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October 26, 1990

ORIGINAL
FILE COPY

Mr. Steve C. Tribble
Director, Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32301

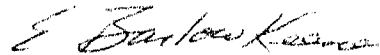
Re: Docket No. 891194-TL - Caller ID

Dear Mr. Tribble:

Enclosed please find an original and fifteen copies of Southern Bell Telephone and Telegraph Company's Prehearing Statement, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely yours,



E. Barlow Keener

- ACK
- AFA _____
- APP _____
- CAE _____
- CMU
- CTR _____
- EAG _____
- LEG
- LIN
- OPR _____
- RCR _____
- SLR
- WAC _____
- OTH _____

Enclosures

cc: All Parties of Record
A. M. Lombardo
Harris R. Anthony
R. Douglas Lackey

RECEIVED & FILED



FPSC-BUREAU OF RECORDS

A BELL/SOUTH Company

DOCUMENT NUMBER-DATE

09659 OCT 26 1990

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed tariff filings by) Docket No. 891194-TL
Southern Bell Telephone and)
Telegraph Company clarifying when) Filed: October 26, 1990
a non published number can be)
disclosed and introducing Caller)
ID to Touchstar Service)

SOUTHERN BELL TELEPHONE AND TELEGRAPH
COMPANY'S PREHEARING STATEMENT

COMES NOW Southern Bell Telephone and Telegraph Company
("Southern Bell" or "Company"), in compliance with Order No.
23445, issued on September 6, 1990, herewith submits its
Prehearing Statement.

A. WITNESSES

Southern Bell proposes to call the following witnesses to
offer testimony and exhibits on the issues indicated below:

<u>Witness</u>	<u>Issues Addressed</u>
Nancy H. Sims	1,5,6,7,8,9,10,11,12,13
Nancy H. Sims	Rebuttal
David Regal	Rebuttal

DOCUMENT NUMBER-DATE
09659 OCT 26 1990
FPSC-RECORDS/REPORTING

B. EXHIBITS

<u>Witness</u>	<u>Document Indicator</u>	<u>Title of Exhibit</u>
Nancy H. Sims		

Southern Bell reserves the right to call rebuttal witnesses, witnesses to respond to Commission inquiries not addressed through direct testimony and witnesses to address issues not presently designated which may be designated at the prehearing conference to be held on November 15, 1990, or thereafter by the Prehearing Officer.

C. STATEMENT OF BASIC POSITION

Caller ID is a new optional Touchstar® Service feature that allows the called party to see the calling party's telephone number displayed before answering the phone. Southern Bell believes that Caller ID will provide many benefits to residence and small business customers, and will result in a better balance between the interests of both the called and the calling party. In addition to enhancing a subscriber's call management capabilities, Caller ID will reduce the potential for obscene, annoying, harassing and fraudulent telephone calls. In the states where Caller ID has been approved and implemented, the response to it has been overwhelmingly favorable.

Southern Bell has worked closely with those groups which perceive that Caller ID presents them with serious risk. For instance, Southern Bell has worked extensively with law enforcement to develop solutions that will accommodate their needs and has developed a significant list of appropriate alternatives. Southern Bell will continue to work with law enforcement to meet special technical requests as long as they do not compromise the welfare of the company's overall customer body or the integrity of its network. Extensive work was also conducted to solve the concerns of HRS agencies.

Based on this Commission's thorough review of the issues regarding Caller ID, the tariff should be allowed to become effective immediately.

D. SOUTHERN BELL'S POSITION ON THE ISSUES

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

Position: Caller ID is an optional Touchstar® service proposed by Southern Bell that will permit the display of the number of a calling party on the called party's customer premises equipment ("CPE").

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

Position: No. Section 934.02(21), Florida Statutes, defines a "Trap and trace device" as "a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted." The CPE unit that displays the calling number is not capable of an independent trap or trace function. Southern Bell's own technology used in its normal course of business provides the capability to identify the caller's number. The data that are allegedly "captured" and forwarded to the display unit are actually only a digital display of the numerical information owned by Southern Bell. Consequently, the purchase and subsequent use of the CPE display unit by a customer does not give the customer the independent power needed to capture any information and, therefore, does not constitute a "trap and trace" device. The technology that traps and traces the caller's number is now used on a daily basis by Southern Bell at the request of customers receiving harassing or annoying calls. The calling number information obtained in response to the request of the called party is then disclosed to a third party -- law enforcement. Caller ID service merely discloses the calling party's number to the recipient of the call

instead of to law enforcement officials. This legal issue will be discussed more thoroughly in Southern Bell's post-hearing brief.

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

Position: No. Throughout the prehearing proceedings there have been allegations made that Caller ID violates Section 934, Florida Statutes, regarding the prohibition against a "trap and trace" device. Even if Caller ID service is considered to be a "trap and trace" device, it is clear from the plain language of Section 934.03(2)(i) and 934.31, Florida Statutes, that the service falls within at least one, if not all four, of the exceptions contained in the Statute. Those exceptions cover activities: (1) relating "to the protection of users of that service from abuse of service or unlawful use of service"; (2) "to protect...a user of that service from fraudulent, unlawful, or abusive use of service"; (3) "where the consent of the user of the service has been obtained"; or (4) as authorized "under federal law". 18 U.S.C. § 3121(b). Caller ID falls within the first exception because, as explained, the trap and trace of a caller's number is performed by the provider of the service (Southern Bell) for the protection of its customers. The service falls within the second exception because it is designed to

protect persons who wish to subscribe to the service from fraudulent, unlawful, and abusive calls. Caller ID falls within the third exception to the trap and trace law because the party being called (i.e., the "user") has given his express consent to the implementation of Caller ID by subscribing to it. Fourth, the consent of only one party is required "under federal law" when a trap and trace device is used. These statutes are criminal statutes and are to be construed strictly and all doubts are to be resolved in favor of the prospective user of the Caller ID service. Any ambiguity must be resolved against the state. The trap and trace statute was copied word for word from the federal statute and the Florida Legislature expressly stated that a trap and trace device may be used as authorized "under federal law". Federal law clearly allows a trap and trace device to be used with the consent on only one user. Thus, if Caller ID is considered a trap and trace device, it would still be legal under Florida law because the party being called has given his express consent to the implementation of the service by subscribing to it. This legal issue will be discussed more thoroughly in Southern Bell's post-hearing brief.

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

Position: No. The Florida Constitution provides in Article 1, Section 23 that:

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

Thus, in Florida it is clear that a violation of a right of privacy requires a "governmental intrusion". See, Shaktman v. State, 553 So.2d 148 (Fla. 1989) Before constitutional restraints apply, there must necessarily be "state action." Actions by private individuals and entities are clearly not subject to constitutional restrictions. See, Shelley v. Kraemer, 334 U.S. 1 (1948). Evans v. Abney, 396 U.S. 435, 445 (1970); Moose Lodge No. 197 v. Iris, 407 U.S. 163, 171-179 (1972). Southern Bell is a private entity with no connection to the state other than its regulation by the Florida Public Service Commission ("Commission"). The Commission's involvement in the approval of Caller ID has been limited to the standard approval process that Southern Bell must follow regarding the offering of new services. Section 364.05, Florida Statutes. The Commission did not suggest, much less require, the implementation of Caller ID service. The limited action taken by the Commission in this proceeding does not constitute the requisite state action necessary to invoke constitutional restraints. Carlin v. Southern Bell, 302 F2d 1352

(11 Cir. 1986). Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974).

Even if the approval of Southern Bell's Caller ID service did constitute the state action required to invoke the application of constitutional limitations, which it does not, Caller ID service violates no constitutionally cognizable privacy interest. Southern Bell's Caller ID service merely protects the right to be left alone. Just as a "peep hole" allows one to know who knocks at his door, Caller ID service merely alerts the subscriber to the telephone number of the calling party. Moreover, pursuant to Southern Bell's General Subscriber Services Tariff A2.2.2a: "The calling party shall establish his identity in the course of any communication as often as may be necessary". The mere transmission and display of the calling party's telephone number cannot possibly invade his privacy. The calling party must already disclose his identity during the course of the call.

It is important to note that in this particular situation there are competing interests. The calling party has an interest in anonymity. On the other hand, the called party has an interest in not receiving harassing, fraudulent, unlawful or abusive calls. The interest of the calling party that his telephone number not be displayed is greatly, if not completely,

reduced, however, by the fact that the calling party is presently required to disclose his identity on every call.

The caller is not a passive or unwilling individual. He voluntarily conveys his telephone number as well as the telephone numbers to which he is placing a call into the telephone company system. The substantial interest that will be served by Caller ID service greatly outweigh any interest in the calling party in keeping his number secret from persons whom he chooses to call. This legal issue will be discussed more thoroughly in Southern Bell's post-hearing brief.

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

Position: Caller ID will give the customer control of incoming calls since customers can choose which calls to answer. For example, customers often get solicitation calls around dinner time. Caller ID will help them decide whether they want to answer such calls.

Caller ID will discourage obscene/annoying/harassing calls. With Caller ID, annoyance callers will have to be concerned that the called party will obtain their number, making them far more reluctant to make such calls. Caller ID will increase the customers' sense of security and privacy by allowing

them to choose which calls to answer. Caller ID will provide a more secure method of access to business databases from the home. Computers can be programmed to accept calls from authorized numbers only. This decreases the threat of hackers.

Caller ID can assist deaf customers by providing a way for them to distinguish incoming calls that they wish to answer immediately with a telecommunications device for deaf persons (TDD) from those that they wish to have answered with an automated recording/announcement device.

Caller ID allows customers to store telephone numbers of missed calls so that they can be returned later.

Caller ID will provide small businesses with the ability to personalize business services, thereby giving prompt, efficient service.

Caller ID gives businesses which provide delivery services based on orders received over the phone a quick and easy way to verify the accuracy of the information before accepting the order or sending the requested product. Caller ID will assist in reducing the occurrence of fraudulent orders and reduce expenses for businesses that accept telephone orders as well as reduce the risk of harm to delivery personnel.

Some of the benefits to the public over and above those described previously include: Caller ID will reduce false fire

alarms and bomb threats; Caller ID will reduce prank calls to law enforcement and other public safety agencies. Caller ID can be used by law enforcement to verify that persons on parole or "house arrest" are calling from an appropriate location. Caller ID can be used to provide additional information to assist emergency services providers.

Southern Bell believes that for most Florida consumers Caller ID provides benefits rather than detriments. However, for a small segment of subscribers, such as law enforcement and domestic violence intervention agencies, the delivery of the caller's number appears to be of particular concern. Southern Bell, however, believes that it has adequately met the concerns of those groups by developing and offering various blocking options.

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?

Position: The objective of Southern Bell's introduction of Touchstar* features is to provide a range of services whereby the called party can have more control over his telephone, and both the called party and the calling party can choose options to tailor their telephone service to suit their individual needs.

While there is a possibility of cross elasticity among the touchstar features, only Caller ID displays the telephone number of the party who is calling. There seems to be a general misunderstanding that Call Trace, Call Return and Call Block are equivalent or comparable to Caller ID. They are not.

Following is a comparison of the features offered by each service:

Call Block - allows the customer to block calls from the last number that called. It also allows the customer to program blocking for up to six numbers. In contrast to Caller ID, Call Block does not identify the number of the party making the call. Nor does it let the customer know who is calling before answering the call. In fact, call block works by preventing the completion of the call.

Call Return - redials the last phone number that called. It works only on the last call; information on previous calls is unavailable. Unlike Caller ID, call return does not identify the number of the party making the call. Call Return is effective only to the extent that the other party picks up the phone when the call is returned. If that person doesn't answer, call return is ineffective. With Caller ID a subscriber can identify repetitive calls from the same caller, which he cannot do with call return.

Call Tracing - this Touchstar® feature allows the customer to activate a system that records the number of a person making a call. The customer can then ask Southern Bell to investigate. Call Tracing does not let the customer know the identity of the annoying caller, even if Southern Bell investigates the case. It does not let the customer know who is calling before answering the call. Therefore, a person may keep answering calls from the same caller. Call Tracing does not immediately identify the number of the person making the call as does Caller ID. In a crisis situation, such as a potential suicide, the called party would have to hang up before the trace could be initiated, which would jeopardize the rescue effort. In contrast, Caller ID provides an immediate vehicle to determine the calling number and thereby allow rescue efforts while keeping the caller on the line.

Caller ID - lets the called party know the number of the calling party before picking up the phone, and depending on the type of CPE used, may store telephone numbers of callers.

Southern Bell believes the rate structure for each of the existing Touchstar® services is appropriate for residential and small business applications. For example, Call Tracing was originally offered in a trial on a per-call basis in one location and on a monthly basis in another location. Based on the results of these trials, Southern Bell elected to offer Call Tracing on a

monthly flat rate basis in order to reflect customers' preference and to generate revenues sufficient to cover the cost of the service and to provide contribution to support basic local exchange service.

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

Position: Southern Bell's tariff states: "a nonpublished 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 the calling party." Nonpublished listings were conceived as an optional service whereby a subscriber could have his number excluded from the telephone directory and directory assistance records. The introduction of Caller ID will not change this in any fashion.

It is also important to keep in mind that a caller's telephone number will be available to another person only when the caller has actually called a person who subscribes to Caller ID. Thus, a customer with a nonpublished number or any other Southern Bell subscriber who does not wish a certain party to have his phone number can choose either not to call that person, to call from a different number or to use some other method such as placing the call through an operator. Furthermore, Caller ID

can be utilized to enhance the privacy of customers with nonpublished numbers by giving them the ability to screen incoming calls, thereby giving them more control over their service.

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

Position: Southern Bell believes that for the vast majority of calls customers have no need or desire for anonymity. For those few instances where anonymity is important there are several alternatives available.

First, the subscriber's telephone number can be kept confidential by placing calls through an operator, since calls so placed will be delivered with an "out of area" indication rather than the telephone number of the originating party. Second, in instances where anonymity is important, pay telephones may be used. While the calling number of a pay telephone set would be delivered to a Caller ID subscriber, the subscriber's ability to convert that telephone number into a location is extremely limited. Calls can also be processed through third parties such as answering services and office PBX's. In addition, recently approved out dial only lines can provide anonymity to individuals or agencies. Further, RingMaster service, which assigns distinctive rings to two or more telephone numbers on one line,

can be utilized to identify callers returning calls to a number as a result of their use of Caller ID. Services such as foreign central office, foreign exchange and cellular also will provide calling number anonymity.

Southern Bell recognizes, however, that law enforcement and domestic violence intervention agencies have special concerns about delivery of all numbers and the Company has proposed optional calling number delivery blocking at no charge for these groups.

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

Position: All telephone numbers should be delivered in order to maximize the societal benefits to both those who subscribe and those who do not subscribe to the service.

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

Position: Southern Bell has worked closely with law enforcement in an attempt to develop solutions that will accommodate their needs. Therefore, Southern Bell has designed

additional options which go beyond just sending the privacy indicator. Many new and creative alternatives that adequately meet the needs of law enforcement have been developed as a result of the joint collaboration between law enforcement and the company over the past months. These include per line blocking as well as other options that will not only protect law enforcement's anonymity but will also assist them with their investigative efforts. In addition, because law enforcement indicated that cost was one of its major concerns, Southern Bell has offered these options at no cost. Southern Bell, however, is not willing to meet law enforcement's request that they be provided with the ability to deliver anyone's number since such could jeopardize the general public.

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

Position: Southern Bell will provide optional per line blocking at no charge for domestic violence intervention agencies. Southern Bell has also offered a special calling card for Department of Health and Rehabilitative Services sponsored agencies to enable "at risk" individuals to place operator handled calls and thereby protect their anonymity. Southern Bell proposes that any agency, such as a domestic violence

intervention agency, which establishes the fact that the divulgence of identities over the telephone could cause serious personal or physical harm to its employees and certified clients should be provided blocking of Caller ID service. Southern Bell believes that personal safety, not just inconvenience, should be the determining factor.

Issue 12: Is Caller ID in the public interest?

Position: Yes. In providing this service, Southern Bell is responding to the needs of its customers who have indicated that they want to have more control over whom they talk to on the telephone. Just as they prefer to know who is knocking at their door before they open it, many of Southern Bell's customers want to know who is calling on their telephone before they answer it. Caller ID service gives them that information. Caller ID thus gives the party who is called a level of control over his telephone service that he does not have today.

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

Position: All appropriate steps needed to address Southern Bell's Caller ID tariff offering have been taken.

Southern Bell filed tariff revisions on September 29, 1989, by which it added Caller ID to the Touchstar® features and proposed clarifications regarding the divulgence of nonpublished telephone numbers. The tariff implementing Caller ID was approved effective February 1, 1990, and Southern Bell was directed to amend the filing with a prohibition on the resale of any numbers acquired through Caller ID.

The issue concerning the appropriateness of blocking certain agencies' numbers and any charge for such blocking was deferred for further consideration before the February 1, 1990 effective date. In recognition of the needs of law enforcement and domestic violence intervention agencies, Southern Bell is prepared to file a tariff amendment setting the following criteria for blocking:

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

2. The entity should establish that the forwarding of

numbers through Caller ID would seriously impair or prevent it from performing its business; and,

3. The entity should establish that no reasonable offering by the telephone company other than blocking will protect its desired anonymity.

Southern Bell also sent bill inserts to all customers where Caller ID was to become available to notify them of these criteria.

Based on the foregoing, Southern Bell believes that it has adequately addressed the needs of its customers and the general public that the Caller ID tariff should be approved for immediate implementation.

E. STIPULATIONS

None.

F. PENDING MOTIONS FILED BY SOUTHERN BELL

Southern Bell has no pending motions at this time.

Southern Bell knows of no requirements set forth in any prehearing order with which it cannot comply.

Respectfully submitted,

SOUTHERN BELL TELEPHONE AND
TELEGRAPH COMPANY

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CERTIFICATE OF SERVICE
Docket No. 891194-PL

I HEREBY CERTIFY that a copy of the foregoing has been
furnished by United States Mail this 26th day of October,
1990 to:

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