had a sphere separate and distinct from Article I, Section 12. See, Cope, To Be Let Alone: Florida's Proposed Right Of Privacy, 6 Fla.St.U.L.Rev. 675 at p. 723 (1978); Cope, A Quick Look At Florida's New Right Of Privacy, 55 Fla. B.J. 12 (1981); Jackson, Interpreting Florida's New Constitution Right Of Privacy, 33 U.Fla.L.Rev. 565 at p. 580 (1981); But see, Dore, Of Rights Lost And Gained, 6 Fla.St.L.Rev. 609 at p. 655 (1978). Indeed, the Rules of Construction set forth in Article X, Section 12(a) of the Constitution of Florida

mandates that the language of Article I, Section 23, "...except as otherwise provided herein," be construed as a reference to the entire constitution, therefore, in particular Article I, Section 12.

Such analysis is also consistent with this Court's decision in Shevin v. Byron, Harless, Schaffler, Reid and Assoc. Inc., 379 So.2d 633, 636-639 (Fla. 1980). That case, although decided prior to the adoption of Article I, Section 23, differentiated between the privacy interests in being secure from unwarranted governmental surveillance and intrusion into one's private affairs protected by the Fourth Amendment and Article I, Section 12, of the Florida Constitution; and the privacy interests in decisional autonomy in personally intimate matters and in protection against disclosure of personal matters for which protection must be sought elsewhere. The privacy amendment added in Article I, Section 23, while obviously designed to fill that void, need not be seen as intruding on that area already covered by Article I, Section 12 of the Constitution of Florida

5. Even if this interpretation were not mandated solely by the language of the two Constitutional provisions, it is reinforced by the recognition that voters of Florida expressly amended Article I, Section 12 of the Constitution in 1982, two years after adding Section 23. Long standing rules of statutory construction dictate that the specific controls the general and that later enactments control earlier ones. State v. Diers, 532 So.2d 1271 (Fla. 1988). Up until the Opinion in this case, this Court had consistently held that the 1982 Amendment of Article I, Section 12 prevailed, notwithstanding the general privacy provision in Article I, Section 23. State v. Hume, 512 So.2d 185, 188 (Fla. 1987) (We also agree with the State that our right-of-privacy provision, Article I, Section 23 of the Florida Constitution does not modify the applicability of Article I, Section 12, particularly since the people adopted Section 23 prior to the present Section 12); Madgen v. State, 521 So.2d 110 (Fla. 1988) (...in State v. Hume... we held that the recording...

does not violate the newly adopted Article I, Section 12 of the Florida Constitution... We also rejected the contention that our right-of-privacy provision under Article I, Section 23 of the Florida Constitution prohibited this type of evidence). See also, State v. Welker, 536 So.2d 1017 (Fla. 1988) (relying on Article I, Section 12, despite the dissent relying on Article I, Section 23); Rasmussen v. South Florida Blood Services, 500 So.2d 533, 536 n. 5 (Fla. 1987) (intrusions into privacy during criminal investigations are generally protected by the prohibition against unreasonable search and seizure. See, Art. I, § 12, Fla. Const.).

This analysis is entirely consistent with this Court's long standing principles. Indeed, in Sylvester v. Tindall, 154 Fla. 170, 18 So.2d 892 (1944), the Court stated:

A general rule is that no one provision of the constitution is to be separated from all the others, to be considered alone, but that all provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Thus a constitutional amendment becomes a part of the constitution and must be construed in pari materia with all of those portions of the constitution which have a bearing on the same subject. But a somewhat different rule prevails if a constitutional amendment conflicts with pre-existing provisions. In 11 AmJr., Sec. 54, p. 663, it is well said:

"A new constitutional provision adopted by a people already having well-defined institutions and systems of law should not be construed as intended to abolish the former system, except in so far as the old order is in manifest repugnance to the new Constitution, but such a provision should be read in the light of the former law and existing system. Amendments, however, are usually adopted by the express purpose of making changes in the existing system. Hence, it is very likely that conflict may arise between an amendment and portions of a Constitution adopted at an

earlier time. In such a case the rule is firmly established that an amendment duly adopted is part of the Constitution and is to be construed accordingly. It cannot be questioned on the ground that it conflicts with pre-existing provisions. If there is a real inconsistency, the amendment must prevail because it is the latest expression of the will of the people. [Emphasis added.]

18 So.2d at 900-901.

As broad as the general Right of Privacy guaranteed by Article I, Section 23, may be interpreted in other areas, see, In Re: T.W., ___ So.2d ___ (Fla. #74,143, Opinion filed October 5, 1989), 14 F.L.W. 497, it cannot be held to supplant and override the specific subsequent amendment of Article I, Section 12, of the Florida Constitution.

6. To elevate what has heretofore been expressed solely as a dissenting position, see, State v. Welker, supra at p. 1021 (Barkett, J., dissenting); Bernie v. State, 524 So.2d 988, 1000 (Barkett, J., dissenting); State v. Hume, supra at p. 190 (Barkett, J., dissenting), to that of the opinion of the Court, without overruling or even explanation of prior precedent, can create nothing less than confusion among the bench, the bar, and the law enforcement officials who must comply with such inconsistent pronouncements.

7. A significant factor in this Court's decision is the assumption that the telephone numbers dialed or transmitted to the telephone company are not intended to be communicated to a third party. Recent technological advances in optional telephone equipment seriously undermine this assumption. Equipment is now being test marketed in the Orlando area and may soon be available statewide, as it already is in other states, by which the telephone facility called will be able to display the telephone number of the caller, even before the phone is answered. (See attached exhibit.) Hence, without knowing whether the receiving phone is equipped with such a feature, or who is viewing the information at the receiving end, the caller may be exposing the

number he has dialed from without realizing or intending such disclosure, and without the phone being answered. How realistic then is the assumption that such information is shared only between the caller and the phone company? Moreover, if that information is no longer capable of being maintained as private, how is it protectible under either Article I, Section 12 or Section 23? How would this expectation of privacy be changed if the telephone company changed its billing practice to use message unit billing, where time and distance are expressly noted for billing purpose?

Even without these technological advances, the assumption that Petitioners had any cognizable privacy interest is questionable at best. Florida Statute § 364.31(a) imposes a duty upon all telephone companies to report to the sheriff of any affected county any information that the service is being used in violation of the laws prohibiting bookmaking or other gambling. Said statute imposes upon each telephone company the duty to provide all reasonable means to ascertain if any of its facilities are being so used. See, section 364.31(b).

Accordingly, Respondent respectfully suggests that this Court has overlooked or misapprehended its own decision in Winfield v. Division of Pari-Mutuel Wagering, 477 So.2d 544 (Fla. 1985). Winfield recognizes that the threshold question is whether the law recognizes a legitimate expectation of privacy to exist in the first place. Id. at p. 547. In the instant cause, there was no such prior recognition by case law, statute, or otherwise. Indeed, prior to this case, the only Florida case on the subject was Yarbrough v. State, 473 So.2d 766 (Fla. 1st DCA 1985), which expressly followed Smith v. Maryland, 442 U.S. 735, 99 S.Ct. 2577, 61 L.Ed.2d 220 (1979), in holding that an individual does not have a legitimate expectation of privacy with regard to numbers dialed into a commercial telephone system. Without some manifestation by way of statute, case law, or technology, the assumption of a legitimate expectation of privacy is unwarranted.

8. But even if it is accepted that there is a protectible privacy interest in the telephone numbers dialed, the Opinion of this Court has legislated a procedure which is beyond that utilized in Winfield, supra, and beyond that mandated by the Florida Legislature.

In its Opinion at page 6, the Court states:

...To justify the intrusion into private lives by the use of a pen register, Article I, Section 23, requires that the State demonstrate two things. First, it must show a reasonable founded suspicion that the telephone line was being used for a criminal purpose...

Winfield, however, involved no pre-intrusion showing of a reasonable founded suspicion to a judge, rather the Department of Business Regulation issued subpoenas to obtain banking records of individuals it was investigating. Id. at p. 546. Winfield expressly noted that it was up to the investigating agency rather than the bank or the depositor to calculate what is and is not relevant to its investigation. Id. at p. 548. Indeed, subpoenas heretofore issued by the State Attorneys of Florida, like grand jury subpoenas, are immune from requirement of showing materiality in compelling production of testimony and documentary evidence. Imparato v. Spicola, 238 So.2d 509 (Fla. 2d DCA 1970); State v. National Research Systems, Inc., 459 So.2d 1134 (Fla. 3d DCA 1984).

Most importantly, Winfield imposed no requirement that the bank records sought were being used for a criminal purpose, rather required that the subpoenas, "were reasonably calculated to obtain information relevant to a state investigation." 548 So.2d at p. 548. Pen registers and trap and trace devices are not only utilized in cases where the parties to the phone conversation are actively engaged in the planning or discussing criminal activity. Such devices are useful law enforcement tools in locating escapees, fugitives, kidnappers, and others who, although not actively planning new crimes, use the telephone to contact friends and/or relatives, thereby creating leads which

may result in prompt apprehension. Oftentimes, these devices are attached to telephone equipment with the cooperation of the subscriber, yet, this Court's holding is so broad so as to preclude the installation of such devices because of the "privacy rights" of the person on the other end of the telephone, and the inability to establish a current criminal purpose.

9. Finally, in legislating this new procedure, it is respectfully suggested that this Court has overlooked and misapprehended the will of the people. In response to the Electronic Communications Privacy Act of 1986, Pub.L. 99-508, 100 Stat. 1848, the Florida Legislature passed Chapter 88-184 Laws of Florida which set out a statutory procedure for obtaining pen registers and trap and trace devices. Florida Statute §§ 934.31, 934.32, 934.33 and 934.34 (1988). Said statute contains no requirement of demonstrating a "reasonable founded suspicion that the telephone line was being used for a criminal purpose," rather it requires, "a certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by the investigating agency." Florida Statute § 934.32(2)(b). In its most recent legislative general session, the Legislature passed Chapter 89-269 Laws of Florida and expressly added to Florida Statute § 934.33 a section to provide:

(5) A court may not require greater specificity or additional information beyond that which is required under s. 934.32 and this section as a requisite for issuing an order as provided in this section.

When these two legislative enactments are examined in light of Article I, Section 12, it is clear that most recent expression of the people is to bind the courts of this state to the specific interpretations of the Supreme Court of the United States, and to exclude from evidence only those articles or information which would be inadmissible under decisions of the United States Supreme Court construing the Fourth Amendment.

See, Hearn v. State, supra. For this Court to now legislate new and more onerous procedures for the issuance of pen registers is to ignore the concepts of Separation of Powers set forth in Article II, Section 3; to ignore the Rules of Construction set forth in Article X, Section 12; and to flout the will of the people as set forth in the 1982 Amendment to Article I, Section 12 of the Constitution of Florida. If this Court chooses to do so, then the Respondent suggests that the remedy of exclusion of evidence is inappropriate, unwarranted and antithetical to Article I, Section 12.

The Respondent is also unsure and concerned as to the reach of the instant opinion. State Attorneys traditionally exercise broad investigatory powers pursuant to Florida Statutes § 27.04. Invariably, subpoenas so issued, to some extent, impinge upon privacy rights. Conceivably, this Court has now vitiated the authority of the State Attorneys, or for that matter grand juries, (Florida Statutes § 905.185) to obtain evidence by virtue of their subpoena powers without any further showing.

WHEREFORE, Respondent prays that this Motion for Rehearing be granted and that this Court's decision of October 11, 1989, be withdrawn and clarified in the following respects:

- a) The interrelationships to Article I, Sections 12 and 23, and the conflicting decisions of this Court.
- b) The applicability of this Court's decision to trap and trace devices, including ones soon to be readily available to the general public.
- c) The applicability of this Court's decision to consensual pen register and trap and trace devices.
- d) The applicability of this Court's decision to other telephone company information such as subscriber information, toll records, and special feature devices, such as call waiting and


forwarding, which information is currently obtainable by subpoena.


- e) The applicability of this Court's decision to other records such as bank records, subpoenaed by the State Attorney or the grand jury.
- f) Whether evidence admissible under the decisions of the Supreme Court of the United States, the Fourth Amendment, and Article I, Section 12 of the Florida Constitution is nonetheless excludable under Article I, Section 23?

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General

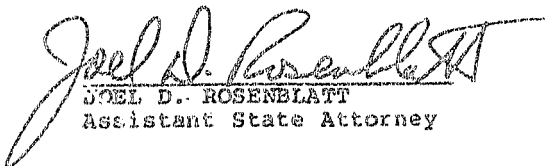
JANET RENO
State Attorney

By: 
for MICHAEL J. WEIMAND
Assistant Attorney General
Department of Legal Affairs
401 N.W. 2nd Avenue
Suite W-921
Miami, Florida 33128

By: 
JOEL D. ROSENBLATT
Assistant State Attorney
Florida Bar # 120682
1351 N.W. 12th Street
Miami, Florida 33125
(305) 547-7093

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was forwarded to Mel Black, Attorney for Petitioner, 2937 Southwest 27th Avenue, Suite 202, Miami, Florida 33133, on this the 26th day of October, 1989.


JOEL D. ROSENBLATT
Assistant State Attorney

Caller * ID

Allows you to view the number of the caller before you answer the phone.

Caller * ID lets you view the telephone number of an incoming call on a customer provided display unit so you can identify who is calling before you answer the phone.

NOTE: Caller * ID requires an additional piece of equipment to be provided by the customer — either a small display unit or a display telephone.

How does it work?

- Follow the instructions provided by the manufacturer for setting up your display unit or display telephone.
- The telephone number of the party calling you will be displayed after the first ring.

Any other important points?

- Since the Caller * ID works automatically, there are no activation/deactivation requirements.
- Repeat * Call and Return * Call customers can use Caller * ID for identifying which number is responsible for special ringback. This is especially helpful when you have several Repeat * Calls and/or Return * Calls active at the same time.
- Priority * Call customers can use Caller * ID to identify exactly from which Priority * Call number the call is coming.
- When you receive a call from outside your specific service area (see Service Area insert) a special message will appear on your display unit or telephone instead of the telephone number. Check your display unit instructions to determine what message will be displayed.



T-89-506

Southern Bell

A. M. Lombardo
Assistant Vice President-
Regulatory Relations

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

September 29, 1989

RECEIVED

SEP 29 1989

Florida Public Service Commission
Communication Department

Mr. Walter D'Haeseleer
Director, Division of Communications
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 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 A1 - Third Revised Page 12
- Section A6 - Fifth Revised Page 2
- Section A6 - Contents Page, Fourth Revised Page 1

This tariff filing proposes to clarify the conditions under
which a number associated with a non-published listing may be
disclosed.

The following attachment provides additional supporting and
explanatory information for the proposed tariff revision. This
attachment constitutes a comprehensive package which fulfills
the basic requirements for supporting data specified in Rule
25-9.05.

Attachment A - Executive Summary

Your consideration and approval will be appreciated.

Yours very truly,

Attachment

Southern Bell - Florida
Attachment A
Page 1 of 1

EXECUTIVE SUMMARY

Section A6.4.A (Non-Published (Private) Listing) of the General Subscriber Service Tariff is being revised to clarify the conditions under which a number associated with a non-published listing may be disclosed.

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 by the Company upon request of a calling party. This has always been the intent of the tariff. However, with today's technology there are various ways that a number associated with a non-published listing may be disclosed. Due to changes in technology, a tariff revision is necessary to clarify that the telephone number of the calling party may be disclosed if the called party has the necessary equipment that can receive and/or disclose incoming telephone numbers.

This filing offers a better understanding of the conditions under which a non-published telephone number is offered and may be disclosed.

A1. DEFINITION OF TERMS

NETWORK INTERFACE

- 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
- The Network Interface will be located inside the subscriber premises.
- 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 (SEMI-PRIVATE) TELEPHONE LISTING~~ ~~is a listing of telephone numbers assigned to exchange stations which is not available to the general public.~~ (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~~ ~~is a listing of telephone numbers assigned to exchange stations which is not available to the general public.~~ (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~~ ~~is the listing omitted from the telephone directory and is not shown on records available to the general public.~~

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.

SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Third
Fourth Revised Page 1
Cancels ~~Third Revised Page 1~~
~~Second~~

ISSUED: September 29, 1989 *October 13, 1989*

EFFECTIVE: November 29, 1989

BY: Vice President
Miami, Florida

December 13, 1989

A6. DIRECTORY LISTINGS

CONTENTS

	<u>Page</u>	
A6.1 Regulations Applicable to Directory Listings	1	(F)
A6.1.1 General	1	(F)
A6.2 Business Listing	1.1	(F)
A6.2.1 General	1.1	(F)
A6.2.2 Business Designation	1.1	(F)
A6.2.3 Trade Name	2	(F)
A6.3 Residence Listing	2	(F)
A6.3.1 General	2	(F)
A6.3.2 Reserved for Future Use Deleted	2	(F)
A6.3.3 Reserved for Future Use Deleted	2	(F)
A6.4 Non-Published (Private) Listing	2	(F)
A6.4.1 General	2	(F)
A6.4.2 Rate Application	2.1	(F)
A6.4.3 (DELETED)	2.1	(F)
A6.5 Non-Listed (Semiprivate) Listing	2.1	(F)
A6.5.1 General	2.1	(F)
A6.5.2 Rate Application	3	(F)
A6.5.3 (DELETED)	3	(F)
A6.6 Additional Listing	3	(F)
A6.6.1 General	3	(F)
A6.6.2 Business Additional Listing	3	(F)
A6.6.3 Residence Additional Listing	4	(F)
A6.7 Miscellaneous Listing	4	(F)
A6.7.1 Access Service Listing	4	(F)
A6.7.2 Alternate Listing	4	(F)
A6.7.3 Cellular Carrier Listing	4	(F)
A6.7.4 Company and Customer Owned Telephone Service	4.1	(F)

Tariff Revisions
Legislative Format
Not for Approval

ISSUED: ~~September 29, 1989~~ October 13, 1989
BY: Vice President
Miami, Florida

EFFECTIVE: ~~November 29, 1989~~
December 13, 1989

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 dentist

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

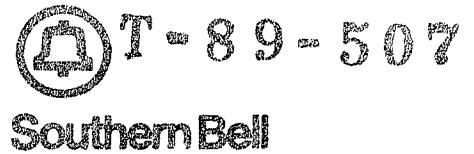
- A. A non-published listing is not listed in either the alphabetical section of the Company's directory or directory assistance records and will not be furnished upon request of a calling party. However, when a call is placed from a telephone number associated with a non-published listing, the number 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.
- 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.

~~Deleted~~

Not for
Legislative Purposes
Not for Approval

045

material appearing on this page previously appeared on pages 3, 4
of this section
material appearing on this page not appear on pages



A. M. Lombarde
Assistant Vice President-
Regulatory Relations

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

RECEIVED

SEP 29 1989

Florida Public Service Commission
Communication Department

September 29, 1989

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 - Third Revised Page 35
- Third Revised Page 36
- Original Page 36.1
- Third Revised Page 37
- Third Revised Page 38

The purpose of this filing is to introduce Caller ID as the seventh call management feature of the TouchStar[®] service family. Caller ID is an optional network based feature offered in addition to basic telephone service.

In addition, text revisions are being made to clarify the terms and conditions under which TouchStar service overall is provisioned on multi-line hunt groups.

[®]Registered Service Mark of BellSouth Corporation


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 - Revenue Information
Attachment E - Cost Information

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,


Assistant Vice President -
Regulatory Matters

Executive Summary

Introduction

The purpose of these revisions is to introduce a seventh call management feature, Caller ID, to the TouchStar[®] service family. Caller ID is a network based optional feature which will be offered in addition to basic telephone service. It will provide increased control, privacy and security for telephone users.

This feature will be provided subject to the availability of facilities. It will be offered to single line residence and business customers who have Touch-Tone or rotary dial service.

In addition, text revisions are being made to clarify the terms and conditions under which TouchStar service is provisioned on multi-line hunt groups.

Description of Present Tariff

No such offering exists in the current tariff. However, this feature was trialed via an experimental tariff between July 18, 1984 and May 1, 1988 in Orlando, Florida.

Description of Proposed Tariff

Caller ID is the seventh call management feature of the TouchStar service family to be introduced.

The rate structure for this feature, as with the other TouchStar features, includes rate banding. This consists of the minimum, maximum and current rate for the feature. Following a thirty (30) day notice to the Commission and existing subscribers, and with the approval of the Commission, the Company may increase or decrease rates within the minimum and maximum ranges specified.

The current rates shown in this tariff are supported by primary market research within the BellSouth region.

The text change is a result of recent network modifications. The TouchStar service features, excluding Caller ID, can now be offered and provisioned separately on lines within a multi-line hunt group, therefore, the previously imposed limitation was removed.

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Technical Information

Caller ID, like the other TouchStar[®] service features, depends on the implementation of Common Channel Signaling System 7 (CCS7) into the network for interoffice applications. The CCS7 network is required to forward the calling number to the terminating central office. CCS7 is not required for Caller ID usage on an intra office basis.

Caller ID will deliver the called number only on calls that originate and terminate within TouchStar service equipped offices.

In connection with Caller ID, the Company will deliver all numbers, subject to technical limitations, including telephone numbers associated with Non-Published Listing Service.

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 Caller ID will be the responsibility of the customer.

Market Information

Trial experience in Orlando as well as market research within the BellSouth region suggests significant demand for Caller ID. The majority of Caller ID subscribers are expected to be from the residence segment.

The profile of Caller ID customers is anticipated to be very similar to that of basic TouchStar Service customers. This includes, but is not limited to, customers who desire privacy and control of their telephone service, make and receive a high volume of telephone calls, or tend to have an above average number of household members. In addition, survey results indicate that Non-Published Listing Service customers are very likely to subscribe to Caller ID as a means of increasing their privacy.

Revenue Information

Southern Bell's estimated gross year one revenue for Caller ID is \$3,432,891. Additional revenue information is shown as Attachment D.

[®]Registered Service Mark of BellSouth Corporation

T-89-507

Southern Bell - Florida
Attachment A
Page 3 of 3

Cost Information

Resource Cost Methodology was used in the cost study developed for this filing.

The cost of money used in this study is 13%.

Additional cost information is shown in Attachment E.

Conclusion

TouchStar[®] service Caller ID is anticipated to be very attractive to single party customers seeking increased control of their telephone service, particularly incoming calls. Approval of this tariff will allow the Company to address that need and at the same time generate additional revenues from this new feature offering.

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Service Description

TouchStar[®] service Caller ID is the seventh call management feature to be offered in this family of features. It offers customers increased security, privacy, control and convenience for their telephone service.

Caller ID 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 customer's 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 Caller ID 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 Caller ID.

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. In connection with Caller ID, the Company will deliver all numbers, subject to technical limitations, including telephone numbers associated with Non-Published Listing Service.

Caller ID will only operate on calls originating and terminating within TouchStar Service equipped offices.

T-89-507

Southern Bell - Florida
Attachment C
Page 1 of 2

Customer Effects

TouchStar[®] service Caller ID provides the customer with many unique call management benefits:

- Enhances privacy - by allowing the customer to decide whether, or how, they will answer their telephone.
- Increases control - by reducing unwanted telephone calls.
- Improves security - by allowing the customer to know in advance of answering who is calling.
- Increased convenience - by enabling the customer to avoid missing incoming calls while occupied with other activities or simply not at home. Depending on the type of CPE unit purchased, the customer could store the numbers of all incoming callers and return any they choose to at a later time.
- Reduces annoying or harassing calls - by allowing the customer to identify the caller in advance of answering.
- Improves security - by allowing emergency personnel to provide assistance in certain situations more quickly.
- Improves customer service potential of small businesses - by allowing them to personalize business services, thereby giving prompt efficient service.

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Customer Effects (Continued)

While Caller ID will provide numerous benefits to the majority of customers by allowing them to identify a caller in advance of answering, it may also generate concern among certain groups/customers desiring to maintain anonymity. Some examples of these groups with legitimate anonymity concerns are as follows:

- Undercover Police Officers
- Wife/Child Abuse Shelters
- Hot/Help Line Callers

Recognizing these specific anonymity concerns, Southern Bell will offer alternative solutions such as the ones listed below to customers.

- Use of non-published telephone service equipped for outgoing calls only. The called party could not obtain the name or address, nor could they call back to the calling party.
- Use of public telephones. Although the calling number would be transmitted, it is highly unlikely it would be recognized.
- Placement of calls through the operator.
- Use of RingMaster Service. When a RingMaster service subscriber places a call to a Caller ID customer, the primary number is delivered. This number could be non-published and not answered. The called party could not obtain the name or address, nor could they call back to the calling party.
- Call transfer through a third party. The third party's number is delivered, not the caller's.

Revenue Information

Southern Bell estimates that these revisions will result in \$3,432,891 in additional revenues during year one.

It is anticipated that Caller ID will ultimately account for 25% of the total TouchStar[®] service features in service.

The projected residence and business percent penetration is as follows:

	Year 1	Year 2	Year 3
Residence	3.75%	5.50%	7.00%
Business	.38%	.75%	1.13%

In the revenue calculations for year one, the annual demand was converted to monthly demand in order to approximate linear inward movement growth. Inward movement demand is assumed to occur in equal increments throughout the year. Monthly in-service demand quantities are present worthed using a nominal interest rate which equates to an annual effective interest rate of 13%. The monthly (PW) demand follows:

Residence

Month 1	6,037.12	Month 7	39,754.68
Month 2	11,951.88	Month 8	44,973.54
Month 3	17,746.16	Month 9	50,082.54
Month 4	23,421.78	Month 10	55,083.39
Month 5	28,980.55	Month 11	59,977.75
Month 6	34,424.27	Month 12	64,767.26

Business

Month 1	212.41	Month 7	1,398.72
Month 2	420.51	Month 8	1,582.34
Month 3	624.38	Month 9	1,762.10
Month 4	824.07	Month 10	1,938.05
Month 5	1,019.65	Month 11	2,110.25
Month 6	1,211.18	Month 12	2,278.76

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Revenue Information (Continued)

Due to the cross elasticities of Caller ID and other TouchStar[®] service features, it is expected that some erosion of the basic TouchStar features will occur. The effects of that erosion are reflected in the Caller ID demand forecast, and thus the revenues.

Revenues (\$M) for year one are as follows:

\$3,432,891

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Cost Information

Resource costs are incremental costs PLUS an allocated portion of joint costs. An example of a joint cost in the Caller ID cost study is the IAESS LASS feature package right-to-use fee. The IAESS LASS feature package includes all of the basic TouchStar[®] family features, Caller ID and Call Tracking. The right-to-use fee is allocated based on total feature demand for all of the features included in the package. However, note that the right-to-use fee expense was made when provisioning the basic TouchStar features. There is no incremental right-to-use expense associated with the IAESS software.

The cost, revenue and contribution for Caller ID is as follows:

Monthly Cost Per Line

Residence	\$3.77
Business	3.62

Cost Study Assumptions are shown below:

- resource cost methodology was used to derive costs
- cost of money used was 13%
- all non-recurring costs are spread over recurring demand
- monthly costs per line include all recurring and non-recurring costs

The specific costs, revenue and contribution information for year one of the service is shown below.

Revenues	Cost	Contribution	%
\$3,432,891	\$1,648,247	\$1,630,759	98.94%

FLORIDA ~~First~~
ISSUED: September 29, 1989
BY: Vice President
Miami, Florida

A13. MISCELLANEOUS SERVICE ARRANGEMENTS

A13.19 TouchStar® Service (Cont'd)

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

B. Repeat Dialing

Repeat Dialing, when activated, automatically redials the last number the customer attempted to call. If the called line is not busy, the call will be placed.

If the called line is busy, a confirmation announcement is heard, the customer hangs up and a queuing process begins. For the next 30 minutes, both the calling and called lines are checked periodically for availability to complete the call. If during this queuing process the called line becomes idle, the customer is notified, via a distinctive ring, that the network is ready to place the call. When the customer picks up the telephone the call will automatically be placed. In some locations, due to technological limitations, Repeat Dialing must be purchased with Call Return.

C. Call Selector

Call Selector provides a distinctive ringing pattern to the subscribing customer for up to six specific telephone numbers.

The customer creates a screening list of up to six telephone numbers through an interactive dialing sequence. When a call is received from one of the predetermined telephone numbers, the customer is alerted with a distinctive ringing pattern (short, long, short). Calls from telephone numbers not included on the screening list will produce a normal ring.

If the customer subscribes to Call Waiting in A13.9.1.A.3 of this Tariff and a call is received from a telephone number on the Call Selector screening list while the line is in use, the Call Waiting tone will also be distinctive.

When a telephone number on the Call Selector screening list also appears on the Preferred Call Forwarding list, the Preferred Call Forwarding will take precedence. Likewise, when the same number is shown on the Call Block list, the call will be blocked.

A customer's line will not produce a distinctive alert if the calling line is not referenced to and originated by the main telephone number or a Telephone Number identified number that represents all the lines in a collection of lines, such as multi-line hunt groups.

D. Preferred Call Forwarding

Preferred Call Forwarding allows the customer to transfer selected calls to another telephone number. A screening list of up to six numbers is created by the customer and placed in the network memory via an interactive dialing sequence. Subsequently, calls are forwarded to the Call Forwarding telephone number only if the calling number can be obtained and is found to match a number on the screening list.

If the customer also subscribes to Call Block and the same telephone number is entered on both screening lists, the Call Block feature must be deactivated to allow the call to forward.

This feature will not work if the calling line is not referenced to and originated by the main telephone number, or a Telephone Number identified number that represents all the lines in a collection of lines such as multi-line hunt groups.

E. Call Block

This feature provides the customer the ability to prevent incoming calls from up to six different telephone numbers.

A screening list is created by the customer either by adding the last number associated with the line (incoming or outgoing), or by pre-selecting the telephone numbers to be blocked. When a call is placed to the customer's number from a number on the screening list, the caller receives an announcement indicating that the party he is attempting to call does not wish to receive calls at this time.

Note 1: Use of this feature, if activated from the first time in a multi-line hunt group environment, will activate all lines in the hunt group.

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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. (N)

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

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. (N)

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. (N)

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. (N)

Caller ID is not available on operator handled calls. (N)

A13.19.3 Regulations and Limitations of Service

A. The following limitations apply: ~~that~~

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. ~~that~~ ~~the same TouchStar service serving area.~~ (C)

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. (C)

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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: (Cont'd)

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. (M)
4. Appropriate service order charges apply except during Company designated periods of special promotion. (M)
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. (M)
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. (M)
7. Subscribers to Prestige® Single Line, I and II must have Touch-Tone in order to subscribe to TouchStar® service. (M)
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. (N)

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A13. MISCELLANEOUS SERVICE ARRANGEMENTS

A13.19 TouchStar® Service (Cont'd)

A13.19.4 Rates and Charges

A. Residence - Single or First Service Features

(1) Call Return¹ ~~±~~

(a) Per line

MONTHLY RATE				USOC
Minimum	Maximum	Current		
\$2.50	\$6.00	\$4.00	NSS	(C)

(2) Repeat Dialing¹ ~~±~~

(a) Per line

2.50	6.00	4.00	NSD	(C)
------	------	------	-----	-----

(3) Call Selector ~~±~~

(a) Per line

2.50	6.00	4.00	NSK	(C)
------	------	------	-----	-----

(4) Preferred Call Forwarding ~~±~~

(a) Per line

2.50	6.00	4.00	NCE	(C)
------	------	------	-----	-----

(5) Call Block ~~±~~

(a) Per line

2.50	6.00	4.00	NSY	(C)
------	------	------	-----	-----

(6) Call Tracing ~~±~~

(a) Per line

2.50	6.00	4.00	NST	(C)
------	------	------	-----	-----

(7) Caller ID

(a) Per Line

5.00	12.00	7.50	NSD	(N)
------	-------	------	-----	-----

B. Residence - Additional Service Features (Second and Subsequent Features)

(1) Call Return¹ ~~±~~

(a) Per line

2.50	5.00	3.00	NXS	(C)
------	------	------	-----	-----

(2) Repeat Dialing¹ ~~±~~

(a) Per line

2.50	5.00	3.00	NXS	(C)
------	------	------	-----	-----

(3) Call Selector ~~±~~

(a) Per line

2.50	5.00	3.00	NX2	(C)
------	------	------	-----	-----

(4) Preferred Call Forwarding ~~±~~

(a) Per line

2.50	5.00	3.00	NXS	(C)
------	------	------	-----	-----

(5) Call Block ~~±~~

(a) Per line

2.50	5.00	3.00	NXS	(C)
------	------	------	-----	-----

(6) Call Tracing ~~±~~

(a) Per line

2.50	5.00	4.00	NST	(C)
------	------	------	-----	-----

(7) Caller ID

(a) Per Line

5.00	12.00	7.50	NSD	(N)
------	-------	------	-----	-----

C. Business - Single or First Service Features

(1) Call Return¹ ~~±~~

(a) Per line

3.50	6.00	4.50	NSS	(M)
------	------	------	-----	-----

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

~~Note 1: In a multi-line hunt group arrangement, features must be ordered and billed on the line in the hunt group.~~

~~Note 2: Due to technological limitations in some locations, Call Return and Repeat Dialing cannot be ordered separately.~~

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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 ~~or~~

(CM)

	MONTHLY RATE			USOC	
	Minimum	Maximum	Current		
(a) Per line	93.50	88.00	84.50	NS0	(M)
(3) Call Selector or					(C)
(a) Per line	3.50	6.00	4.50	NSK	
(4) Preferred Call Forwarding or					(C)
(a) Per line	3.50	6.00	4.50	NCE	
(5) Call Block or					(C)
(a) Per line	3.50	6.00	4.50	NS1	
(6) Call Tracing or					(C)
(a) Per line	3.50	6.00	5.00	NSY	
(7) Caller ID					(N)
(a) Per Line	7.00	20.00	10.00	NS0	(N)

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

(1) Call Return ¹ or					(C)
(a) Per line	2.50	5.00	3.50	NX8	
(2) Repeat Dialing ¹ or					(C)
(a) Per line	2.50	5.00	3.50	NX9	
(3) Call Selector or					(C)
(a) Per line	2.50	5.00	3.50	NX2	
(4) Preferred Call Forwarding or					(C)
(a) Per line	2.50	5.00	3.50	NX6	
(5) Call Block or					(C)
(a) Per line	2.50	5.00	3.50	NX5	
(6) Call Tracing or					(C)
(a) Per line	3.50	6.00	5.00	NST	
(7) Caller ID					(N)
(a) Per Line	7.00	20.00	10.00	NS0	(N)

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

~~Note 1. In a multi-line trunk group arrangement, features must be ordered and billed on each line in the multi-line trunk group.~~

~~Note 2. Due to technological limitations, in some locations, Call Return and Repeat Dialing cannot be ordered separately.~~

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