

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

7
ORIGINAL
FILE COPY

In Re: Proposed tariff filings by) Docket No. 891194-TI
SOUTHERN BELL TELEPHONE AND TELEGRAPH) Filed: October 26, 1990
COMPANY clarifying when a nonpublished)
number can be disclosed and introducing)
Caller ID to TouchStar Service)

JOINT PREHEARING STATEMENT

Robert A. Butterworth, Attorney General of Florida ("Attorney General"), Peter Antonacci, Florida Statewide Prosecutor ("Statewide Prosecutor"), and the Florida Department of Law Enforcement, ("FDLE"), submit this Joint Prehearing Statement pursuant to the Commission's Order on Prehearing Procedure, Order No. 23445, issued September 6, 1990.

All Known Witnesses

Neither the Attorney General nor the Statewide Prosecutor have submitted prefiled direct testimony regarding Caller ID or related services. However, the Attorney General and the Statewide Prosecutor hereby join and incorporate by reference the direct testimony of those known witnesses provided by the Citizens of the State of Florida by and through Jack Shreve, Public Counsel, ("Public Counsel")(See Prehearing Statement of Public Counsel), by the Florida Department of General Services ("DGS")(See Prehearing Statement of DGS), and by the Florida Department of Law Enforcement ("FDLE"). Furthermore, the Attorney General, Statewide Prosecutor, and FDLE would join and incorporate by reference any rebuttal testimony filed by Public

RECEIVED & FILED

DOCUMENT NUMBER-DATE

09655 OCT 26 1990

FLORIDA BUREAU OF RECORDS

FPSC-RECORDS/REPORTING

Counsel or DGS in the future. FDLE witness Ron Tudor will also provide rebuttal testimony. Additionally, Tudor's direct testimony contains attachments which should be considered as our exhibits.

Statement of Basic Position

The Attorney General, Statewide Prosecutor, and FDLE have very serious concerns over both the legality and practicality of introducing any form of Caller ID service in Florida. First, for reasons set out below, the Attorney General, the Statewide Prosecutor, and FDLE believe Caller ID, as proposed by Southern Bell in this tariff, may violate criminal statute §934.31, Fla. Stat., and that its implementation could constitute a misdemeanor of the first degree, punishable as provided in Florida Statutes §§ 775.082, 775.083, or 934.41.

Second, the Attorney General, the Statewide Prosecutor, and FDLE submit that introduction of the Caller ID service would submit the hundreds of state and federal law enforcement agents working in the area of narcotics interdiction to the potential for serious personal injury or death. The attempts to reconcile the needs of law enforcement with the desires of Southern Bell to implement the service have not, despite good faith negotiating efforts, resulted in a compromise which would insure the safety of law enforcement officers and civilian operators involved in undercover narcotics or other criminal investigations. While

some law enforcement officials or agencies may take a position contrary to the Attorney General, Statewide Prosecutor, or FDLE, it is our considered belief that nearly every major law enforcement agency at the state or federal level engaged in the specific task of drug interdiction and other complex undercover criminal investigations flatly opposes Caller ID.

Finally, the proponents of Caller ID as a method for intercepting and/or deterring obscene or harassing phone calls conveniently overlook the service known as Call Trace which provides that capability in a manner consistent with Florida's wiretapping laws. The Attorney General has previously communicated to this Commission his belief that a Call Trace option based upon a per call fee is a most effective method of combating obscene or harassing phone calls and prosecuting offenders. A similar communication has been provided to the Comm by FDLE Commissioner Tim Moore. Furthermore, the Attorney General has previously communicated to this Commission his concern that Caller ID mechanisms will provide those unlawful organizations dealing in commodities or security fraud, commonly known as "boiler room operators", a valuable tool for obtaining the telephone numbers of potential victims.

Issues

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

Attorney General, Statewide Prosecutor,
and FDLE Position: Caller ID is a
service proposed by Southern Bell that
would allow customers to use a display
to show the calling party's telephone
number when they answer the telephone.

Issue 2: Is Caller ID a trap and trace device as described
in Chapter 934, Florida Statutes?

Attorney General, Statewide Prosecutor,
and FDLE Position: Caller ID, as
proposed by Southern Bell, constitutes a
trap and trace device as defined by
§934.02(21), Fla. Stat. (1989).
Pursuant to the statute, a trap-and-
trace device is 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."

Issue 3: Does Caller ID violate any federal laws or any
laws of the State of Florida?

Attorney General, Statewide Prosecutor,
and FDLE Position: Florida Statutes
§934.31 and 18 U.S.C. §3121 both pro-
hibit the general use of pen registers
and trap and trace devices except in
three defined situations. Ongoing re-
search indicates that the United States
Congress did not intend to allow tele-
phone companies to avoid the general
prohibition against trap and trace
devices when 18 U.S.C. §3121 was
enacted. To quote the Congressional
Research Service of the Library of
Congress: "The Act's legislative history
fails to refute the plain meaning of the
Act's language and may be read to con-
firm that Congress intended the Act's
proscription to apply to such cases
[Caller ID]. None of the act's excep-

tions appear applicable under most circumstances."

Because Florida's law mirrors the federal statute, it appears that Caller ID would violate both the federal and state statutes. We intend to continue our research and provide the Commission with further direction as part of our legal briefing.

Issue 4: Does Caller ID violate Florida's Constitution?

Attorney General, Statewide Prosecutor, and FDLE Position: The Attorney General, Statewide Prosecutor, and FDLE are currently researching Florida's Right to Privacy Law, Article 1, §23, Florida Constitution, and attendant Supreme Court of Florida case law in an effort to answer this question. Based on the court's recent decision in Shattman v. State, 553 So.2d 148 (Fla. 1989), in which the court held that the telephone numbers of an individual may not be intercepted by other parties through use of a pen register absent a compelling governmental interest such as enforcement of Florida's criminal laws, we have serious concerns over the potential infringement of individual caller privacy. We intend to continue our research and provide the Commission with further direction on this point as part of our legal briefing.

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

Attorney General, Statewide Prosecutor, and FDLE Position: Caller ID has been touted as a method to protect phone customers from obscene or harassing telephone calls. Given the existence of competing technologies such as Call Trace (which accomplishes the same task)

and the absence of any other expressed rationale for its implementation, it is our position that the service is of little benefit to the consumers of Florida. On the negative side, the service offers the real risk of serious injury or death to Florida's law enforcement officers and also provides "boiler room operators" with an important tool to enable them to pry upon potential victims of their fraudulent schemes. Furthermore, Caller ID would disrupt the prevalent and long established practice of allowing individuals to obtain, at a cost, an unlisted telephone number by obliging those individuals holding such numbers to purchase the number and then pay for repeat protection by the purchase of Call Blocking. Thus, the services are of little or no benefit yet offers the potential for extreme detriment to law enforcement officers, potential victims of crime and existing telephone customers.

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

Attorney General, Statewide Prosecutor, and FDLE Position: As discussed in Issue 5, we believe that Call Trace provides the same benefits and protections against obscene and harassing phone calls as Caller ID. Other alternative class offerings provide equally effective substitutes to Caller ID and are available at the present time. These offerings do not present the dangers or concerns we have outlined above. We join the position set forth by Public Counsel that the availability of Call Trace at a reasonable price allows the public to achieve greatly enhanced functionality without the major cost or impact of Caller ID.

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

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

Issue 8: What alternatives to Caller ID blocking are available and do they sufficiently protect customers' anonymity?

Attorney General, Statewide Prosecutor, and FDLE Position: The answer to this issue will be based in part on whether it is determined that Caller ID violates Florida and federal law. If Caller ID violates Florida law, it is our view that no option would be viable. If it is determined that Caller ID does not violate Florida law, we would adopt the position taken by the Public Counsel and DGS on this point.

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

Attorney General, Statewide Prosecutor, and FDLE Position: Our position on this point is outlined in Issue 8 above.

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

Attorney General, Statewide Prosecutor, and FDLE Position: If it is determined that Caller ID is not violative of Florida Statutes or Florida Constitution, law enforcement should be extended Call Block capability at no charge. As further technology, such as the options which have been proposed by the phone companies, comes on line that assures anonymity of undercover operatives, these systems should be made available to law enforcement at no cost. It should be stressed however that such options should be considered a supplement to universally-available Call Blocking and not considered a substitute for such blocking.

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

Attorney General, Statewide Prosecutor, and FDLE Position: Our position on this point is outlined in Issue 8 above.

Issue 12: Is Caller ID in the public interest?

Attorney General, Statewide Prosecutor, and FDLE Position: It is our position that Caller ID is not in the public interest but is only in the interest of those telecommunication providers who seek to expand their services into the area of information brokering.

Issue 13: What further action should be taken on Southern Bell's tariff filings introducing Caller ID (T-89-507) and changing the conditions under which nonpublished number

information will be divulged (T-90-0231)? What should be the effective date of such action?

Attorney General, Statewide Prosecutor, and FDLE Position: The Commission should reject any and all tariff filings seeking to introduce Caller ID or changing the conditions under which nonpublished number information will be divulged. Such action should be taken as soon as possible.

Stipulations

Neither the Attorney General, the Statewide Prosecutor, nor the FDLE have stipulated to any issues with any parties.

Pending Motions

As of this date, the Commission has not yet acted upon the motion filed by Public Counsel to compel and request in camera inspection of documents filed on or about August 7, 1990, or Public Counsel's motion to consolidate consideration of Caller ID tariff filings and to conduct generic proceedings filed on or about September 24, 1990. Additionally, Public Counsel's Petition To Require the Offering Of Call Trace Service To All Customers At Reasonable, Usage Based Rates filed September 21, 1990, and joined by the Attorney General remains unresolved.

Other Matters

The Attorney General, the Statewide Prosecutor and FDLE have met the requirements set forth in the Commission's order on prehearing procedure, Order No. 23445, issued September 6, 1990.

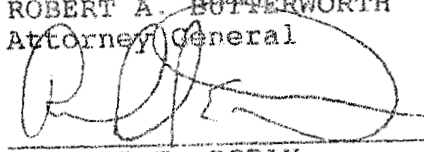
TIM MOORE
Commissioner


MICHAEL RAMAGE

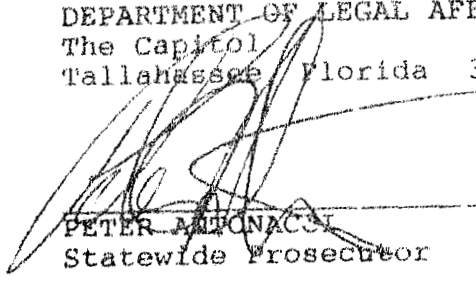
FLORIDA DEPARTMENT OF LAW
ENFORCEMENT
Post Office Box 1498
Tallahassee, Florida 32302

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General


RICHARD E. DORAN
Director, Criminal Appeals

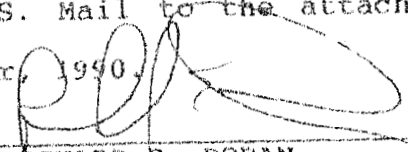
DEPARTMENT OF LEGAL AFFAIRS
The Capitol
Tallahassee, Florida 32399-1050


PETER ANTONACCI
Statewide Prosecutor

OFFICE OF STATEWIDE PROSECUTION
The Capitol, PL-01
Tallahassee, Florida 32399-1050

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the fore-
going has been furnished by U.S. Mail to the attached list of
people, this 26th day of October, 1990.


RICHARD E. DORAN

Southern Bell Telephone and Telegraph
Company

Attn: Mr. Marshall M. Criser, III
150 South Monroe Street, #400
Tallahassee, FL 32301

Mr. E. Barlow Keener, Esquire
Mr. Harris R. Anthony, Esquire
Southern Belle Telephone and
Telegraph
Company

Museum Tower, Suite 5301
150 West Flagler Street
Miami, FL 33130

A Aabaco Locksmith
Attn: David Merkatz
Post Office Box 5301
Ft. Lauderdale, FL 33310

Ms. Angela Greene
Division of Legal Services
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0863

Mr. J. M. 'Buddy' Phillips
Florida Sheriff's Association
Post Office Box 1487
Tallahassee, FL 32302-1487

Mr. Bruce Renard, Esquire
Messer Law Firm
Post Office Box 1876
Tallahassee, FL 32302-1876

Mr. Stephen S. Mathues, Esquire
Department of General Services
Office of General Counsel
2737 Centerview Drive
Knight Building Suite 309
Tallahassee, FL 32399-0950

Mr. Jeffrey Cohen, Esquire
Florida Medical Association
Post Office Box 14038
Jacksonville, FL 32203

Ms. Charlene Carres
American Civil Liberties Union
Post Office Box 1031
Tallahassee, FL 32302

Mr. Alan Berg
United Telephone Company
Post Office Box 5000
Altamonte Springs, FL 32716-5000

Mr. Thomas R. Parker, Esquire
Association General Counsel
GTE Florida Incorporated
Post Office Box 110, MC7
Tampa, FL 33601-0110

Ms. Cheryl Phoenix, Esquire
Florida Coalition Against Domestic
Violence
Post Office Box 532041
Orlando, FL 32853-2041

Mr. Walter D'Haeseleer
Division of Communications
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0863

Mr. Jack Shreve, Esquire
Public Counsel
Office of the Public Counsel
House of Representatives
The Capitol
Tallahassee, FL 32302

Mr. Willis Booth
Florida Police Chiefs Association
Post Office Box 14038
Tallahassee, FL 32317-4038

Lee Willis
227 South Calhoun Street
Post Office Box 391
Tallahassee, FL 32302

Mr. Dale Cross
Central Telephone Company
Post Office Box 2214
Tallahassee, FL 32316-2214