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FILE COPY

January 11, 1991

Steve Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, FL 32399-0850

Re: Docket No. 891194-TI

Dear Mr. Tribble:

Enclosed for filing in the above-captioned proceeding on behalf of the Citizens of the State of Florida are the original and 12 copies of Citizens' Brief to be filed in this docket.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Enclosure

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Sincerely,

Darlene Driscoll

Darlene Driscoll

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00340 JAN 11 1991

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 891194-TI
Filed: January 11, 1991

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CITIZENS' BRIEF

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PSC-RECORDS/REPORTING

The Citizens of Florida ("Citizens"), by and through Jack Shreve, Public Counsel, file this brief urging the Florida Public Service Commission ("Commission") to require Southern Bell to offer free per call and per line blocking to all of its customers as a condition to allowing Southern Bell to offer Caller ID service.¹ However, before the Commission takes final agency action in this docket, there are a number of pending matters that must be resolved.

Motion for Additional Hearing and Other Relief

On December 20, 1990 the Citizens filed a motion requesting the Commission to hold an additional limited hearing on matters raised in 180 documents produced by Southern Bell after the conclusion of the evidentiary hearings held on November 28-29, 1990. That motion showed that documents provided after the conclusion of evidentiary hearings contain a host of new information bearing on issues in this docket. Due process provisions of the Florida Administrative Procedures Act, as well as the due process guarantees contained in the Florida and United States Constitutions, call for a procedure such as holding an additional limited hearing before the Commission takes final agency

¹The Citizens' prehearing statement urged the Commission to require Southern Bell to offer free per call blocking to all of its customers as a condition to offering Caller ID service. This brief extends that position by urging the Commission to also require free per line blocking for all Southern Bell customers as a condition to offering Caller ID service.

action in this docket. The motion asked the Prehearing Officer to hold an additional preliminary prehearing conference to identify procedures governing the further handling of this case, suggested certain Southern Bell officials testify about the newly produced documents, and asked the Commission to reschedule the filing of briefs and the agenda conference until a reasonable time after conclusion of the additional limited hearing.

In an abundance of caution the Citizens file this brief without the Commission taking action on the motion for additional limited hearing and for other relief, even though that motion requested an extension of the time for filing briefs. The Citizens again request the Commission to rule on the motion, schedule the additional limited hearing, and reschedule the time for filing briefs and holding the agenda conference.

Motion to Consolidate and to Conduct Generic Proceeding

On September 24, 1990 the Citizens filed a motion requesting the Commission to consolidate consideration of the Caller ID tariff filings made by Southern Bell and Centel. In addition, that motion requested the Commission to consider the issue of Caller ID blocking on a generic basis for all local exchange companies in Florida. The motion noted the vastly different positions of Southern Bell and Centel concerning Caller ID blocking and

suggested the need for a consistent policy on Caller ID blocking throughout the state.

Having obtained no ruling on the motion, the Citizens again raised the motion at the beginning of the evidentiary hearings. (T. 37). The Commission Chairman took the motion under advisement and decided to rule on the motion either at the conclusion of the hearings or at the agenda conference. (T. 45). The Citizens again renewed the motion at the conclusion of the evidentiary hearing. (T. 1104). Once again the Commission deferred ruling on the motion.

There should be a consistent policy on Caller ID throughout the state. Southern Bell opposes free per call blocking, while Centel and United support free per call blocking. Many parties to this docket argue in favor of both free per call and free per line blocking. It would make no sense to have a customer's ability to block the transmission of their number to a Caller ID unit depend on the vagaries of which local exchange company happens to serve them.

Witnesses in the evidentiary hearings described the importance of a consistent statewide policy on blocking. For example, the Statewide Joint Task Force on Radio Communications Systems requires per line blocking on a statewide basis. The radic system will cross LATA and company boundaries. The lack of uniformity would

cause a problem for the Department of General Services. (Mayne, T. 1087). The system is intended to operate uniformly statewide. Law enforcement agents, for example, could use a hand held radio to place a telephone call using this system. (Tudor, T. 912). This one system will serve five different agencies (Id.) and will cross local exchange company boundaries. Per line blocking would be a benefit as the state begins this pilot project. (Mayne, T. 1054).

Aside from the requirements of the statewide 800 megahertz trunked radio system, a consistent policy on blocking is important for law enforcement personnel. It is particularly important to the Florida Department of Law Enforcement, which has statewide enforcement responsibilities, to have a uniform and consistent system that offers universally available blocking. (Tudor, T. 845).

For example, if the Commission were to approve United's proposal for per call blocking in Winter Park but approve something else for Southern Bell in Orlando, it would present grave operational problems to law enforcement personnel. They cannot be operating out of a manual every time they make a phone call. They cannot pull out a manual when they cross a street to see whether they have crossed telephone company boundaries and then make their undercover call in a different manner depending on which side of the street they are on. (Tudor, T. 916).

Finally, the plight of an abused spouse is the same regardless of local exchange company territorial boundaries, and the protection of free per line and per call blocking should be available to them anywhere in the state.

The Citizens once again renew the motion filed this past September to consolidate consideration of Caller ID tariff filings and to conduct a generic proceeding. The Commission should grant the motion and hold a generic proceeding before taking final agency action in this docket.

Expectations of Privacy

Southern Bell's proposal would strip away the expectations of privacy people now have and replace it with a new system where privacy may be obtained only by paying an additional fee to Southern Bell for each call.

The importance of customers' expectations of privacy about their telephone number is perhaps most clearly shown by the number of people willing to pay Southern Bell today to maintain either a nonpublished or an unlisted number. Nonpublished telephone numbers are those telephone numbers that will neither be published in the directory nor given out by Southern Bell's directory assistance. Unlisted numbers are those numbers not listed in the telephone directory which can be obtained by calling the operator. (Sims, T.

196). There are approximately 834,000 nonpublished numbers and 211,000 unlisted numbers in Southern Bell's territory in Florida -- combined, the telephone numbers of over a million Southern Bell subscribers (Sims, T. 197) out of about 4 million access lines. 211,000 subscribers with unlisted phone numbers pay Southern Bell 80¢ per month to prevent their number from being published in the telephone directory, and 834,000 customers of nonpublished service pay Southern Bell \$1.75 per month to prevent their number from being published in the directory or given out by directory assistance. Combined, Southern Bell receives in excess of \$15 million from these two services. (Sims, T. 197). These services provide privacy for customers' telephone numbers.

Southern Bell itself recognized the importance of maintaining private telephone numbers before the BellSouth Regional Marketing Council determined a different policy would apply throughout the BellSouth region. Southern Bell witness Nancy Sims agreed that exhibit 4, a memo dated November 1, 1988, accurately portrayed the Southern Bell position as it existed before the Regional Marketing Council decided differently. (Sims, T. 217). Although a BellSouth position paper at that time urged the delivery of all numbers without blocking, the memo stated that "as before, Southern Bell has a different recommendation. We still feel strongly that private listing customers be allowed to inhibit their calls on a per call basis" (Exh. 4, underlining contained in exhibit). That memo, accurately portraying Southern Bell's position, determined

that delivering the calling number while allowing private listing customers to inhibit their calls on a per call basis would be just as marketable as the service with no free blocking. The exhibit states that "Southern Bell feels a commitment to the private listing customer" and that "we are also committed to our customer base and to our own integrity." (Exh. 4).

All of that changed, however, once the BellSouth Regional Marketing Council met and determined that a position different from the Southern Bell position would prevail throughout the entire BellSouth region. Exhibit 8, a deposition of Alan K. Price taken on August 16, 1990, describes the action of the Regional Marketing Council. The council was an officer level body put in place to make decisions concerning existing or new products. (Exh. 8, pg. 7). The council included officers from each of the two telephone operating companies as well as BellSouth Services and BellSouth Corporation. The members from BellSouth Corporation included one who was involved as the officer responsible for the planning of information services, one who was the chief marketing officer for the enterprise companies, and one who was the chief planning officer for BellSouth Corporation. There may have been others. (Exh. 8, pgs. 12-13). As a result of that meeting, all BellSouth companies, including Southern Bell, then adopted a position to wholly oppose free per call blocking with Caller ID service.

Just as the original Southern Bell position recognized privacy expectations, many surveys show that a large segment of the population feel that forwarding of their number will decrease their privacy. This is confirmed by surveys conducted by Southern Bell itself, as well as by surveys conducted in other regions. (Cooper, T. 606-610). In these surveys, nonpublished subscribers expressed the greatest concern about their numbers being passed around. They would also be the most likely to subscribe to Caller ID because they are high privacy people. However, they are also the most likely persons to use per call blocking because they are high privacy people. (Cooper, T. 648).

Another concern in response to survey questions is the probability of being called back by businesses or being placed on telemarketing lists once Caller ID is put in place. (Cooper, T. 752). A customer today may identify themselves when speaking with a business, but they know they can choose whether to provide that business their telephone number. (Id.). Caller ID poses such a threat to the privacy of telephone numbers that a survey conducted by Lou Harris showed that 43% of survey respondents thought that Caller ID shouldn't be allowed at all. (Cooper, T. 604).² In a somewhat similar vein, a privacy study conducted by GTE in

²GTE witness Elseewi criticized the Lou Harris poll for "leading" by asking whether the telephone company should be allowed to sell this service to people who want to buy it, or not. (Elseewi, T. 384). The option of free blocking was not presented to the respondents in the Lou Harris poll questions. (Elseewi, T. 410).

California showed that 51% of the survey respondents thought that CLASS services violate privacy. (Elsewi, T. 411).³

A Pennsylvania study showed very strong concern about sending the caller's telephone number to car dealers, real estate agents, department stores, and others. (Cooper, T. 617).

Dr. Cooper's prefiled testimony identified 20 problems that would arise from the loss of anonymity and privacy caused by Caller ID. He grouped those problems into four categories: disruptions of routine communications, commercial abuses of the telephone number, special situations, and interpersonal problems arising from Caller ID. (Cooper, T. 601-602). Exhibit 19, an attachment to Dr. Cooper's rebuttal testimony, shows examples from testimony in Maryland where almost all of the potential problems identified in Dr. Cooper's prefiled testimony appeared. Now, as a result of more recent hearings (held after Caller ID was implemented without

³These results differ from the Kentucky and Indiana studies submitted in the prefiled testimony of GTE witness Elsewi. The results of the GTE California privacy study came out only in cross examination. Elsewi's studies from Kentucky and Indiana contain no reference to blocking. There were no questions in the survey designed to determine whether a person's interest in Caller ID would remain the same or taper off if blocking were also an option. (Elsewi, T. 405-406). Elsewi's focus groups identified a variety of problems including commercial abuse, work at home people, etc., but she ignored these problems in her prefiled testimony. She only found "some potential irritation" with Caller ID, and proposed no solution. (Cooper, T. 638). She used only positive descriptions about the Caller ID service, thereby highly biasing the questions. (Cooper, T. 642).

blocking), the Maryland Commission has reversed its decision and decided to offer free per call blocking to all customers.

Southern Bell undoubtedly recognizes the importance of privacy to its customers. Notwithstanding its stated position that it is "against" blocking, Southern Bell's proposal would actually provide universal blocking to anyone willing to pay Southern Bell a fee each time they make a call.

For example, Southern Bell charges 75¢ for a local call made with a calling card. An out of area indicator will appear on the Caller ID box when a call is made with a calling card, not the caller's telephone number. (Sims, T. 99). The same thing will appear on a Caller ID box with a local operator assisted call, but in this case at a charge of \$1 per call.

In yet another instance, out of area indicators will appear on a Caller ID box instead of the caller's telephone number whenever a call is made using a cellular telephone. Southern Bell will always get transport revenues from a cellular telephone call, and its affiliate BellSouth Mobility would gain additional revenues if BellSouth Mobility were the cellular telephone company. Southern Bell witness Nancy Sims estimates that there are close to 1 million cellular telephones in use in the state of Florida. (Sims, T. 118-119).

Finally, although incredibly less convenient, a caller could always use a pay phone to transmit the pay phone's number instead of the caller's personal telephone number. Southern Bell will always receive revenue from a pay phone call, whether a quarter for the pay phone call itself or a fee for interconnection when the call is made using another pay phone provider. (Sims, T. 126).

The Citizens urge the Commission to require Southern Bell to provide free per call and per line blocking to all of its subscribers as a condition to offering Caller ID service in Florida. The need for both of these types of blocking was specifically described by a number of witnesses representing spouse abuse victims.

Shelters in Florida received 80,000 calls last year. (Phoenix, T. 964). Ms. Phoenix estimated that only one out of ten battered women contact battered women shelters. (Id.). If Caller ID were offered as proposed by Southern Bell, it would be lethal to battered women and their children. (Phoenix, T. 949). While the spouse abuse shelters need per line blocking for obvious reasons, there are thousands of women who do not come to the shelters and flee for their very lives and the lives of their children from an abusive spouse. They are the ones who need protection first and foremost. If their location was known, it would put them and their children at risk. (Phoenix, T. 959). If children were in the home of a battered spouse and they had to call their father, they might

either forget how to use the code to implement per call blocking or forget to use it at all. The abuser would then be able to identify their location and again track them down. Ms. Phoenix favors per line blocking as well as per call blocking available to all customers. (Phoenix, T. 956).

Ms. Joyce Brown described similar concerns. Caller ID would have been very dangerous to her when she was running from her abuser. Her abuser hit her in the head with a hammer 10 times. When she fled, the abuser went directly to relatives to try to find her when he heard that she was not dead. Had Caller ID been in place, the abuser would have known where she was, for she called from a friend's house. (Brown, T. 979).

Her youngest child was permitted to call her father. Had there only been per call blocking available, she fears that her child might have forgotten the code, and, as a result, she would have died. (Brown, T. 980). Her children are now 13, 12, and 9 years old. She finds it difficult to get them to wash the dishes, so she knows that it is going to be difficult to get them to dial a code every time they use the telephone. (Brown, T. 987).

Ms. Brown also expressed concerns about "o" and "p" coding manipulation by an abuser. An abuser could be down the street in a telephone booth from the victim's house and make a phone call using the operator. The abuser could tell her he is out of the

state. Seeing an "o" on a Caller ID unit would be consistent with the abuser's story. If she were to go outside, she could lose her life because an "o" in this instance reflected an operator assisted call, not an out-of-area call. (Brown, T. 983-984).

Ms. Brown should not be forced to tell her story over and over again to get a waiver from Southern Bell to provide blocking, nor should she be forced to be certified as a battered woman or some other such indignity. (Brown, T. 980). Of course, since by far most battered spouses do not even seek the help of a shelter, there is no way they could become "certified", as Southern Bell proposes, in order to protect their life and obtain free blocking. The criteria proposed by Southern Bell would only benefit the minority of women who can get into a crowded shelter. (Brown, T. 981). To provide a list of persons from the shelter would only touch a small portion of the women who the shelters never see. Preparing a list, as Southern Bell proposes, would not even begin to do a complete job. (Brown, T. 993).

Approximately 6 million women are battered repeatedly each year. (Dunn, T. 1006). Keeping a list, as Southern Bell proposes, would be impossible, and concerns for liability wouldn't allow the shelters to do it. According to Ms. Dunn, her agency couldn't buy enough insurance to allow them to do something like Southern Bell proposes. (Dunn, T. 1023).

The need for free per line blocking is not limited to battered spouses and their children. State government, the largest telephone user in the state, endorses free per line and per call blocking for the state government's telephone network.

There are a number of reasons why state government supports per line and per call blocking. Those include safety in life threatening situations faced by the state's law enforcement officers (described later in this brief), as well as a need to assist and promote the investigative operations of the Office of Auditor General, Office of the Comptroller, and Department of Legal Affairs. It would also facilitate the purchasing function of numerous departments during contract negotiations. (Mayne, T. 1037).

The Board of Directors of the Joint Task Force on State Agency Law Enforcement Communications supports the policy of the Division of Communications on Caller ID and Caller ID blocking. (Mayne, T. 1043). The statewide Joint Task Force radio communication system would need per line blocking, as it serves many different users. (Mayne, T. 1054). The Department of General Services sees Caller ID with free per line and per call blocking as an equitable way to protect those users needing it, but yet at the same time to let state and local government move forward with the development of applications using Caller ID technology. (Mayne, T. 1051).

The Governor and the Cabinet approved state government's endorsement of free per call and per line blocking on November 27, 1990. (Mayne, T. 1031). Exhibit 29 reflects that action taken by the Governor and Cabinet.

The law enforcement community is particularly concerned about Southern Bell's proposal to offer Caller ID without universal free per call blocking. Criminals will immediately begin using the Caller ID system to screen calls received while engaged in illegitimate acts. It is equally predictable that the safety of undercover law enforcement officers will be jeopardized by such use of Southern Bell's proposed system. (Tudor, T. 814). A drug task force in Maryland, for example, arrested a heroin dealer who was using Caller ID to force his customers to call from specific phone numbers in order to transact business. (Tudor, T. 816).

FDLE's concern extends to the families of undercover officers, operatives, and cooperating citizens. Once a phone number is displayed, an address can be easily ascertained by using a directory commonly available for sale or for review at public libraries. (Tudor, T. 818).

Universally available blocking would allow a higher level of safety for undercover officers, confidential informants, and cooperating victims and witnesses. If it is available to the public at large, a criminal who receives a blocked telephone call

would not become overly suspicious. This contrasts sharply with what Southern Bell proposes in this case. Under the Bell proposal, the very fact that blocking occurred would suggest that a law enforcement officer may be the person making the call. (Tudor, T. 819). As proposed by Southern Bell, the Caller ID tariff is insufficient to eliminate or even reduce the significant and serious concerns regarding the safety and security of those involved in working either in an undercover investigative capacity or working in cooperation with the police during a criminal investigation. (Tudor, T. 820). Caller ID, as proposed by Southern Bell, shifts the balance of control toward the criminal. (Tudor, T. 821).

While Southern Bell opposes universally available free per call blocking⁴, two other local exchange companies in Florida embrace free per call blocking to help offset many of the concerns about Caller ID. United's witness Bill Jones attended public hearings in Miami, Jacksonville, and Orlando. As a result of the testimony he heard in those hearings, United decided to propose free per call blocking in its territory. Tests from North Dakota, where the use of blocking fell dramatically after people began to get used to Caller ID, pointed out that per call blocking would not be a significant problem to the company. (Jones, T. 501; 513-514).

⁴Southern Bell only opposes free per call blocking. As shown previously in this brief, Southern Bell would offer universally available pay per call blocking through various means.

United believes that Caller ID would remain a valuable service even if blocking were available. (Jones, T. 523).

Centel likewise proposes free per call blocking universally available to all of its subscribers. Centel firmly believes that the customer, not the serving telephone company, should decide what services the customer will use -- including the disclosure of customer telephone numbers. (Exh. 17, pg. 1). It believes that offering free per call blocking to all of its customers strikes an appropriate balance by offering the many benefits of calling number identification service while preserving customer privacy interests. (Id.).

Centel recognizes that customers have legitimate reasons for wanting to keep their telephone numbers private for certain calls, and their approach would give customers this choice. (Exh. 17, pg. 4). Providing free blocking would not cloak the originating number of obscene or harassing calls. Customers with return call service have the option of returning an immediately incoming call even if per call blocking had been used by the caller. Additionally, call trace enables all customers, whether or not a caller used call blocking, to immediately initiate a trace of an obscene or harassing call. (Exh. 17, pg. 4).

Caller ID with blocking provides call recipients greatly enhanced capacity to manage incoming calls. It allows customers to

preserve the privacy of their telephone numbers, while at the same time it also preserves the functionality and usefulness of the overall signaling system 7 technology. (Cooper, T. 594). If an abusive caller chooses to block their number, the recipient need not answer the blocked phone call. If a caller blocks their number, a recipient can respond just like a homeowner who sees that a person at the door has covered the peep hole: just don't open the door. (Tudor, T. 831). If a person gets an "o" or "p" on the Caller ID unit and chooses to answer it, they are on their guard. (Cooper, T. 646-647). The recipient can choose simply not to answer the call, knowing that the person calling them has blocked the transmission of their number to the recipient's Caller ID terminal. On the other hand, the department store or other business will still answer the phone when a "p" appears on the Caller ID unit because the call is a business opportunity to them. Thus there is call management on both sides of the call, and the utility of the network is enhanced with per call blocking. (Cooper, T. 646-647).

The cost of Caller ID blocking can and should easily be absorbed through the charges for Caller ID itself. The cost of preserving the current privacy rights of all subscribers should be borne by those who want to see the incoming numbers, which they don't see today. They are getting a new benefit, and they should pay all of the costs associated with it. (Cooper, T. 790). Since Caller ID creates the problem that blocking is intended to solve,

any costs associated with blocking should be attributed to Caller ID. It would not increase the price of Caller ID since Caller ID is already priced far above cost. (Cooper, T. 635). To impose a cost for blocking, when only a small number of subscribers appear likely to want Caller ID, would sacrifice the interests of the vast majority to the interests of a small minority. (Cooper, T. 634). The Caller ID penetration in New Jersey is about 2%. (Sims, T. 127). In Tennessee the penetration rate is about 1.2%. (Sims, T. 195).

Per call blocking wouldn't devalue this service for three reasons: (1) there is an overlap of functionality between Caller ID and other custom calling services, such as call trace, call block, and call return, (2) many types of calls will not be deterred by the technology, regardless of how it is configured, and (3) per call blocking may actually enhance the call management capabilities of Caller ID. (Cooper, T. 619). United feels that Caller ID would remain a valuable service even if blocking were available (Jones, T. 523) and that per call blocking would not be a significant problem. (Jones, T. 513). And Centel believes that blocking available to all customers on a per call basis would not greatly dilute the benefits of caller number identification. (Exh. 17, at 3).

The Commission Should Order Southern Bell to Offer Call Trace to all Customers at a Rate of \$1 Per Use

On September 21, 1990 the Citizens filed a petition to require the offering of call trace service to all customers at reasonable, usage based rates. That petition pointed out that in any prosecution for illegal obscene or harassing phone calls, call trace provides a means to provide independent verification of the number from which an obscene or harassing phone call was made. Ubiquitous availability of call trace would offer an effective means to combat obscene and harassing phone calls. If made available generally to all customers at reasonable, usage based rates, every would-be obscene or harassing phone caller would know that the called party has call trace available to forward the calling party's number to authorities for further legal action. New Jersey Bell offers such a rate level and structure to its customers, charging \$1 for each use of call trace service, and makes call trace automatically available to all of its customers.

On September 21, 1990 the Attorney General filed a letter with the Commission, and provided a copy of the letter to all parties, supporting the petition. Likewise, on September 27, 1990 the Florida Department of Law Enforcement provided all parties a copy of a letter filed with the Commission on September 24, 1990 supporting the petition. A letter dated October 18, 1990 from the Chairman of the Commission to James T. Moore, Commissioner of the Florida Department of Law Enforcement, indicated that the

Commission would take up the call trace petition in this docket as issue 6.⁵

Call trace will be effective even in instances where, under Southern Bell's proposal, a calling party's number would not be delivered to the called party. For example, under Southern Bell's fee for blocking proposal, anyone can use a calling card or make an operator assisted call to get around Caller ID and avoid transmitting their telephone number to the called party. However, call trace will provide the number to authorities even in instances such as these where Caller ID would not provide the number. (Sims, T. 117). 98% of Southern Bell's customers would not have the option of call trace available to them because they haven't presubscribed to it under the existing rate level and structure. (See Sims, T. 287). If only a small percentage of people might have Caller ID, a potential abuser might not think there is much risk in making an obscene or abusive call. Universal availability of call trace, however, would be a significantly better deterrent because anybody could use it without presubscription. (Cooper, T. 722).

Call trace addresses the problem of abusive and harassing phone calls better than Caller ID. (Tudor, T. 829). The evidence from a telephone company record from call trace is a stronger piece

⁵The Chairman's October 18, 1990 letter may not have been provided to all parties of record. Southern Bell and GTE Florida, Inc., filed oppositions to the Citizens' petition.

of evidence than that obtained from Caller ID. (Cooper, T. 627). Most people will not know the telephone number of an anonymous abusive caller. Merely advising an abusive caller that his phone number is known will not necessarily stop the caller's behavior. Evidence from Caller ID would not be sufficient to justify a prosecution of an abusive caller. (Tudor, T. 826).

The use of call trace would also avoid the confrontation suggested by the use of Caller ID. Phone companies have always instructed recipients of such calls not to even converse with the caller, let alone attempt to recontact them. (Tudor, T. 827-828).

Representatives of spouse abuse victims support call trace as the preferred means of dealing with abusive callers. Call trace, if offered on a per use charge basis, would be a viable option for battered women to document with the police if the abuser is harassing her. Call trace would also mitigate the chance of a citizen/vigilante from taking justice into his or her own hands if given the number of an obscene phone caller. (Phoenix, T. 951). More than another method, call trace appears an appropriate way of handling obscene or harassing phone calls. Battered women could use call trace to inform the police about calls from abusers. It would provide an excellent record of abusers violating court orders prohibiting harassment or phone contact. (Dunn, T. 1002).

Southern Bell agrees that call trace is a deterrent to harassing and obscene phone calls. (Sims, T. 239). In fact, the company advertises call trace to combat annoying calls and nuisance calls. (Sims, T. 239-240; Exh. 7).

In a survey conducted for United, the overwhelming majority of respondents preferred to pay a per use fee for call trace instead of a fixed monthly fee. This preference was noted by 79% of the residence respondents and 77% of the business respondents. In fact, in the residence market the survey found that call trace was the most popular of the new services, even more popular than Caller ID or call return. Call trace was seen as a product with the strongest appeal in the residence market as protection against obscene calls. (See Exh. 15).

Despite customer preference for offering call trace on a per use basis, Southern Bell opposes such a rate structure mainly because it believes a flat rate structure requiring presubscription will generate more money for the company. The company compared two trials, one in Natchez, Mississippi, and another in Orlando, Florida. A flat rate of \$5 per month in one trial was compared against a \$5 per use rate applied in the other, and the company found that the flat rate of \$5 per month would generate more revenue than a \$5 per use usage charge. The company made no other price comparisons. (Sims, T. 234-235). Such blatant self-interest

in maximizing cash flow should take second seat to the public interest and public service provided by call trace.

Universal availability of call trace to all customers, charged on an as-needed basis, would provide a much more effective deterrent to abusive or obscene phone calls than does the current system requiring presubscription and a four dollar monthly fee. A one dollar "pay as you use it" rate structure would make the service available to almost everyone who needs to use it and would represent a terrific deterrent to abusive calls. (Tudor, T. 829-830). United's surveys show that customers prefer such a rate structure. The Commission should grant the call trace petition and direct Southern Bell to change their rate structure to make call trace universally available to all customers on a per use basis with a fee of no more than one dollar per use.

**Without Free Blocking Caller ID Violates Florida's
Trap and Trace Statute and Florida's Constitution**

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

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

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

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

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

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

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

Then, Commission order no. 22704 issued March 19, 1990 (FPSC 3:264) required additional changes to the Southern Bell tariff filing. Order 22704 required Southern Bell to offer optional

blocking of Caller ID service and set forth detailed eligibility criteria Southern Bell would have to include in its tariff filing if it were to gain Commission approval. Those criteria were:

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

The Commission continued to defer other decisions about the filing.

Finally, after the intervention of numerous parties and formal requests for public and evidentiary hearings, Commission order no. 23370 issued August 20, 1990 (FPSC 8:292) granted those requests and held both public and evidentiary hearings.

Routine approval of a tariff filed by a utility would normally be insufficient involvement by the Commission to find state action. Jackson v. Metropolitan Edison Company, 419 US 345 (1974); Carlin Communication, Inc., v. Southern Bell Telephone and Telegraph Co., 802 F.2d 1352 (11th Cir. 1986). But nothing about the history of this case shows routine approval of a company tariff. Instead, the Commission required detailed changes to the tariff filed by

Southern Bell. It required both an evidentiary hearing in Tallahassee and a series of public hearings around the state. These types of actions are practically never taken by the Commission on tariff filings.

The detailed involvement of the Commission in this tariff filing amounts to state action. Essentially analogous actions taken by the Pennsylvania Public Service Commission on a Caller ID tariff filing constituted state action. Barasch v. Pennsylvania Public Utilities Commission, 576 A.2d 79 (Pa. Commw. 1990).⁶

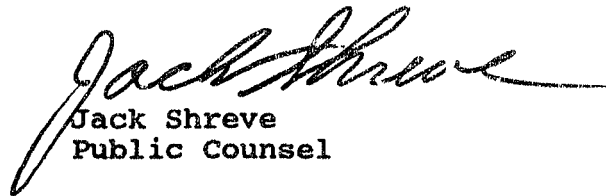
The provisions of Article I, section 23 of Florida's Constitution apply when there is state action. The Florida Supreme Court applied this constitutional right to privacy to telephone numbers in the case of Shaktman v. State, 553 So.2d 148 (Fla. 1989). In that case the court stated that "a fundamental aspect of personhood's integrity is the power to control what we shall reveal about our intimate selves, to whom, and for what purpose." Shaktman at 150-151. The court then further stated that "the telephone numbers an individual dials or otherwise transmits represent personal information which, in most instances, the individual has no intention of communicating to a third party. This personal expectation is not defeated by the fact that the telephone company has that information." Shaktman. at 151.

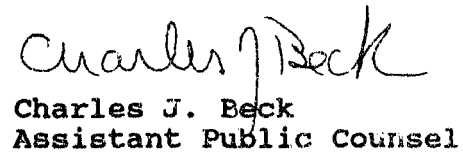
⁶The Pennsylvania Supreme Court accepted jurisdiction to review this decision. Briefs will be filed by the parties in February and March of 1991.

Southern Bell would sell that information to the called party without the caller's consent.

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

Respectfully submitted,


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CERTIFICATE OF SERVICE
Docket No. 891194-TI

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties this 11th day of January, 1991.

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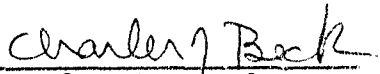
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