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January 11, 1991

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 Brief, which we ask that you file in the captioned docket.

ACK

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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
E. Barlow Keener

Enclosures

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

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A BELLSOUTH Company

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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-TL

Filed: January 11, 1991

BRIEF OF

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

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DOCUMENT NUMBER DATE
00887 01/11/91
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INTRODUCTION

On September 29, 1989, Southern Bell Telephone and Telegraph Company ("Southern Bell" or the "Company") filed with the Florida Public Service Commission ("Commission") two proposed tariff revisions. One tariff revision introduced Caller ID as the seventh call management feature of the TouchStar® service offerings. (Proposed General Subscriber Services Tariff ["G.S.S.T."] A13.19.2G) The other tariff revision clarified conditions under which a number associated with a non-published listing may be disclosed. (Proposed G.S.S.T. A1 and A6.4.1A.) By Order No. 22397, issued on January 10, 1990, the Commission found that Caller ID was in the public interest and should be made available to Southern Bell's subscribers. The Commission, however, denied the tariffs as filed but conditioned approval of revised tariffs upon the adequate addressing of safety concerns for certain segments of society such as law enforcement, social services, and domestic violence shelters.

On January 10, 1990, Southern Bell filed a revised Caller ID tariff providing for limited Calling Number Delivery Blocking. The tariff made the blocking available upon request at no charge to private, non-profit, domestic violence intervention agencies and federal, state and local law enforcement agencies. (Proposed G.S.S.T. A13.19.2H. and A13.19.3A.10.)

On February 20, 1990, the Commission ordered Southern Bell to send a notice to its customers explaining the criteria for blocking. In addition, the Commission directed Southern Bell to work with representatives of law enforcement on an ad hoc task force in order to resolve any specific law enforcement issues. The Commission also deferred a decision regarding the effective date of the tariff.

On June 7, 1990, the Office of Public Counsel ("Public Counsel") requested hearings on Caller ID. At the July 17, 1990 Agenda Conference, the Commission granted Public Counsel's request for hearing. Order No. 23445. The Commission scheduled and held three public hearings on Caller ID throughout the state on September 26, 27, and 28, 1990. Additional hearings were held in Tallahassee on November 28 and 29, 1990, which produced a transcript record consisting of 1,112 pages. Testimony was presented by Southern Bell, Public Counsel, United Telephone Company of Florida ("United"), Florida Department of Law Enforcement ("FDLE"), the Florida Coalition Against Domestic Violence (the "Coalition") and the Department of General Services ("DGS").

For the convenience of the Commission, this Brief represents Southern Bell's arguments on each issue identified in the Commission's Prehearing Order, in seriatim. Southern Bell's

arguments on overlapping issues, however, have been generally crossed-referenced rather than repeated.

STATEMENT OF SOUTHERN BELL'S BASIC POSITION

Caller ID is one of seven TouchStar service features recently offered by Southern Bell. These features include Call Return, Repeat Dialing, Call Selector, Deferred Call Forwarding, Call Block, and Call Tracing. The purpose of Caller ID and all the TouchStar features is to give customers the ability to manage and control their telephone service. TouchStar services have been made possible by a technology known as Common Channel Signaling System 7 ("SS7").

Advances in telecommunications technology such as SS7 now permit the called party to exercise the degree of control which the called party possessed prior to the advent of direct dialing. The Commission described the early methods of call completion in Order No. 22397:

We believe the called party's privacy was a key concern during the infancy of the telephone industry. An operator connected all calls, rang the called party, and announced to the called party who was on the line. In most cases, this practice continued until traffic volumes increased to the degree where speed became a concern and then, operators increasingly connected calls without announcing the calling party. Finally, with the advent of direct dialing, it was still a common courtesy

to announce one's identity upon connection.

Id. at p. 4. The technical limitations of direct dialing permitted the calling party to anonymously intrude into the home or business of the called party. Now, further advances in technology such as Caller ID will allow the called party to regain control over these anonymous intrusions. The Commission explained the effect of this technological advance:

Caller ID helps restore the balance. This will undoubtedly change the way each subscriber perceives his telephone and its use. This feature will also make it more difficult to commit crimes over the telephone. The fear alone of having one's number displayed should significantly reduce the number of attempted harassing and obscene calls. This has indeed been the case in other states where Caller ID is already in place.

Id. p. 4.

As the Commission has concluded previously, Caller ID is in the public interest and will provide numerous benefits to Florida customers. Caller ID will discourage obscene, annoying and harassing calls; assist deaf customers by providing them with a way to distinguish incoming calls; allow customers to store telephone numbers of missed calls; allow businesses to personalize their service; and allow law enforcement to immediately know the telephone number of a criminal.

Even though several Florida law enforcement agencies have supported Caller ID only with universal blocking, Southern Bell believes that the special arrangements it has offered to law enforcement, such as optional blocking, access dialing arrangements, and the use of calling cards, will allow law enforcement to continue to conduct its undercover activities safely. Furthermore, Southern Bell maintains that Caller ID without universal blocking will permit law enforcement to gain an advantage over the criminals it is investigating and allow law enforcement to more easily investigate telephone harassment, bomb threats and false fire alarms. Southern Bell also believes that the optional blocking offered to domestic violence agencies and individuals concerned for their personal safety sufficiently satisfy the needs of those individuals.

In spite of the concerns raised by various parties about Caller ID, the provision of Caller ID without universal blocking has proven successful in those states where Caller ID is currently being offered on that basis: Virginia, West Virginia, Vermont, New Jersey, and Tennessee. In addition, Georgia recently approved a one-year trial of Caller ID without universal blocking.

Several parties in this docket have raised legal issues concerning whether Caller ID violates the Florida wire-tap statute, Chapter 934, Florida Statutes, and whether Caller ID violates the Florida Constitution's privacy provision. In order

to violate the wire-tap statute, Caller ID must be defined as a "trap and trace device". This statute, which is a penal statute, must be strictly construed. It defines a trap and trace device as a "device which captures the incoming electronic or other impulses". Since the customer's Caller ID display unit does not give the customer the independent power to capture any information it, therefore, does not constitute a "trap and trace device".

Even if it were conceded that Caller ID service constituted a "trap and trace device", which it is not, Caller ID does not violate Chapter 934, Florida Statutes, because the Florida Legislature provided that trap and trace devices may be used as authorized "under federal law". Caller ID does not violate federal law, and, therefore, is authorized under state law. Furthermore, Caller ID also may be lawfully provided in accordance with several statutory exceptions which permit the use of a trap and trace device with the consent of the user.

Likewise, Caller ID does not violate the Florida Constitution which provides that every person has the right to be let alone from "governmental intrusion". In order to violate an individual's constitutional right of privacy, there must be "state action". Southern Bell, a private company, is the entity which was proposed to offer Caller ID. Thus, the action taken by the Commission in approving Southern Bell's tariff does not constitute

"state action". Even if the Commission's approval of a tariff did constitute state action, which it does not, Caller ID service does not violate a constitutionally cognizable privacy interest. To the contrary, Caller ID service protects the called party's right to be left alone because it allows the subscriber to know which person, identified by a telephone number, is entering his premises.

While there are several TouchStar services that are similar to Caller ID, none of the services provides the same benefits as Caller ID. For example, Call Tracing allows a customer to cause the calling number to be recorded at the central office. Unlike Caller ID, however, it does not let the customer know who is calling before answering the call and thus avoid answering a call he does not want to take.

In addition, the introduction of Caller ID will not change the provision of non-published and unlisted service. Southern Bell's current obligation to unlisted subscribers is to not list the telephone number in the directory and, for non-published customers, to not provide the number through directory assistance. These obligations will remain the same with Caller ID.

In those few instances where a customer requires anonymity, Southern Bell believes that the options that exist due to technical limitations will serve the customer. For instance, a caller may call through the operator, may call from a pay phone or

may have his call processed through third parties such as an answering service or an office PBX.

In summary, Caller ID is legal and offers significant advantages to Southern Bell's customers. Southern Bell maintains, therefore, that its Caller ID tariff should be approved with optional blocking only for those individuals and entities with special safety needs.

SOUTHERN BELL'S POSITION ON THE ISSUES

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

Caller ID is one of seven optional TouchStar services provided by Southern Bell. It will display the telephone number associated with the calling party on a special display unit provided by the called party. (Tr. Sims, pp. 52-53) The technology needed to provide Caller ID service is software and hardware located in Southern Bell's central offices. (Tr. Sims, p. 53) In order to provide Caller ID, Southern Bell uses a signaling system known as SS7. (Tr. Sims, p. 53) When a Southern Bell subscriber originates a call through the subscriber's serving central office equipped with SS7, the serving central office generates information containing the calling party's number. If the called party subscribes to Caller ID service, the calling

party's number is then transmitted by the receiving switch to the customer's display unit over the local loop. (Tr. Sims, p. 53)

The customer's display unit enables the customer to view the calling party's number. Thus, the display device is a passive mechanism that merely displays information that has been forwarded to it by Southern Bell after Southern Bell has generated, transmitted and recorded that information within the telephone network. (Tr. Sims, p. 54)

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

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

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

...a device which captures the incoming electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

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

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

Two courts in states other than Florida have ruled on the legality of Caller ID under similar wire-tap statutes. On May 30,

1990, the Commonwealth Court of Pennsylvania¹, in David Barasch, Consumer Advocate v. Pennsylvania Public Utility Commission, 576 A.2d 79 (Pa. Commw. 1990) held that Caller ID service was a "trap and trace device" as defined by Pennsylvania Statutes. Id. at p. 85.² The Court failed, however, to cite rules of statutory construction, and apparently did not recognize that it was interpreting a criminal statute which must be strictly construed, with any ambiguity favoring the accused.³

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

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

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

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

decision as to whether the display unit was a "trap and trace device".⁴

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

Several parties in this proceeding have alleged that Caller ID may violate Chapter 934, Florida Statutes, with respect to certain prohibitions against trap and trace devices. As set forth above, the display unit used in conjunction with Caller ID service is not a trap and trace device and, therefore, the use of such a device does not violate the statutory provisions against trap and trace devices. As noted under Issue 2, Chapter 934, Florida Statutes, is a penal statute which must be strictly construed and any reasonable doubt as to the meaning of such a statute must be construed in favor of the accused. In addition, the Florida Supreme Court has held that it must be assumed that the Legislature knew the plain and ordinary meanings of words when it chose to include them in a statute. Rinker Materials Corp. v. City of North Miami, 286 So.2d 552 (Fla. 1973); Reed v. Bowen, 503 So.2d 1265, 1267 (Fla. 2d DCA 1986) affirmed 512 So.2d 198 (Fla. 1987). The Florida Supreme Court has also held that when the

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

language of the statute is clear and not unreasonable or illogical in its operation, a court may not go outside the statute to give it a different meaning. Jones v. Utica Mutual Insurance Co., 463 So.2d 1153 (Fla. 1985); Holly v. Auld, 457 So.2d 217 (Fla. 1984); Reed v. Bowen, supra. By applying these rules of statutory construction, Florida Statutes clearly do not prohibit Caller ID service.

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

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

Furthermore, Section 934.31(2)(c), Florida Statutes, expressly provides that a trap and trace device may be used

without a court order "where the consent of the user of the service has been obtained". Section 934.31(2)(c), Florida Statutes.⁵ Interpreting the statute strictly and assuming that the Legislature knew the plain and ordinary meaning of the words, it is clear that the "consent of the user of the service" is all that is required to conform to this exception and that the consent of the "user" means the consent of a singular user, not "users".

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

The obvious intent of the law was to prohibit a third party, such as a law enforcement officer, from using a trap and trace device on the telephone service of a non-consenting user without first obtaining a court order. See, Southern Bell v.

⁵ Not surprisingly, the Florida Medical Association's Post-Hearing Legal Memorandum filed on December 21, 1990, conveniently fails to deny the applicability of this exception.

Hamm, supra, at p. 11. ("It seems clear that what the legislature sought to do, in enacting [the same exceptions to a trap and trace device in the South Carolina statute as in Florida statute], was to protect its citizens from abusive, unauthorized and unwarranted third party or governmental intrusion....") Clearly, by purchasing Caller ID service, the called party is providing his express consent and thus falls within the statutory exception to the prohibition of trap and trace devices.

In addition, even though the statute expressly provides that the user of the service is the only party required to provide consent, by virtue of placing the call the calling party has given his implied consent to this transaction. Indeed, as the calling party is charged with the knowledge of the Caller ID service tariff once it becomes effective, by placing a call he is giving his express consent. Moreover, Southern Bell's G.S.S.T. A2.3.12 provides that all telephone numbers are the sole property of Southern Bell.⁶ Therefore, a subscriber to Southern Bell's

⁶ G.S.S.T. A2.3.12 states:

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

services can claim no property interest in his or her telephone number. The telephone number is just that -- only a telephone number. No personal identification is involved unless the called person recognizes the subscriber from past experiences.

Although the meaning of the statutory exception permitting a trap and trace device to be used without a court order when "the consent of the user of the service" has been obtained is sufficiently clear on its face, the Legislature's intention may also be ascertained by considering a related statutory provision. The Florida Legislature adopted, almost word for word, the federal Electronic Privacy Communications Act of 1988, in accordance with the federal mandate. When the Legislature amended Chapter 934, Florida Statutes, to conform to the federal law, it explicitly provided that trap and trace devices may be used as authorized by "federal law". The Legislature provided in Section 934.03(i), Florida Statutes, that:

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

(emphasis added) See, 18 USC § 3127.

By adding the language that a trap and trace device may be used as "authorized... under federal law", the Florida Legislature demonstrated that it intended that "the consent of the user" would have the same meaning that it has under federal law. Since

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

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

As discussed above, only two courts have considered Caller ID in conjunction with state wire-tap statutes that conform to the federal statute. Barasch v. Pennsylvania PUC, supra, held that even though the Pennsylvania law⁷ was almost identical to the federal Electronic Privacy Communications Act requiring consent of the "user", the Pennsylvania General Assembly intended that the

⁷ 10 Pa. C.S. Section 5771(b)(2).

state statute should be stricter than the federal law. Despite the fact that the Pennsylvania statute contains the word "user", in accordance with the federal law, the Court interpreted "user" in Pennsylvania to mean "all of the parties" involved in a conversation. Id. at pp. 84, 93.

The legal rationale relied upon by the Pennsylvania Court is inappropriate under Florida law for two reasons. First, Florida rules of statutory construction require that a criminal statute be strictly construed and any ambiguity be resolved against the state. Florida rules of statutory interpretation also require that it must be assumed that the Legislature knew the plain and obvious meanings of words when it chose to include them in the statute and that when the language of the statute is clear and not unreasonable or illogical in its operation, the court may not go outside of the statute to give it a different meaning. A discussion of Pennsylvania rules of statutory construction is noticeably absent from the Pennsylvania Court's decision. Ignoring the general principles of statutory construction, the Pennsylvania Court went outside the letter of the statute and gave a different meaning to the express language of the statute.

Second, the Florida trap and trace statute differs from the Pennsylvania Statute. As noted above, Section 934.03(2)(i), Florida Statutes, provides that: "(i) It shall not be unlawful...[t]o use...a trap and trace device as

authorized...under federal law." This statutory provision does not exist in the Pennsylvania wire-tap law. Unlike the Pennsylvania laws, the Florida statute clearly sets forth the Florida Legislature's intent that by conforming the Florida statute to the federal Electronic Privacy Communications Act, Florida was determined to apply the state statute regarding trap and trace devices in the same manner as the federal government applied the federal statute.

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

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

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

(emphasis added) In order to violate a person's right of privacy under the Florida Constitution, there must be a "governmental intrusion" or "state action that infringes on privacy rights". Rasmussen v. South Florida Blood Service, 500 So.2d, 533, 535 (Fla. 1987). See also Shaktman v. State, 533 So.2d 148 (Fla. 1989). In Shaktman, the Supreme Court held that "privacy interests of Article 1, Section 23 are implicated when the government gathers telephone numbers through the use of a pen

register." Id. at p. 151 (emphasis added). Thus, actions by private individuals and entities are clearly not subject to constitutional privacy restrictions. Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974); Carlin Communications, Inc. v. Southern Bell Tel. & Tel. Co., 802 F2d 1352 (11th Cir. 1986); Shelley v. Kramer 334 US 1 (1948); Evans v. Abney, 396 U.S. 435, 445 (1970); Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 171-179 (1972). Southern Bell v. Hamm, supra, at p. 14.

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

The question of whether or not the Commission's approval of a tariff constituted "state action", which is required to invoke the Fourteenth Amendment of the U.S. Constitution, was

decided in Carlin Communications, Inc. v. Southern Bell, *supra*. The plaintiff in Carlin alleged that the Commission's approval of the Southern Bell "976" tariff constituted "state action". Rejecting the plaintiff's argument, the Eleventh Circuit Court of Appeals noted that:

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

Id. at pp. 1361-1362.

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

The mere fact that a business is subject to state regulation does not by itself convert its action into that of the State for purposes of the fourteenth amendment. [cite omitted] Nor does the fact that the regulation is extensive

and detailed, as in the case of most public utilities, do so.

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

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

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

Id. at p. 13. The Pennsylvania Court, in Barasch v. Pennsylvania PUC, supra, is the only court to have held that approval of Caller ID constitutes state action.⁸ The Court reasoned that the state action arose because of (i) the Commission's "extensive investigatory hearings", (ii) its order for limited blocking to certain individuals absent a request by the parties to do so, and

⁸ Two of the five judges on the Barasch court dissented from this holding.

(iii) its order to require a certification process to be implemented by law enforcement. Id. at p. 87. The Court's rationale is contrary to the U.S. Court of Appeals decision in Carlin, supra. As explained above, the Carlin Court specifically held that an investigation of the tariff by the Commission did not amount to state action. Id. at 1359. Carlin also held that where the Commission supported certain revisions to the "976" tariff that such action did not arise to coercion on the part of the Commission because the "operative decisions...as to the inclusion of the language in the tariff...were made by Southern Bell." Id. at 1360-1361. Where, as here, a private utility such as Southern Bell voluntarily offers a service, such as Caller ID, that service does not involve a governmental intrusion simply because it is offered pursuant to a tariff approved by the Commission.

Even if there were some reasonable expectation of privacy in keeping the telephone number from which the call is placed confidential, which there is not, and even if Southern Bell's Caller ID service did involve the "state action" required to invoke the application of constitutional limitations, which, as shown above, it does not, under the balancing test established by the United States Supreme Court, the scales are still tipped convincingly in favor of the constitutionality of Caller ID.

It has been suggested by some that the calling party may have an interest in anonymity. On the other hand, the called

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

Caller ID service protects the calling party's right to be left alone. Just as a "peephole" allows a person to know who is knocking at his door, Caller ID service alerts the called party to the telephone number of the calling party. In addition, the caller is not a passive or unwilling individual in this case. He voluntarily conveys his telephone number, as well as the telephone numbers to which he is placing a call, into the telephone company system. If he wishes to keep his telephone number a secret, he has options available to do so.⁹ Thus, the substantial interests that would be served by Caller ID greatly outweigh any interests of the calling party in keeping his number secret from person whom he chooses to call.

⁹ See Issue 8, infra.

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

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

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

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

Caller ID will benefit the Florida public in general and law enforcement in particular by reducing the number of fraudulent, unlawful, harassing and obscene telephone calls by allowing a victim of these calls to immediately report to law enforcement the specifics of the crime and the number from which the call originated. (Tr. Tudor, pp. 865-868) (Hearing Exhibit 22) As noted in Hearing Exhibit 22, which is the most recent six-month Caller ID report filed by New Jersey Bell on June 15, 1990, with the New Jersey Board of Public Utilities, Caller ID has provided actual, substantial benefits to the customers of New Jersey Bell for more than two years.¹⁰

Relying on reports of actual experience of the Caller ID service such as set forth in the New Jersey report is a much more sound method by which to base a decision than relying on speculation by entities and individuals who have not actually used the service. GTE's expert witness, Dr. Sue L. Elseewi, explained this concept:

The survey that is undertaken after the actual introduction of a product will obviously give you a much better read...of public opinion because you're not dealing with an amorphous concept but, rather, with the product itself. So you can get a better understanding of

¹⁰ It should be noted that Public Counsel's witness, Dr. Cooper, did not even consider this most recent evidence. (Tr. Cooper, p. 698)

the product and people's feelings toward that product.

(Tr. Elseawi, p. 399) Thus, for example, the New Jersey report recounted a situation in which a state legislator and his wife regularly received harassing calls before they subscribed to Caller ID. The legislator, who now subscribes to Caller ID, screens all of his incoming calls and advised the anonymous caller that he had the caller's number. The calls stopped. (Hearing Exhibit 22, Tab II, p. 1)

In addition, Caller ID should benefit even those customers who do not purchase the service. As noted in the New Jersey report, a Newark, New Jersey customer advised that she was plagued by crank and obscene calls for years, often receiving as many as ten calls per month. Once Caller ID was introduced in her area, the volume of calls was reduced to two calls in a four-month period and she did not even subscribe to Caller ID. (Hearing Exhibit 22, Tab II, p. 3)

Caller ID should also assist local municipalities in quickly responding to emergencies. For example, in New Jersey, as of June 19, 1990, approximately 150 municipal agencies subscribed to Caller ID. Caller ID has also assisted the police in potential suicide and domestic violence situations. For instance, a twelve year old New Jersey girl received a call from a man saying he would kill himself. The child contacted the police and provided the man's telephone number from the Caller ID display unit.

Because of Caller ID, the police were able to save the man.
(Hearing Exhibit 22, Tab II, p. 4) In addition, Caller ID was reported to have eliminated false fire alarms in one section of a New Jersey county. (Hearing Exhibit 22, Tab II, p. 5)

Caller ID should also assist in general law enforcement activities. The actual experience with Caller ID in New Jersey has been shown to be clearly beneficial to law enforcement. For instance, Colonel Clinton Pagano, who for fifteen years was the chief law enforcement officer of the New Jersey State Police, testified before the U.S. Senate that:

Caller ID dramatically increased the ability of law enforcement to respond and perhaps apprehend a suspect or begin the investigation quickly, thereby increasing the chances of a successful conclusion.

Hearing Exhibit 22, Attachment C. Colonel Pagano explained that:

In situations involving bomb threats to schools and businesses, false alarms, kidnappings, residential burglaries, and ransom poisonings, Caller ID serves an invaluable tool in the investigative process because it provides information instantly. Caller ID dramatically increases the ability of law enforcement to respond and perhaps apprehend a suspect or begin the investigation quickly, thereby increasing the chances of a successful conclusion.

Id. (emphasis supplied)

In addition, as noted in the New Jersey report, Caller ID assisted law enforcement by an identification of the address of a

thief. In this situation, the home of an individual subscribing to Caller ID was burglarized. From the numbers stored on the individual's Caller ID display unit, he noticed that someone had been calling his home at odd hours before and after the robbery. Based on the telephone numbers stored on the individual's Caller ID device, the police were able to obtain the corresponding address and recover some of the stolen items. (Hearing Exhibit 22, Tab II, p. 7)

Because Caller ID will give customers control of their incoming calls, customers will increase their sense of security and privacy by allowing them to choose which calls to answer. As noted in Issue 3, Caller ID is analogous to the peephole in the door in that it allows a person to determine if he knows the caller before answering.

Furthermore, since Caller ID displays the incoming number, Caller ID will be able to assist deaf customers by providing a way to identify incoming calls they wish to answer with a telecommunications device for deaf persons. (Tr. Sims, pp. 56-57)

Caller ID will also benefit business customers. For instance, Caller ID will allow a business customer to provide a better method of securing business data in computers. Computers may be programmed to accept calls only from authorized telephone numbers which are delivered by Caller ID. In addition, Caller ID

will help deter computer hackers from calling computers because the computer would record the telephone number of the calling party. (Tr. Sims, p. 56) Caller ID will also assist Southern Bell's business customers by allowing them to identify the calling party, which should help to prevent fraud and theft. (Hearing Exhibit 22, Tab II, p. 7)

Caller ID will also benefit business customers by allowing the business customer to immediately access its records when a calling party's number is displayed in the business' computer. Such a benefit will dramatically increase the speed and efficiency of business transactions between the consumer and the business. (Tr. Sims, pp. 57-58)

The issue of whether Caller ID is in the public interest is clarified even further by the survey performed by Dr. Elseewi. The survey revealed that 62% of the customers like "Very Much" the feeling about forwarding the telephone number and 19% liked "Somewhat" the feeling about forwarding the number. In other words, 79% liked the number being forwarded. In addition, 12% were neutral and only 4% disliked the idea. (Tr. Elseewi, pp. 365-366) What was especially significant about Dr. Elseewi's study was that after the GTE Caller ID-type service was introduced in the trial area in 1990, the percentage of customers who liked the service "very much" increased from 14% to 62% and the

percentage of customers who disliked the service "very much" decreased from 8% to 2%. (Tr. Elseewi, p. 366)

Dr. Elseewi's report also revealed that 75% of the customers believed that Calling Number Forward protected one's privacy. (Tr. Elseewi, p. 370) Finally, and most significantly, Dr. Elseewi's study revealed that, among those subscribers who have the service, the Calling Number Forward service was more popular with the customers than Call Waiting and was used many times more than any other service. (Tr. Elseewi, pp. 371-373) Dr. Elseewi summarized her results:

Research indicates that Caller ID will eventually rival Call Waiting in popularity and allow consumers a greater sense of security and privacy in their homes. I would, thus, submit that the Commission should be guided in their decision by public opinion, which is that the majority perceives CLASS services to provide a protection of their privacy.

(Tr. Elseewi, p. 397)

Such results of customers' feelings about experiencing actual use of Caller ID should be given great weight by the Commission. Support for Caller ID by the public in Florida reflects Dr. Elseewi's results. At the public hearings conducted by the Commission in three locations, more people testified in support of the service than against it.

As Ms. Sims explained, Caller ID will provide substantial benefits rather than detriments. (Tr. Sims, p. 59) She noted

that for a small segment of subscribers such as law enforcement and domestic violence intervention agencies, the delivery of the telephone number associated with the calling party appears to cause particular concern. Nevertheless, as she explained, Southern Bell has adequately met the concerns of these groups and individuals by developing and offering optional blocking methods. (Tr. Sims, p. 59)

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?

Caller ID offers unique functions and benefits available from no other services including such existing CLASS services as Call Tracing, Call Return and Call Block. (Tr. Sims, pp. 66-71 and 86-88) Ms. Sims explained the unique service offered by Caller ID:

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

(Tr. Sims, p. 66) For instance, Call Tracing, a TouchStar service, allows the customer to activate the system that records the telephone number associated with the calling party. In order to activate the service, a customer must first answer the call,

hang up and then dial an access code. In accord with Southern Bell's Call Tracing tariff, G.S.S.T. A13.19.2F: "The customer is not provided with the traced number."

As Ms. Sims testified, Southern Bell performed a survey of customers who subscribe to Call Tracing and discovered that there was a strong desire by the subscribers to see the telephone number. (Tr. Sims, p. 330) Unlike Call Tracing, Caller ID would immediately disclose the calling telephone number to the called party which would allow the called party to make an informed decision as to how to answer a call or whether or not to answer a call at all.

Other TouchStar services, which compliment but are not substitutes for Caller ID, are Call Block and Call Return. Call Block allows a customer to block the last number called and to block particular numbers designated by the customer. Unlike Caller ID, Call Block will not identify the number of the party making a call. Also, unlike Caller ID, Call Block works only after the customer has completed the call. (Tr. Sims, p. 67) Call Return redials the last number that was called. Unlike Caller ID, Call Return does not allow the customer to record the telephone numbers of attempted calls and calls received prior to the last call.

Southern Bell believes the rate structure for the each of its existing TouchStar services is appropriate for residential and

business applications. Nevertheless, several parties, including Public Counsel, suggested that Call Tracing be provided on a usage basis of \$1.00 per call, as opposed to its existing flat rate fee. As explained by Ms. Sims, Call Tracing was offered on a monthly flat rate basis for two reasons: (i) the rate structure reflected customer preference, and (ii) the rate structure generated enough revenues to cover the cost of the Call Tracing and thereby provide contribution to support basic local exchange service. (Tr. Sims, p. 90)

If Call Tracing were offered at \$1.00 per call, as suggested by Public Counsel, it would not be priced to cover the cost of the service. (Tr. Sims, pp. 90-91 and 235-236) Ms. Sims demonstrated by use of analogy to an alarm service why the monthly flat rate was the proper rate structure for Call Tracing:

With an alarm service, you buy an alarm service and you pay a monthly fee for it in hopes that you never have to use it, but you pay that monthly fee. Now, if you had to do it on a per-activation basis, I doubt there would be very many alarm companies in business.

(Tr. Sims, p. 236)

While some states, such as New Jersey, offer Call Tracing at \$1 per call, those states offer services that differ significantly from Southern Bell's Call Tracing service. (Tr. Sims, pp. 343-345) For example, in New Jersey when Call Tracing is activated, New Jersey Bell instructs the customer through a

recording to call the local law enforcement department. When a Southern Bell customer uses Call Tracing in Florida, the customer is instructed to call the Southern Bell Annoyance Call Center. Considerable time is spent by Southern Bell's Annoyance Call Center employees investigating the Call Tracing report and taking the appropriate action based on that investigation. It is obvious, therefore, that the active role of Southern Bell in providing Call Tracing causes Southern Bell's costs to be more than New Jersey's costs. (Tr. Sims, pp. 345-347) In summary, Southern Bell believes that its rate for Call Tracing of \$4 per month for residential customers and \$5.00 per month for business customers is the most appropriate rate and adequately covers Southern Bell's costs.

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

In New Jersey, where Caller ID has been in effect since October 1988, 50 percent of the Caller ID customers were non-published telephone subscribers as of October 31, 1989. (Tr. Sims, p. 61) The New Jersey data on this issue are significant because the data reflect actual effects as opposed to speculation:

...[E]vidence that we have gotten from the New Jersey reports [regarding non-

published customers] to the New Jersey Commission [and] they do not offer blocking in New Jersey [is that] Caller ID appears to be working well. They haven't had a lot of disconnections on nonpub customers. They haven't had an outstanding number of complaints. That's factual data. I mean, that's actually what is happening today.

(Tr. Sims, p. 209)

Southern Bell's tariff describes the terms and conditions by which non-published listings are provided:

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 the calling party.

(Tr. Sims, p. 60; G.S.S.T. A6.4-5) Because of technological constraints, customers purchasing non-published listings have traditionally not had cause to believe that their numbers might be automatically transmitted over the telephone network. In recent years, however, technological advances have permitted Southern Bell and other telephone companies to be able to transmit the number associated with the calling party to the called party for purposes of identifying the calling party. For example, with the development of E911 the telephone company is able to transmit the number associated with the calling party to a local government agency. In order to clarify that non-published listings would be transmitted to the governmental entity, Southern Bell revised its tariff. (Tr. Sims, pp. 61, 261) Advances in telecommunications

technology have also permitted interexchange carriers to transmit the number associated with the calling party to the called party. (Tr. Sims, p. 268) With the advent of Caller ID, Southern Bell believed it was appropriate to revise its tariffs again in order to clarify that the number associated with the customer subscribing to the non-published listing would be transmitted to the called party. (Tr. Sims, p. 61)

If a calling party subscribing to a non-published listing does not wish to transmit the number associated with his service to the called party, the calling party will be able to use existing technical limitations to prevent the number from being transmitted. These options include, for instance, calling through an operator, calling through an answering service, using RingMaster[®] or using outgoing only line. (Tr. Sims, p. 201)

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

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

Because of technological and economic constraints, there exist certain methods by which a caller may complete a call without causing the number associated with the caller's service to be transmitted to the called party. (Tr. Sims, pp. 64-66) The calling party may dial "0" and either use a credit card or request the operator to dial the telephone number. Either method will cause a "0" to be transmitted to the called party. (Tr. Sims, p. 113) In addition, the caller may use RingMaster service to cause a non-published telephone number to be transmitted to the called party. If the called party uses the transmitted number to call the customer back, the customer will know by a distinctive ring that the transmitted number is being used and can decide on how or whether to answer the telephone. (Tr. Sims, p. 115)

The calling party may also use an outgoing only line in order to prevent the called party from returning calls to the calling party. (Tr Sims, p. 65) Furthermore, the calling party may use a cellular telephone which will transmit a zero or use a pay telephone which will transmit the number associated with the pay telephone. Finally, the calling party may call through a third party, such as an answering service or office PBX, in order to prevent the number associated with a calling party from being

transmitted to the called party. (Tr. Sims, pp. 65) In the rare circumstances in which the calling party requires that the telephone number not be transmitted, these technical limitations to Caller ID will sufficiently protect his anonymity.

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

Southern Bell believes that in order to maximize the societal benefits offered by Caller ID to all customers, both those who subscribe and those who do not subscribe to the service, there should be no universal blocking. (Tr. Sims, p. 62)

Southern Bell's witness stated that:

I think with [the availability of universal blocking]...that the [Caller ID] service will be affected by the fact that more and more people will use...blocking. And the wrong people.

(Tr. Sims, p. 208) In addition, a study performed by Pacific Bell of California revealed that universal per call blocking would devalue Caller ID by 30 percent. Most importantly, Southern Bell believes that universal blocking will obliterate one of the major benefits of Caller ID service: the curtailing or eliminating of abusive, threatening, harassing, and annoying calls. (Tr. Sims, p. 109)

When questioned why Southern Bell should not offer Caller ID with universal blocking as proposed by Central Telephone Company of Florida, Ms. Sims explained:

[R]ight now, the experience that's out there [in other states] has been Caller ID with no blocking as [sic] a successful service.

(Tr. Sims, p. 295) In deciding whether or not to require universal blocking, the Commission should consider that Caller ID without blocking has been successfully offered in six states to date. With the exception of one state, Maryland, Caller ID is still offered without blocking, with no reported adverse consequences. Currently, there are no states in which Caller ID with blocking is being provided on a statewide basis. (Hearing Exhibit 23) Even in Maryland, where just recently the Maryland Public Service Commission required the local exchange companies to provide per call blocking for Caller ID, more than 60% of public witnesses were apparently in favor of leaving Caller ID as it had been provided. (Hearing Exhibit 23, p. 4)

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

Pursuant to the Commission's directive set forth in Order No. 22704, Southern Bell participated on a task force with law

enforcement in order to develop solutions to accommodate their special safety needs. Southern Bell believes that based on its discussions with law enforcement, the special arrangements offered by Southern Bell to law enforcement agencies would adequately meet their safety concerns. (Hearing Exhibit 26)

The spokesman for the task force, Mr. Ron Tudor, testified that law enforcement believed that Caller ID with universal blocking was necessary in order to avoid jeopardizing police activities. Southern Bell, however, believes that the evidence from states where Caller ID is actually in operation shows that Mr. Tudor's position is contrary to the best interests of law enforcement officers. For instance, Colonel Clinton Pagano, former director of the New Jersey State Police, presented testimony to the U.S. Senate regarding Caller ID. As authorized by the Governor of New Jersey and the Attorney General of the State of New Jersey, Colonel Pagano testified that Caller ID without per call blocking was the best method of providing the service:

I urge this Committee to reject the suggestion that blocking is required to safeguard undercover police activities. In fact, blocking would not serve as an effective safeguard for undercover officers, since blocking itself could raise suspicions of the person to whom the call was placed. Knowledgeable law enforcement groups actively involved in undercover operations will tell you that blocking would be the equivalent of sending the target of an undercover

investigation a message that police are calling.

* * *

Reality is, and has been, that you have to protect your undercover people with the thought in mind that they are being monitored every minute. Consequently, some law enforcement agencies have used "safe" phones for undercover activities long before the introduction of Caller ID. This practice will continue in a Caller ID environment. In addition to the use of "safe" phones, the law enforcement community in New Jersey has received assistance from a telephone company for other arrangements to satisfy law enforcement requirements. As a result, state, local, and federal law enforcement agencies in New Jersey have successfully adapted to Caller ID without blocking. Significantly, this has not been difficult.

(Hearing Exhibit 22, Attachment C, pp. 3-5) (emphasis added)

In addition, the Special Agent in charge of the North Carolina Federal Bureau of Investigation, Mr. Paul Daily, and the President of the North Carolina Police Chief's Association, Mr. Joe Puett, testified before the North Carolina Public Service Commission that Caller ID would be appropriate if only limited blocking were made available to certain entities such as law enforcement. (Hearing Exhibit 26, Attachment 4) Moreover, it is significant that in the recent hearing on Caller ID before the Maryland Public Service Commission, law enforcement was noticeably absent from the list of parties appearing at the hearing.

(Hearing Exhibit 23, p. 7) It should be inferred that the absence

of law enforcement from the Caller ID hearing indicated that law enforcement in Maryland was satisfied with Caller ID without universal blocking.

In addition, the International Association of Chiefs of Police passed a resolution supporting Caller ID without blocking:

...opposes any Legislation, state or federal, requiring telecommunications companies to offer call blocking, as this effectively negates the major benefits to be derived from Caller ID.

(Tr. Tudor, p. 865) Also, during the Florida public hearings on Caller ID, several law enforcement witnesses supported Caller ID as offered by Southern Bell. (Miami Public Hearing Transcript, pp. 101-104 and 112-166)

Moreover, based on Mr. Tudor's testimony, it is not clear whether he was testifying on behalf of the law enforcement organizations for which he claimed to be speaking. Mr. Tudor implied in his testimony that he was testifying on behalf of all of Florida's law enforcement agencies. For example, he stated:

In addition, members of the...Florida Sheriffs Association...indicated their support for the position of the task force.

(Tr. Tudor, p. 814) When questioned during the hearing, however, Mr. Tudor testified that he had not contacted the Florida Sheriffs Association to confirm whether the association supported his testimony:

Q. Did you confirm....that the Florida Sheriffs' Association supported your position as set forth in your testimony?

A. No sir.

(Tr. Tudor, p. 868)

Furthermore, during the course of the task force negotiations, Southern Bell offered to provide law enforcement with several arrangements in order to alleviate law enforcement safety concerns. The arrangements included:

1. The use of a calling card in order to transmit a zero at no charge;
2. The use of access dialing arrangements at no charge;
3. The use of calling party number revision at no charge; and,
4. The ability to transmit a Southern Bell pay telephone number from any location at Southern Bell's cost.

(Hearing Exhibit 26; Tr. Tudor, pp. 883-885) Although Southern Bell's formal offer, which was presented to Mr. Tudor as the spokesman of the task force, seemed to satisfy many of law enforcement's safety needs, it is most puzzling that Mr. Tudor did not recall that Southern Bell offered the special arrangements until he was presented a document at the hearing that "refreshed his recollection". (Tr. Tudor, p. 883) This poor recollection of such a significant offer was apparently indicative of the spokesman's representations to other law enforcement entities

throughout Florida about Caller ID and Southern Bell's offer of special calling arrangements. (Tr. Tudor, p. 885)

Southern Bell maintains that, based on its discussions with law enforcement and the statements made by law enforcement officers such as Colonel Pagano, law enforcement would receive the maximum benefits from Caller ID if that service is offered without universal blocking. Southern Bell also believes that the special telecommunication arrangements should provide law enforcement with more than adequate protection. (Hearing Exhibit 26, pp.1-3)

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

Southern Bell has offered to provide free optional per line blocking to entities or individuals that establish that the divulgence of their telephone numbers could cause personal harm. (Tr. Sims, p. 74) As explained below, Southern Bell has properly addressed the concerns of these persons.

The witnesses associated with domestic violence entities were concerned that they would be required to "certify" that certain individuals were battered women and that this would be a difficult, if not impossible task. (Tr. Brown, p. 981; Tr. Phoenix, p. 950) The witnesses also testified that children of the battered women might forget to use the blocking code when

calling the abuser, whereby revealing the battered woman's number to the abuser. (Tr. Phoenix, p. 987) Another concern was that battered women calling the abuser from a telephone other than the battered woman's telephone would not be able to use call blocking. (Tr. Dunn, p. 1005)

Southern Bell believes that various domestic violence agencies will be able to provide Southern Bell with the names of individuals requiring optional blocking for Caller ID. (Tr. Sims, p. 81) Because domestic violence victims must continually be on their guard against their abusers in every area of their lives, Southern Bell posits that if a victim is with a friend or family member, the victim will know before she makes a call to the abuser that she should take proper steps to not transmit the telephone number. (Tr. Sims, p. 82) With regard to the problem of young children calling the abuser and causing the telephone number to be revealed, Southern Bell's proposal would allow the abuse victim to obtain free per line blocking. (Tr. Sims, p. 64) This would obviate the need to employ any blocking code. Thus, the provision of Caller ID as proposed by Southern Bell should not exacerbate the already unfortunate situation of the victim of domestic violence.

Issue 12: Is Caller ID in the public interest?

As thoroughly explained in Issue 5, Caller ID will provide numerous benefits to both residential and business customers and thus is clearly a service in the public interest. (Tr. Sims, pp. 52-53)

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?

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.

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

1. The entity should establish that its business is law enforcement or one 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 is prepared to file this revised tariff immediately and believes that the effective date of such a tariff revision should be within sixty days of the date of the Commission order.

CONCLUSIONS

Caller ID service is the latest addition to TouchStar service and makes possible the delivery of the originating telephone number. This capability can be of enormous benefit to society through the resulting decrease in abusive, harassing, annoying and threatening calls. Caller ID service will also be of assistance to law enforcement and crisis intervention personnel in eliminating bomb threats and false fire alarms and assisting in emergency matters such as suicide threats. Finally, Caller ID increases the call management capability of subscribers by

permitting customers to screen their calls before answering, thus returning some control over the call to the called party. The most substantial evidence of Caller ID's benefits is that Caller ID is currently offered successfully in five states in a manner similar to that proposed by Southern Bell.

The benefits provided by Caller ID would be substantially diluted by the introduction of universal blocking. Universally available blocking would permit blocking of the originating number of abusive and harassing calls and would reduce the desirability of the service for business and residential customers alike. Southern Bell does not, however, oppose optional blocking for special agencies and individuals who have personal safety concerns. Southern Bell believes that its offer of blocking and other special telecommunications arrangements to law enforcement will satisfy law enforcement's safety concerns.

In conclusion, Southern Bell requests that the Commission approve the Caller ID tariff and approve limited optional blocking as recommended by Southern Bell for specified agencies, their volunteers and other individuals concerned with their personal safety.

Respectfully submitted,

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CERTIFICATE OF SERVICE
Docket No. 891194-TL

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furnished by United States Mail this 11th day of January,
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