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January 11, 1991

Mr. Steve C. Tribble, Director  
Division of Records & Reporting  
Florida Public Service Commission  
101 E. Gaines Street  
Tallahassee, FL 32399-0865

Dear Mr. Tribble:

Re: Docket No. 891194-TL  
Proposed Tariff Filing by Southern Bell Telephone  
and Telegraph Company Clarifying When a Nonpublished  
Number Can Be Disclosed and Introducing Caller ID to  
Touchstar Service

AKK \_\_\_\_\_

ABA \_\_\_\_\_

APP \_\_\_\_\_

DAE \_\_\_\_\_

① DAD \_\_\_\_\_

CTR \_\_\_\_\_

Please find enclosed the original and 15 copies of CTE  
Florida Incorporated's Post Hearing Brief for filing in  
the above-referenced matter.

ENG \_\_\_\_\_

LEO \_\_\_\_\_

LIN \_\_\_\_\_

Service has been made as indicated on the attached  
Certificate of Service. If there are any questions with  
regard to this matter, please contact the undersigned at  
(813) 228-3087.

OPC \_\_\_\_\_

POH \_\_\_\_\_

SEC \_\_\_\_\_

WAS \_\_\_\_\_

QYN \_\_\_\_\_

Very truly yours,  
*Thomas R. Parker* (R)  
Thomas R. Parker

EP:tas  
Enclosures

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*TB*  
FPSO-BUREAU OF RECORDS  
GTE Florida Incorporated  
GTE South Incorporated  
A part of GTE Corporation

DOCUMENT NUMBER 891194-TL  
00365 JAN 11 1991  
FPSO-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed tariff filing by )  
SOUTHERN BELL TELEPHONE AND TELEGRAPH ) Docket No. 891194-TL  
COMPANY clarifying when a nonpublished ) Filed: 1-11-91  
number can be disclosed and introducing )  
Caller ID to TouchStar Service )  
\_\_\_\_\_ )

POSTHEARING BRIEF OF GTE FLORIDA INCORPORATED

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POSTHEARING BRIEF OF GTL FLORIDA INCORPORATED

Pursuant to the schedule established by the Commission at the initiation of this proceeding, GTE Florida Incorporated ("GTEFL") hereby submits its posthearing brief in the above-referenced docket.

I. INTRODUCTION

Proposals to offer Caller ID service in Florida have generated a level of interest seldom associated with telephone company tariff filings.<sup>1</sup> Through a series of public hearings and written filings, a diverse array of individuals and organizations has come forward to express a variety of viewpoints on the merits of the prospective offering. In addition, the subject of Caller ID

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<sup>1</sup> GTEFL recognizes that the purpose of this proceeding is to examine Southern Bell's Caller ID tariff filing. However, several Florida telephone companies have expressed their intention to offer similar services and the outcome of this case may affect the structure of each carrier's Caller ID offering. Additionally, a company-specific discussion of the inherently generic policy and legal aspects of Caller ID would be somewhat contrived. For these reasons, this brief treats Caller ID in a broad sense, rather than focusing particularly on Southern Bell's offering. Consistent with this treatment, the term "Caller ID" herein refers to the generic CLASS calling number delivery feature, ignoring any company-specific differences in appellation.

has attracted considerable attention from both local and national media.

GTEFL believes this intense focus on Caller ID is entirely appropriate, given the broad public policy implications of the service. Discussion of Caller ID issues, however, has often been characterized by an exceptionally high degree of emotion. GTEFL urges the Commission to remain aware of this fact throughout its deliberations in this case, and to reject those elements that may cloud rational decisionmaking. Although Caller ID technology is still in the early stages of deployment throughout the country, experience from jurisdictions where the service has been initiated, as well as consumer research findings, provide a solid foundation for a sound and informed Caller ID policy in Florida.

Careful consideration of long-term telecommunications policy goals is also an essential component of a well-reasoned decision in this case. Innovative network services, such as those made possible by CLASS technology, are the building blocks of the infrastructure that will carry Florida into the Information Age. Imposing unwarranted restrictions on these emerging services before they can attain their full potential will deny the state's residents the opportunity to reap important social and economic benefits.

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For the sake of clarity, the body of this brief is divided into two major sections, designated III and IV. Section III is a

generalized, comprehensive analysis of the issues associated with the Caller ID offering. GTEFL believes this form of analysis is essential to providing a cohesive perspective on the factors central to the Commission's decision-making process in this case. Section IV sets forth GTEFL's specific responses to each issue listed in the Prehearing Order No. 23445 issued on September 6, 1990, as amended by Order No. 23445-A, dated September 19, 1990.

## II. SUMMARY OF GTEFL'S POSITION

In accordance with the factors discussed in the preceding section, GTEFL believes that Caller ID should be made available on virtually all calls. There are no federal or Florida state legal obstacles that would prevent such unrestricted Caller ID service.<sup>2</sup> Further, consumer research and experience with Caller ID demonstrate that a blocking offering is unwarranted; its implementation would impose needless costs on carriers and consumers alike.

Nevertheless, GTEFL is sensitive to concerns about Caller ID that have been voiced by witnesses for the Florida Department of Law Enforcement ("FDLE") and the Florida Coalition Against Violence ("FCADV"). GTEFL plans to offer Protected Number Service to meet the concerns of these groups and others with similar needs. In this manner, GTEFL can best accommodate those with a legitimate

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<sup>2</sup> "Unrestricted Caller ID" in this brief refers to Caller ID offered without any form of universally available blocking.

requirement for anonymity, while preserving the broad benefits of the service for the general public.

GTEFL remains firmly convinced that more generalized restrictions on calling number delivery are unwarranted and imprudent. However, should the Commission conclude otherwise, GTEFL believes an acceptable solution would be to require per-call blocking on a subscription basis. In no event should the Commission require ubiquitous deployment of per-call or per-line blocking.

### III. COMPREHENSIVE ANALYSIS

#### A. There Are No Legal Obstacles to the Introduction of Unrestricted Caller ID

##### 1. Unrestricted Caller ID Does Not Violate Any Federal or Florida State Laws

At both federal and state levels, the statutory analysis of Caller ID has focused on the potential relevance of trap and trace provisions to the service. The Florida and federal statutes regarding this matter are best treated within a single discussion, as both sets of trap and trace provisions are essentially identical for purposes of this inquiry. Each scheme defines "trap and trace" device, and then sets forth exceptions to the general requirement of obtaining a court order to install such a device. This similarity is more than accidental. In passing the Electronic Communications Privacy Act, which established the trap and trace guidelines, Congress directed the states to revise their laws to provide at least the same level of protection as the

federal law.<sup>3</sup> Pursuant to this mandate, the Florida legislature in 1988 appropriately amended Chapter 934. The revisions very closely track federal law, and appear to have been adopted without significant debate.<sup>4</sup>

The threshold question under both sets of laws is whether Caller ID service is a trap and trace device. The federal and Florida provisions 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 a device from which a wire or electronic communication was transmitted."<sup>5</sup> The plain language of the definition precludes any interpretation that would place Caller ID within its ambit. With regard to Caller ID, the equipment that displays the originating number of a caller is nothing more than a "dumb" terminal. It is incapable of capturing the electronic impulses that permit identification of incoming telephone numbers. Rather, the intelligence to do so resides in the network itself.<sup>6</sup> The service relies upon the ability of the

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<sup>3</sup> See S. Rep. No. 541, 99th Cong., 2d Sess. ("U.S. Senate Report") 49, reprinted in 1986 U.S. Code Cong. & Admin. News 3555, 3603.

<sup>4</sup> See generally Fla. Senate Staff Analysis and Economic Impact Statement, Bill No. CS/SB 585 ("Fla. Senate Analysis") (May 16, 1988).

<sup>5</sup> Fla. Stat. §934.02(21); 18 U.S.C. §3127(4) (identical to the Florida definition except for the omission of the article "a" before the second occurrence of "device.")

<sup>6</sup> This fact emerges clearly from Southern Bell witness Nancy Sims' thorough description of the operation of Caller ID at Tr. 52-54.

network to switch and transport the calling party's number across the Signalling System 7 architecture to the call recipient's terminating end office switch. Thus, the trap and trace definition simply does not coincide with the technical realities of Caller ID.

Moreover, there is no evidence that either the federal or state legislatures ever considered Caller ID-type CPE (or, for that matter, the Caller ID network function itself) in their deliberations on the trap and trace provisions. At the federal level, trap and trace devices were discussed only in the specific context of surreptitious third party use.<sup>7</sup> The Florida legislature does not appear to have independently considered the breadth of the definition, merely noting that the state "would adopt the federal requirements for application and issuance of a court order authorizing the installation and use of these devices."<sup>8</sup>

Even assuming, arguendo, that Caller ID could be deemed to fall within the definition of "trap and trace device," one or more statutory exemptions nevertheless permit lawful use of the service. The Florida and federal statutes contain several exceptions

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<sup>7</sup> See generally U.S. Senate Report. See also Congressional Research Service, Library of Congress, Memorandum on Caller Identification Telephone Equipment (Oct. 18, 1989) reprinted in 135 Cong. Rec. E783 (Mar. 22, 1990) [Attachment G to Memorandum Regarding Docket No. 891194-TI, from Div. of Comm. and Div. of Legal Services to Dir. of Records and Reporting, Fla. Pub. Serv. Comm'n ("PSC Staff Memorandum") (July 5, 1990)]

<sup>8</sup> See Fla. Senate Analysis at 2.

to the court order requirement. Under both schemes, the usual prohibition will not apply:

with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service:

(a) Which relates to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of the provider or to the protection of users of that service from abuse of service or unlawful use of service;

(b) To record the fact that a wire or electronic communication was initiated or completed in order to protect the provider thereof, another provider furnishing service toward the completion of the wire communication, or a user of the service, from fraudulent, unlawful, or abusive use of service, or

(c) Where the consent of the user of the service has been obtained.<sup>9</sup>

A strong argument could be made that all these exceptions are applicable to Caller ID.<sup>10</sup> However, section (c) is perhaps most directly germane since it is the most comprehensive. Applying language of this provision, the "user of the service" is the telephone customer who has subscribed to Caller ID. By requesting the service, the customer (or customers) at a particular location necessarily consent(s) to the telephone company's activation of

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<sup>9</sup> Fla. Stat. §934.31. The federal statutory language differs only in minor, non-substantive respects. See 18 U.S.C. §3121(b).

<sup>10</sup> See discussion of Caller ID's utility in protecting consumers from fraudulent and abusive use of telephone service, *infra*, §III.B.1.a; County of Richland v. Hamm, South Carolina Court of Common Pleas Case No. 90-CP-40-2686 (Nov. 20, 1990).

Caller ID. The fact that the introductory language to the exceptions is phrased in terms of "use of a pen register or a trap and trace device by a provider of electronic or wire communication service" is consistent with the way in which Caller ID is furnished. The telecommunications provider "uses" a "trap and trace device" in the sense that it provides the network capacity necessary to transport and identify the calling party's number so that it can be displayed on a Caller ID box. This is the only interpretation that makes sense in terms of the Caller ID feature.<sup>11</sup>

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<sup>11</sup> Legislative history provides no further insight into the meaning of the "consent" exception. The background of the federal provision merely recites, without elaboration, the substance of the exemption. See U.S. Senate Report at 46. The Florida report of the bill does not discuss any specifics of the trap and trace guidelines. See generally Fla. Senate Report.

The joint prehearing statement of the Florida Attorney General, the Florida Statewide Prosecutor, and FDLE points to a memorandum of the Library of Congress Congressional Research Service ("CRS") to support the view that "Congress did not intend to allow telephone companies to avoid the general prohibition against trap and trace devices...." Joint Prehearing Statement at 4. Examination of the cited material, however, reveals that the CRS analysis of the consent exception is based on nothing more than conjecture. CRS concedes that the exception is "obscure"; that the legislative history of the trap and trace provisions is "not specific"; and that: "The courts...might consider the privacy interest involved relatively minor and accordingly find that Congress did not intend to preclude the use of [Caller ID] equipment." See CRS Memorandum, *supra*. The memorandum admits further that "the equipment does not appear to have been specifically mentioned anywhere within [the legislative] history and its discussion of trap and trace devices involved surreptitious use of those devices by a third party, ordinarily either the phone company or the police." *Id.* A detailed discussion of the shortcomings of the CRS report is beyond the scope of this brief. However, GTEFL invites the Commission to review the CRS memo in its entirety. Through this exercise, the convoluted and speculative nature of the CRS analysis will become amply apparent.

Should any doubt remain as to the lawfulness of Caller ID in Florida, Fla. Stat. §934.03(2)(i)(1) provides an unambiguous clarification. This section states 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.

There can be no doubt that federal law requires the consent of only one party for traps of incoming numbers, since this same rule extends even to the much more intrusive practice of intercepting conversations themselves.<sup>12</sup> Through §934.03(2)(i)(1), Florida legislators explicitly declared that state trap and trace guidelines would provide no greater level of protection than federal law. A customer's subscription to Caller ID service thus provides all the consent that is needed to ground lawful use of the service under the unitary Florida and federal standard.

The view that Florida law prohibits Caller ID seems to derive primarily from a careless reading of Florida Code Chapter 934. For instance, the Florida Medical Association ("FMA") brief wholly ignores §934.03(2)(i)'s blanket exemption for trap and trace uses

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Moreover, conclusions reached in two previous CRS memoranda creating the trap and trace exceptions directly conflict with the views expressed in the memorandum discussed here. It must be remembered that the report at issue was produced by an arm of Congress at the specific request of a House member seeking to enlist support for his bill that would require universal blocking. See Kastermaier statement, 136 Cong. Rec. E782-83 (Mar. 22, 1990) (included in PSC Staff Memorandum, supra).

<sup>12</sup> 18 U.S.C. §2511(2)(c) and (d).

in accordance with federal law. In addition the FMA's misguided statutory analysis leads it to fundamentally misconstrue the nature of the legal issues associated with Caller ID. The opening sentence of the FMA brief states: "The Florida legislature has carefully delineated the circumstances and conditions under which interception of wire and oral communications may be authorized."<sup>13</sup> It then proceeds to develop its legal arguments based on this statement. The problem with FMA's approach is that Caller ID has nothing to do with either "interception" or "wire and oral communications."

The FMA has failed to recognize the key distinction between interception of communications and the capturing of a telephone number. By definition, "interception" involves the "acquisition of the contents of any wire, electronic or oral communication..."<sup>14</sup> "Contents," in turn, is deemed to mean "any information concerning the substance, purport, or meaning of that communication."<sup>15</sup> The transmission of an incoming telephone number, of course, in no way involves the meaning or substance of the communication itself. Florida courts have unequivocally

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<sup>13</sup> FMA Posthearing Brief at 1. For purposes of this discussion, it is not necessary to treat the question of the substantive accuracy of the quoted statement itself.

<sup>14</sup> Fla. Stat. §934.02(3). See also 18 U.S.C. §2510(4).

<sup>15</sup> Fla. Stat. §934.02(7). See also 18 U.S.C. §2510(8).

affirmed this basic principle, delineating the fundamental differences between the electronic or mechanical trapping of telephone numbers and the actual interception of communications.<sup>16</sup>

As such, the Barasch v. Penn. Pub. Util. Comm'n decision cited by the FMA (Posthearing Brief at 2) has no precedential value in Florida. Apparently, Pennsylvania wiretap law affords the same level of protection to telephone numbers and conversational content.<sup>17</sup> GTEFL believes this view is logically unsound. More importantly, it is at odds with Florida law which, as noted above, has traditionally distinguished between telephone numbers and communications for purposes of applying its security of communications provisions.

More relevant is a recent South Carolina Court of Common Pleas decision.<sup>18</sup> The court held Caller ID to be a lawful service, pointing to differences in Pennsylvania and South Carolina wiretapping jurisprudence. Id. at 8-10. Moreover, the case aptly explains that Caller ID, even if deemed to be a trap and trace

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<sup>16</sup> See, e.g., P.J. v. State of Florida, 453 So.2d 470 (1984) (telephone company's computer trace of an incoming call with consent of called party did not constitute statutory interception because it did not involve acquisition of the contents of the communication); Armstrong v. Southern Bell Tel. & Tel., 366 So.2d 88, 89 (1979) (a device which merely records telephone numbers dialed does not implicate statutory prohibition against interception because no eavesdropping or recording of contents of communication occurred).

<sup>17</sup> See Barasch v. Penn. Pub. Util. Comm'n, Commonwealth Court of Pennsylvania, Case No. 2270 C.D. 1989, at 7-8 (1989).

<sup>18</sup> County of Richland v. Hamm, Case No. 90-CP-40-2686 (Nov. 20, 1990).

device, falls squarely within all three exceptions to the trap and trace prohibitions under both federal and South Carolina law.<sup>19</sup>

Finally, Caller ID does not implicate any provisions concerning "wire and oral communications" as the FMA incorrectly states. A "wire communication" is an "aural transfer," while an "oral communication" is exactly what it says it is.<sup>20</sup> These definitions are wholly inconsistent with the operation of Caller ID, which effects no oral or aural transfers. In short, FMA's entire attempt to cast doubt on the legality of Caller ID is based on a severe misunderstanding of the way in which statutory definitional provisions apply to Caller ID. As such, its arguments should be given little credibility.

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Examination of statutory language and legislative history demonstrates that neither the U.S. Congress nor the Florida legislature ever intended Caller ID services and related equipment to fit within laws directed toward surreptitious surveillance. Certainly, mere conjecture and misguided statutory analyses can do nothing to alter this plain fact.

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<sup>19</sup> Id. at 7-11. As in Florida, the South Carolina state exceptions are the same as those granted by the federal Electronic Communications and Privacy Act.

<sup>20</sup> See Fla. Stat. §934.02(1), (2). See also 18 U.S.C. §2510(1), (2).

2. Unrestricted Caller ID Does Not  
Violate the Florida Constitution

The Commission's initial inquiry as to whether Caller ID violates Florida's Constitution has led to an examination of the state's "right to privacy" provision. Certain interests -- chiefly, the Florida Medical Association -- have attempted to argue that Article I, § 23 of the Florida Constitution should prevent the implementation of Caller ID service. FMA Posthearing Brief at 36. No complicated legal analysis is necessary to discover the flaw in this logic.

Article I, § 23 states, in relevant part, 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 language unambiguously proscribes only "governmental intrusion." Actions of private businesses, such as telephone companies, simply do not fall within the explicitly delineated zone of protection. The decision to develop and propose the implementation of CLASS services was, of course, wholly privately motivated. Likewise, the decision to subscribe to these services is solely within the power of the individual consumer. It would be absurd to suggest that the customary regulatory procedures necessary to obtain approval for Caller ID or any other telephone company offering could somehow transform that offering into a public activity.

Case precedent confirms this evaluation. All of the cases treating Florida's constitutionally granted privacy right involve

direct and unequivocal state activity. Representative circumstances include a state housing authority's disclosure of information provided by tenants<sup>21</sup>, the State Board of Bar Examiners' regulation of admission into the state bar<sup>22</sup>, a dispute over the constitutionality of a Florida obscenity statute<sup>23</sup>, and police use of pen registers in a criminal investigation<sup>24</sup>. The constitutional discussion in the privacy cases focuses on whether the claimed governmental intrusion under the privacy provision can meet the compelling state interest standard. This type of analysis is inapposite, if not impossible, with regard to a private company's plans to deploy Caller ID.

As a prominent commentator on Florida's right to privacy has pointed out, "[i]t is rare for constitutional measures to reach private action,"<sup>25</sup> and Article I, § 23 is no exception:

As against the government, natural persons have a self-executing right of privacy. But section 23 does not apply to intrusions on

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<sup>21</sup> Forsber v. Housing Authority of City of Miami Beach, 455 So.2d 373 (1984).

<sup>22</sup> Florida Bd. of Bar Examiners Re: Applicant, 443 So.2d 71 (1983).

<sup>23</sup> State of Florida v. Long, 544 So.2d 219 (1989).

<sup>24</sup> Shaktman v. State of Florida, 529 So.2d 711 (Fla. S.Ct. 1989). Curiously, the FMA uses the Shaktman case in an attempt to support its theory that Caller ID violates Art. I, § 23. See FMA Posthearing Brief at 3-5. FMA's description of the facts of the case proves just the opposite.

<sup>25</sup> Cope, To Be Let Alone: Florida's Proposed Right to Privacy, 6 Fla. St. U. L. Rev. 671, 726 (1978).

privacy by private individuals or businesses.<sup>26</sup>

Indeed, the legislative history of this provision reveals that a broader right of privacy that would have reached private activity was explicitly considered and rejected.<sup>27</sup>

Despite the simple and straightforward nature of the constitutional privacy analysis, the privacy debate with respect to Caller ID has often tended to become a conceptual morass. This problem stems from the fact that there is no commonly understood and accepted definition of privacy in a sociological sense. There are probably as many different conceptions of privacy -- and what constitutes an invasion of privacy -- as there are individuals in our society. As an additional complication, "privacy" has often been loosely employed to include interests that are more properly placed within the scope of anonymity.<sup>28</sup> While individual notions

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<sup>26</sup> Id. at 742, 715, 720, 725-26. Protection of privacy against intrusions by private entities is a matter for specific statutes and tort law. See id. at 726.

<sup>27</sup> See Ethics, Privacy and Elections Committee, Fla. Constitution Revision Commission, minutes of meetings, Oct. 14, 1977, at 2, 4-5; Oct. 19, 1977, at 7-8; Nov. 21, 1974, at 4-5 (cited in Cope, supra, at 723-28).

Because the Florida Constitution contains an explicit "right to privacy" provision, it is unnecessary to reach the question of Caller ID's lawfulness under federal constitutional law. Nevertheless, the answer would remain the same. In the absence of "state action" by the federal government, there can be no violation of any right to privacy deemed to exist under the U.S. Constitution.

<sup>28</sup> See discussion infra, §III.B.3.b.

of privacy figure unavoidably into public opinion as to the desirability of Caller ID, it is important to remain aware that they have no relevance to the legal analysis of the service. As pointed out above, that analysis concludes upon the determination that Caller ID is not a product of governmental intervention.

**B. Caller ID Is in the Public Interest**

By this time, the Commission has become quite familiar with the types of benefits that Caller ID offers to the consumer. Nevertheless, since the nature of these benefits lies at the heart of this inquiry, GTEFL believes they bear repeating. The following sections will review the advantages of the service and explain why universal blocking will unjustifiedly compromise the societal good to be derived from Caller ID. In addition, GTEFL will propose a solution in response to entities that have expressed concern about the potential negative effect of Caller ID on their operations.

**1. The Numerous Benefits of Caller ID Substantially Outweigh Any Claimed Drawbacks**

Caller ID is a powerful tool with the ability to serve a broad spectrum of individuals and organizations. While perceived problems with the service remain largely speculative, the benefits it offers to those who have used the service have proven to be very real. The list of residential, business, and public safety

applications continues to grow as consumers gain exposure to the service.

**a. Residential Applications**

As Southern Bell witness Nancy Sims testified, Caller ID's utility for residential subscribers lies chiefly in its call screening and management capabilities. These functions distinguish Caller ID from all other CLASS services. See Sims, Tr. 66-69, 97; Jones, Tr. 493-94; Kurtz, 543-44; Cooper, Tr. 748-49.

Consumer surveys conducted in conjunction with GTE's trial of CLASS services in Elizabethtown, Kentucky affirm Caller ID's primary value as a management and screening tool. Elseewi, Tr. 379, 430. These features are particularly valuable to disabled individuals.<sup>29</sup>

Caller ID equipment allows a customer to identify and store the numbers of incoming calls before they are answered. With the help of this feature, the call recipient may decide to respond to a particular call when it is placed or he may wait to return the call at a more convenient time. Of course, he may also elect to avoid certain callers altogether. Whether or not the number is familiar, the number display and storage allow the Caller ID subscriber to make more informed and efficient use of his telephone. Sims, Tr. 54-55. Witnesses for opponents of Caller ID

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<sup>29</sup> Losyk, Miami Hearing Tr. 104-106; Watson, Miami Hearing Tr. 203-04 (noting endorsement of unblocked Caller ID by the National Association of the Deaf.)

agree with this assessment. See, e.g., Phoenix, Tr. 955-56; Cooper, Tr. 748-49.

Caller ID has also proven to be an effective deterrent to annoying calls. For instance, Ms. Sims testified that results from New Jersey, where unrestricted Caller ID service has been available for over 2 1/2 years, reflect a 50% reduction in abusive calls to Caller ID subscribers and a 49% overall reduction in trap and trace requests, Sims, Tr. 55-56. She also noted that a New Jersey survey showed that 84% of Caller ID subscribers believed Caller ID to be a more effective means of dealing with nuisance calls than Call Tracing. Sims, Tr. 14.

Individual accounts from areas where Caller ID is available bear out the evidence of record established in this case, underscoring the great sense of relief the service can bring to a victim of telephone harassment. See Sims, Tr. 69-71. One witness who testified in favor of unblocked Caller ID before a U.S. Senate panel on Caller ID stated:

'I wanted to know if he lived next door or if he was one of my husband's business associates,' Mrs. Blazer said of a man who called her repeatedly, threatened to rape her, banged on her door and windows and vandalized her house. Call Trace wouldn't reveal that.'<sup>30</sup>

While phone company wiretaps eventually led to the caller's conviction, he re-initiated the calls upon being granted probation. The harassment finally stopped only when she was able to sign up

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<sup>30</sup> "Telephone Terrorist" Victim Urges OK for Caller I.D., The Herald Dispatch, Aug. 2, 1990, at A6.

for Caller ID when it became available in the area of Maryland.<sup>31</sup>

Testimony of witnesses in the public hearings also emphasized the unique ability of Caller ID to immediately convey vital information to targets of abusive calls. Bradley, Miami Hearing Tr. 263-56; Rasco, Jacksonville Hearing Tr. 94-95; Thibault, Miami Hearing Tr. 9-12; Valardi, Miami Hearing Tr. 60-62. Even FCADV witnesses opposing Caller ID concede that it could reveal important information about the location of a battered woman's abuser. Phoenix, Tr. 955-56; Dunn, Tr. 1013-14.

Although GTEFL recommends the use of its new CLASS Call Tracing Service for emergencies and abusive situations, the evidence of Caller ID's merit in curbing nuisance and prank calls cannot be ignored. While Call Tracing Service is advantageous because it produces the documentation essential to prosecution of obscene and harassing callers, police customarily require several calls to be traced before they will intervene.<sup>32</sup> In certain circumstances, as pointed out above, Caller ID's ability to convey information on an immediate basis is thus very desirable. Precious time could be lost in seriously threatening situations where the called party has no choice but to seek police intervention in retrieving the number and identity of the caller.

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<sup>31</sup> See id.

<sup>32</sup> Sims, Tr. 285. In addition, Call Tracing requires a customer to listen to an offensive call before hanging up and initiating the trace, and the caller's number can be lost if a new incoming call or call waiting tone is received before activation of the Call Tracing feature.

Mr. Ronald Tudor, witness for FDLE, has claimed that revealing a nuisance caller's telephone number to his victim might give rise to potentially violent confrontations should the victim succeed in locating the caller by means of his telephone number. Tudor, Tr. 827-28. To GTEFL's knowledge, no such event has ever occurred in territories offering Caller ID. See Sims, Tr. 92. While GTEFL does not and will not advise customers to confront harassing callers, the difference of opinion among law enforcement officials as to the utility of making the caller's number available to the victim must be acknowledged. For example, Mr. Tudor was unaware that the International Association of Chiefs of Police ("IACP"), passed a resolution last October which recognized that:

The ability to identify the originating number of incoming calls will increase the control citizens have over receiving unwanted calls or calls from telephones that in the past have been used for harassing, threatening, or obscene calls, thereby protecting their privacy ....<sup>33</sup>

Here in Florida, Tallahassee Police Chief Melvin Lane Tucker has affirmed the view that unblocked Caller ID is most consistent with the public interest. Tucker Direct Testimony at 4. Clinton L. Pagano, until recently the Superintendent of the New Jersey Police, agreed with this principle in testimony on Caller ID before the U.S. Senate. Mr. Pagano stressed the demonstrated value of the service for victims of telephone harassment:

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<sup>33</sup> See Parker/Tudor, Tr. 859-65.

The police simply cannot be as effective as Caller ID in addressing the day in and day out burden of harassing calls endured by our citizens. I am convinced that Caller ID without blocking constitutes an effective deterrent to these calls. In many instances, victims of telephone harassment are not interested in spending time dealing with the telephone company and the police, they just want the calls to stop. Caller ID offers the solution.<sup>34</sup>

A Melbourne, Florida, single mother who had been victimized by repeated phone threats, stated succinctly that "[P]eople that make [harassing] calls are cowards. And if you take away their cloak of anonymity they will stop." Lane, Orlando Hearing Tr. 64. Reports from New Jersey tend to prove the truth of this observation. Sims, Tr. 282-83, 335-37. Even for those who will never become victims of telephone harassment, the security and peace of mind that Caller ID can provide is an undeniable benefit. Elseewi, Tr. 379.

The deterrence value of Caller ID, of course, reaches beyond those who actually subscribe to the service. As Caller ID is deployed in a particular territory, putative annoyance callers will hesitate to carry out their malicious intentions, for fear of being identified. Sims, Tr. 56, 109, 337.

Whatever one's belief about the wisdom of revealing a harassing caller's number to his victim, it is undeniable that Caller ID subscribers will ultimately use the service as they see fit. In

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<sup>34</sup> Hearings on S.2030 Before the Subcomm. on Technology and the Law of the Senate Committee on the Judiciary, 102d Cong., 2d Sess. (1990) (statement of Clinton L. Pagano at 3).

light of this fact, the contentions of those who raise the specter of "telephone vigilantism" appear futile and unnecessarily paternalistic, as well as unduly speculative.

**b. Public Safety Applications**

From a public safety standpoint, Caller ID's potential goes substantially beyond reducing nuisance calls. Its ability to provide immediate information is especially crucial in delicate, life-threatening situations, such as bomb threats, poisonings, and suicides. Sims, Tr. 58-59, 121. With regard to this last category, an Orange County, Florida, teacher related an example where Caller ID might have been able to prevent a tragedy. Nineteen years ago, the teacher had received a call from a student threatening to kill himself. Before the teacher could talk him into a meeting, the caller hung up without revealing his location. The teacher believes that Caller ID could have been a very useful tool in this situation. Ludwig, Orlando Hearing Tr. 68-69. During the hearings, FDLE witness Tudor conceded that Caller ID's ability to locate potential suicide victims could benefit law enforcement. Tudor, Tr. 866.

Caller ID can also help in tracking false alarms and apprehending kidnappers, burglars, and other dangerous criminals. Sims, Tr. 58-59; Tudor, Tr. 866-68. Caller ID will be especially valuable in responding to emergency calls in small communities without "Enhanced 911" service. While many emergency services organizations currently use technology similar to Caller ID as

part of E911 services, Caller ID will improve effectiveness in responding to calls that are placed directly to emergency personnel, friends, or relatives, rather than E911. Once again, the public safety benefits of Caller ID have been cited by law enforcement officials around the country.<sup>35</sup> Mr. Tudor was unaware that the IACP and its member organizations have determined that the ability of the service to identify the originating number provides "crucial leads" to personnel investigating various types of crimes and "can be critical" in quickly responding to requests for emergency assistance.<sup>36</sup> The organization has thus formally resolved to "endorse and encourage[] the implementation of 'caller id' services and the swift enactment of such enabling legislation as may be necessary to allow such implementation ...".<sup>37</sup>

### c. Business Applications

Caller ID can greatly aid businesses in enhancing productivity and becoming more responsive to their customers. As a preliminary matter, it is important to recognize that delivery of the calling party's telephone number is not a novel concept in the business world. The calling party's number has traditionally been made available to interexchange carriers by means of Automatic

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<sup>35</sup> Indeed, it is instructive that when Mr. Tudor testified in Alabama, he was the only law enforcement interest opposed to Caller ID being deployed without blocking. Tudor Deposition, Ex. 21, at 96-98.

<sup>36</sup> Tr. 861-62.

<sup>37</sup> Tr. 859-65.

Number Identification ("ANI"). Expanded ANI services were made available to large companies in 1988 when the FCC allowed AT&T's Info-2 tariff to take effect.<sup>38</sup> These services are conceptually identical to Caller ID in that they reveal the originating number of a call to its recipient at the time the call is placed. ANI subscribers can use a caller's number to quickly identify him and reference appropriate databases.

Large businesses -- typically those with nationwide operations -- have been the chief beneficiary of this capability. At least one commentator has remarked that this situation is at odds with this country's concepts of social equity:

It is only the individual citizen and smaller businesses that are denied the technology when States decide that Caller-ID should not be made available to consumers or severely limited. If Caller-ID were a system 'of the people' rather than exclusively of big business, it could help equalize availability of information resources.<sup>39</sup>

As an additional salutary effect of more widespread availability of number forward technology for businesses, consumers will be better able to guard against the inadvertent disclosures of infor-

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<sup>38</sup> Info 2 Order, 3 FCC Rcd 4407 (1988).

<sup>39</sup> J. Katz, Sociological Perspectives on Caller-ID Privacy 28 (Feb. 1990). It must also be remembered that blocking will not affect calling number delivery through ANI. Blocking would thus maintain the inequity between small and large businesses.

mation that sometimes may occur today because of the low level of awareness of ANI services.<sup>40</sup>

Making Caller ID technology available to smaller businesses will increase productivity and consumer satisfaction with commercial transactions in a variety of ways. Sims, Tr. 57, 93-94; Calucci, Dania Chamber of Commerce, Miami Hearing Tr. 124; Neidhart, *id.* at 244-45. Cohen, Fla. Gold Coast Chamber of Commerce, *id.* at 58-59; Toledo, *id.* at 99-100; Catrambone, Martin County Chamber of Commerce, *id.* at 118-19. For instance, the automated billing application available now to large businesses through ANI results in an estimated annual savings of more than \$4 billion.<sup>41</sup>

This figure is an impressive indication of the additional productivity gains to be secured in making possible more prevalent business usage of calling number delivery. To this end, the IILC has remarked that: "The widespread availability of similar capabilities will serve the emerging information industry and consumers by moving the United States further into the Information Age [footnote omitted]."<sup>42</sup>

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<sup>40</sup> See Sims, Tr. 267. Through his questioning of Mr. Tudor, Commissioner Beard also made the point that the public incorrectly perceives that calls to "800" lines operated by governmental agencies are completely anonymous when, in fact, these numbers are passed by means of ANI. Tr. 906-10.

<sup>41</sup> See Information Industry Liaison Committee, Position Paper on the Issue of Calling Party Identification Privacy/Anonymity and Note 2 (Feb. 23, 1990). Estimates are based upon data generated by the FCC's Industry Analysis Division.

<sup>42</sup> *Id.* at 1-2.

Caller ID will also enhance account management and security functions. Calls to the main number of a business can be automatically routed to the correct department and matched to appropriate databases to permit automatic display of a customer's account information and profile before his call is even answered. A caller's number may be matched to location data to allow a bank, for example, to automatically inform a caller via a Voice Response Unit the location of the nearest automatic teller machine. Caller ID can provide a means of automatically routing a call to the desired database (e.g., weather or sports) of an audiotex provider. Caller ID would provide similar types of benefits to state agencies. As Department of General Services witness Glenn Mayne pointed out, the service could decrease the time necessary to identify a caller seeking the status of an application, certificate, driver's license, or legislation. Mayne, Tr. 1037.

Coupled with Personal Identification Numbers, Caller ID can provide secure access to certain software or databases. See Sims, Tr. 56-57. Or, association of Caller ID data with customer account status could block access to programs or services if the caller's account is delinquent.

Cable television companies can use Caller ID to verify accounts, subscriber telephone numbers, and individual requests for pay-per-view programs. The benefits of Caller ID for pizza parlors and other restaurant delivery services are among the most

easily identified. These businesses can use the service to sharply decrease the level of losses due to fraudulent orders. Sims, Tr. 57-58. Domino's Pizza in northern New Jersey credits Caller ID with reducing its undeliverable orders by over 90% and eliminating driver robberies. Dotson, Orlando Hearing Tr. 51.

Critics of wider business usage of Caller ID have often focused on the service's potential to aid in the generation of telemarketing lists. While this argument has a kind of instant emotional appeal, it is too simplistic to withstand scrutiny. Its premise -- that businesses will compile new lists on a call-by-call basis for their own use -- is open to serious doubt. In all likelihood, it will remain more efficient to obtain the highly detailed lists that are available today from established vendors.<sup>43</sup> Indeed, Public Counsel witness Cooper has failed to offer any support for his contentions that Caller ID's principal attraction for businesses is its list-generating potential. Cooper, Tr. 634, 595, 601, 623-24.

Even assuming that Caller ID can provide some advantages to telemarketers, it would be a mistake to conclude that these advan-

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<sup>43</sup> It bears note that such lists are becoming increasingly more accessible to all levels of business. For example, Lotus Development Corp. will soon offer "Marketplace," a collection of data on compact disks that includes information such as address, gender, age, income and spending levels for the 80 million households listed. Priced at \$695.00, "Marketplace" is specifically geared to small businesses. See The Boston Globe, Nov. 26, 1990, at 25.

tages translate into disadvantages for the consumer. For instance, Caller ID might help businesses to more effectively target consumers with particular interest in their products or services, thereby reducing consumer irritation with unwanted sales calls. Caller ID will also enable consumers to obtain the number of the telemarketer, fostering increased accountability and allowing subscribers to avoid calls from the same organization in the future. Finally, Florida has one of the most comprehensive state legislative schemes to guard against telemarketing abuses.<sup>44</sup> Viewed against this background, alarmist contentions regarding Caller ID's potential to contribute to these abuses are shown to be groundless.

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This list of advantages of Caller ID is necessarily incomplete, as the service's applications will continue to expand and evolve as the service is implemented on an increasingly broader scale. Nevertheless, even in limited deployment, Caller ID has demonstrated its great promise to secure important social and economic gains for the citizens of Florida.

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<sup>44</sup> See, e.g., Fla. Stat. §§501.021-501.055 (home solicitation sales); §501.059 (residential telephone solicitation); §365.165 (automated telephone solicitation); §365.1655 (requirements for telephone solicitation sales contracts); §365.1657 ("junk fax."). See also Sims, Tr. 89.

2. Consumers View Caller Number Identification as a Useful and Valuable Feature

One of the truest indicators of whether a service comports with the public interest is, of course, the level of consumer interest in the offering. Witness Sims noted that: "In the states where Caller ID has been approved and implemented, the response has been overwhelmingly favorable." Sims, Tr. 76, 94. Southern Bell's cross-examination of Public Counsel witness Cooper revealed that almost 60% of written comments submitted in Caller ID proceedings in Maryland supported Caller ID without universal blocking and an even larger percentage generally favored Caller ID. Tr. 742-43. Consumer surveys amply demonstrate that the public believes calling number forward to be a desirable and worthwhile feature.

GTE witness, Dr. Sue Elsewi, together with an independent research organization, has performed extensive research on consumer attitudes toward Caller ID service and the general concept of calling number delivery. This research is especially relevant since it measured attitudes toward new services both before and after exposure to them. Her data, gathered in conjunction with an Elizabethtown, Kentucky trial of GTE's version of Caller ID, show that Caller ID is overwhelmingly the most popular feature among those who have tested the service. Two test groups involved in the trial had used Caller ID. The first of these had been provided Caller ID along with twelve other SmartCall features and a special phone to activate most of these enhancements. The second

of the groups had Caller ID and the SmartCall services, but no special phone. A full 49% of the first group selected Caller ID as their favorite feature; in the second group, this figure reached 37%. Elsewi, Tr. 371-72. Overall, test participants reported a Caller ID mean usage of 23 times per week. The next frequently used service, Call Waiting, registered a mean usage of only 10.4 times per week, less than half that of Caller ID. Elsewi, Tr. 373.

Dr. Elsewi's research also tested receptiveness to the general idea of number forward. Before exposure to this technology, individuals in Elizabethtown and Lexington, Kentucky were asked about their attitudes toward it. Most respondents fell into the "neither like or dislike" (30%) and "like somewhat" (28%) categories. After experience with Caller ID service, however, the majority of individuals (62%) placed themselves in the "like very much" category. Elsewi, Tr. 366-67. In addition, dislike of number forwarding dropped dramatically from 23% to just 6%. *Id.* Moreover, a majority of respondents (55%) who had tested Caller ID described themselves as very or somewhat likely to subscribe to Caller ID if priced at \$7.00 per month. Elsewi, Tr. 377-78.

This research demonstrates that consumers are aware of the benefits that Caller ID can provide to them, and that they are eager to have the opportunity to subscribe to the service. The statistics also show that, for many consumers, the advantages of number forward delivery do not become fully apparent until after

experience with the service. This finding strongly suggests that unwarranted restrictions on the operation of Caller ID could hobble the service before consumers have the chance to become familiar with it and aware of the full range of its possible applications.<sup>45</sup>

3. Unrestricted Caller ID Will Best Serve the Public Interest

In order to derive maximum societal good from Caller ID, number delivery should be made available on virtually all calls. GTEFL thus opposes the institution of any type of universal blocking. While the company acknowledges that law enforcement and certain social services organizations may have a legitimate need to maintain their anonymity, the needs of these groups can be met by specifically targeted remedies, such as GTEFL's Protected Number Service. As explained below, the sweeping solution of universal blocking is wholly unnecessary and highly imprudent.

a. The High Costs of Blocking Are Not Justified By the Likely Demand For the Service

At this early stage, it is difficult to accurately quantify the degree to which blocking would undermine the effectiveness of Caller ID. Nevertheless, it is indisputable that some measure of Caller ID's numerous benefits will be lost through the operation

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<sup>45</sup> Experience with other innovative services illustrates this principle. Call Waiting and Call Forwarding, today two of the most popular enhanced calling features, took years to gain consumer acceptance. A relatively long period of time is often necessary for consumers to become aware of the benefits a new service can provide. See Elsewli, Tr. 418-20.

of generalized blocking.<sup>46</sup> Indeed, even Centel's witness Kurtz admitted that the per-call blocking planned by his company would reduce the value of Caller ID for the consumer. Kurtz, Tr. 540. To the extent that blocking is employed, the substantial social and economic gains produced by Caller ID will be foregone. It is important to realize, moreover, that the losses flowing from a blocking requirement are not limited solely to the diminution of the Caller ID service. Such restrictions could well send an unfavorable signal that will chill the development and implementation of novel services. Further, the broadest possible deployment and use of new network services, such as those that derive from Signaling System 7 technology, is a prerequisite to the development of an advanced information infrastructure. This principle is central to the recommendation of the Information Industry Liaison Committee that automatic calling party identification be made available on virtually all calls:

It is the IILC's view that the widespread availability of calling party identification [CPID] capabilities are critical to the evolving information industry and its customers. . . . CPID will act as a catalyst to facilitate the development of a wide array of efficiencies and new services which will benefit the public at large.<sup>47</sup>

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<sup>46</sup> See, e.g., Sims, Tr. 279-30; Radin, Tr. 442, 483-84. Pacific Bell studies indicated that universal blocking would devalue its Caller ID offering by approximately 30%. Sims, Tr. 294.

<sup>47</sup> IILC Position Paper, supra, at 1.

A decision to restrict innovative technologies before they can fully develop could thus delay the onset of a true Information Age in Florida.

Of course, the direct and more readily calculable costs of actually installing blocking capability must also be considered. The record shows that it is simply not true, as some have suggested, Cooper, Tr. 595, that blocking implementation would be virtually costless. Sims, Tr. 300-03; Jones, Tr. 507-08; Kurtz, Tr. 539-40.

Given this variety of costs and their potentially severe magnitude, the level of demand and demonstrated need for blocking would have to be very high to even consider a decision to order implementation of the service. Available data, however, demonstrate just the opposite. The fact that unrestricted Caller ID has worked well and gained widespread consumer acceptance is very convincing evidence that blocking is unnecessary. Sims, Tr. 208-09. GTE research confirms this conclusion. In follow-up interviews with residents in Elizabethtown, GTEFL's Dr. Elseewi found that most respondents (81% of CLASS test participants and 70% of non-test participants) would reveal their number on all calls. Elseewi, Tr. 390, 416-17. Among the minority who expressed a desire to sometimes conceal their number, half said this would apply to only 1%-10% of calls placed. Three-quarters of respondents would never block their number or would do so less than once a month even if there were no charge for doing so. Elseewi, Tr.

396-91. When asked which means they would most likely use to avoid forwarding their number, a majority of respondents chose an existing alternative (operator, phone booth). Elseewi, Tr. 421. Data from actual blocking trials corroborate these results. During a recent trial of US West's Caller ID offering in North Dakota, per-call blocking was used only 143 times out of a total of one million calls. Sims, Tr. 65.

Despite these statistics, there has been some attempt to argue that privacy concerns and assertedly low demand for Caller ID compel the conclusion that some form of universal blocking should be offered. Cooper, Tr. 593-636, 789-92. The principal proponent of this contention has been Dr. Mark N. Cooper, sponsored in this case by the Office of Public Counsel. Even a cursory examination of Dr. Cooper's testimony reveals the serious flaws in his argument.

Data that Dr. Cooper presents in his testimony seem to undercut his own assessment that Caller ID is perceived as a substantial threat to privacy. Figures he reports show that a total of 95% of all Florida residents believe that receiving the incoming number either increases (48%) or has no impact upon (47%) privacy. Seventy-five percent believe that forwarding their number increases (11%) or does not affect (64%) their privacy. Cooper, Tr. 607, 681.

Dr. Cooper repeatedly makes the point that "those expressing concern about revealing their number exceed those expressing

interest in the service," Cooper, Tr. 609, 604, 617, and even creates a chart showing "ratio of concern to interest." Cooper, Tr. 609. This type of comparison is utterly meaningless; it cannot provide the basis for any valid conclusions about intensity of interest in the service. Whatever the numbers on either side of the comparison, it ignores the important fact that consumers who may have some anxiety about Caller ID may nevertheless believe it is a valuable and desirable service. As detailed above and at Section III.2., supra, consumer research findings demonstrate a high level of interest in Caller ID and relatively low levels of privacy concerns with the service.

Although Dr. Cooper states that surveys dealing explicitly with the subject of blocking demonstrate a high level of demand for the service, such assertions should be given little credence. He indicates that "Pacific Bell evidence" indicates strong support for blocking. However, as Dr. Cooper acknowledged during the hearing, the Pacific Bell document he cites for this proposition contained no figures or actual survey findings. Cooper, Tr. 653. Other blocking survey data that Dr. Cooper cites from "Bell Atlantic jurisdictions" is unable to be examined or verified because Dr. Cooper withheld the underlying documents under claim of confidentiality.<sup>48</sup> Finally, as GTEFL witness Sue Elseewi has

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<sup>48</sup> GTEFL submits that the inability to examine the data upon which Dr. Cooper bases his contentions is a serious handicap for the Commission and the parties to this proceeding. Cross-examination revealed that charts and data in his testimony are not faithful reproductions of information appearing in source documents but rather the result of aggregation and/or selective

explained, the Equifax survey relied upon by Dr. Cooper is seriously flawed. Elsewi, Tr. 383-85. This is apparent even in the question reported in Dr. Cooper's testimony. That question described the number delivery feature of Caller ID, noting that "[s]ome people are worried that this will reduce privacy of telephone use, by giving people's unlisted numbers and because people will no longer be able to call help or hotlines and remain anonymous." The question then asked whether the service should be available without limitation, forbidden entirely, or offered only with blocking. Cooper, Tr. 605. Since the question gave no indication of solutions other than blocking for the concerns emphasized, the data obtained are necessarily skewed and of limited use.<sup>49</sup>

In short, only unsubstantiated assertions, unverifiable data and misguided analyses have been offered in support of a universal blocking offering. This type of material does nothing to weaken GTEFL's assessment that the likely demand for blocking fails to

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inclusion of various bits of tables and reports. Cooper, Tr. 571-72, 574-76, 578-79, 582-83, 650-51, 657-668, 669-76, 677-81, 692, 803-06. GTEFL believes the risk of mischaracterization of data as a result of this process was amply demonstrated during the hearings. *Id.* GTEFL also professes its inability to grasp Dr. Cooper's complex explanation during the hearings of why he was free to incorporate information from numerous documents into his testimony, but at the same time withhold these documents on proprietary grounds. See, e.g., Cooper, Tr. 576-78, 581-86, 587-88, 668-72, 694, 806-07.

<sup>49</sup> See Elsewi, Tr. 386-88 for a more detailed discussion of flaws in the empirical basis for Dr. Cooper's analyses, including specific examples of juxtaposition of data.

outweigh the substantial costs associated with broad restrictions on Caller ID.

b. There Is No Reason to Affirm a Blanket Right to Anonymity Through Universal Blocking

GTEFL believes that the so-called privacy interest that has been associated with the calling party is more accurately termed a desire for anonymity.<sup>50</sup> This desire has been mischaracterized by some as a kind of right. See, e.g., Cooper, Tr. 600-03, 758, 792-93. This view, however, ignores the fact that the ability to make anonymous calls is a neutral outgrowth of technology, rather than any deliberate societal determination that telephonic anonymity is desirable. Before the advent of direct dialing, it was necessary for callers to disclose their identities; only technological advances made it possible to remain anonymous. Nevertheless, social conventions still oblige a calling party to identify himself at the beginning of a call and telephone company tariffs typically make such identification mandatory.<sup>51</sup> Caller ID reinforces these already existing norms. There can be no doubt that a telephone call is an intrusion into one's home or business. While no one would seriously suggest that an individual has a right to

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<sup>50</sup> At the hearings, Commissioner Beard aptly distinguished between this anonymity interest and the privacy interest of the called party. Tr. 802.

<sup>51</sup> See, e.g., Sims, Tr. 60; Southern Bell's General Subscriber Service Tariff Section A2.2.2; GTE's General Service Tariff No. A2.2.2; GTE's Tariff FCC No. 2, Section 2.3.1; AT&T's Tariff FCC No. 1, Section 2.4.1.C.1.

physically enter another's home without first identifying himself, blocking proponents support such a right for those who seek to gain entry by means of the telephone. This position is logically untenable. GTEFL submits that the ability to control admission into one's home or office -- a true "right to privacy" -- deserves greater protection than a caller's ability to conceal his identity. This notion responds to deeply held values of our society, as explained time and again by the U.S. Supreme Court:

Our decisions reflect no lack of solicitude for the right of an individual "to be left alone" in the privacy of the home, "sometimes the last citadel of the tired, the weary, and the sick." [citing Gregory v. Chicago, 394 U.S. 111, 125 (1969); other citations omitted] . . . The state's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society.<sup>52</sup>

Witnesses at the public hearings stressed the right to control entry to one's home:

I think that the anonymity that telephone service, or intrusion into your home, has always been something that has been the dark side of telephone service. . . .I would never allow anyone in my home through the door if they were cloaked or hooded; if I didn't know

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<sup>52</sup> Carey v. Brown, 100 S.Ct. 2286, 2295-96 (1980). See also Rowan v. United States Post Office Dep't, 90 S.Ct. 1484, 1490 (1970) ("The ancient concept that 'a man's home is his castle into which not even the king may enter' has lost none of its vitality, and none of the recognized exceptions includes any right to communicate offensively with another."); Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980); FCC v. Pacifica Foundation, 438 U.S. 726, 98 S.Ct. 3026, 57 L.Ed.2d 1073 (1978); Stanley v. Georgia, 394 U.S. 557, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969).

who they were or didn't disclose their identity.<sup>53</sup>

It is inevitable that new technologies will provoke some measure of anxiety. While most people generally do not mind revealing their telephone numbers, see supra, §III.B.3.a., GTEFL does not deny that certain subscribers may sometimes feel uncomfortable about doing so. The company believes, however, that any initial trepidation will dissipate with actual exposure to Caller ID. In any case, when a subscriber makes a deliberate, well-considered decision that is essential to avoid the possibility of passing his telephone number, a number of options are available to him. These include operator-assisted and credit card calls, calls from cellular and pay phones, and call processing through answering services and office PBXs. Sims, Tr. 65-66; Jones, Tr. 496-97.

These options do not, as Public Counsel has intimated, amount to supporting blocking for a fee.<sup>54</sup> This simplistic characterization wholly ignores the differences between blocking "in the network" and already existing methods through which one can avoid passing his number. As discussed earlier, a network blocking offering would incur substantial costs for telephone companies and the public, both in the short and long term. The total costs of

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<sup>53</sup> Gordon, Miami Hearing Tr. 260. See also Robinson, id. at 273; Evans, Jacksonville Hearing Tr. 33-34.

<sup>54</sup> Office of Public Counsel Prehearing Statement at 2; Tr. 98-102.

the "non-network" solutions are much lower and, in any case, unavoidable, since consumers are free to use the means currently available to them as they see fit.

GTEFL believes that broader restrictions on the delivery of the calling number are ill-advised. Should the Commission determine otherwise, however, the company believes an Order requiring per-call blocking on a subscription basis may be acceptable. The subscription element would ensure that only those who have made an informed and deliberate decision that they do not want to reveal their numbers in certain instances would be given the ability to block. In this way, the costs of blocking can be kept to a minimum and the utility of Caller ID preserved. These objectives would be wholly unattainable in an environment of universal blocking.

(c) Protected Number Service Will Meet Legitimate Needs for Anonymity

Although there is no need to recognize a generalized right to anonymity, GTEFL acknowledges the concerns of certain groups that their anonymity must be maintained in order to avoid compromising their operations. GTEFL personnel have closely followed the Caller ID debate as it has developed in Florida and other jurisdictions as part of the Company's efforts to thoroughly understand security-related issues. Even before GTEFL filed its Caller ID tariff, it initiated discussions with the law enforcement community to allay potential anxiety about the service. Radin, Tr. 437.

GTEFL's Protected Number Service ("PNS") is the result of this educational process. PNS provides the capacity to make calls without revealing one's actual telephone number or his location. A customer will be assigned two numbers -- his current number, and a new, nonpublished number. When he places a call, the new number will appear on the recipient's calling number identification equipment. Calls back to this displayed number will trigger a long-long ring, signalling the called party that the call may be unwanted. Other, legitimate calls will ring distinctively, allowing the call recipient to recognize them as "friendly." Radin, Tr. 440-41. As detailed later in this section, PNS is an effective means of resolving anonymity concerns.

Florida Department of Law Enforcement witness, Ronald Tudor, a particularly outspoken critic of Caller ID service, continues to advocate blocking as the sole means through which police concern for anonymity can be resolved.<sup>55</sup> He has expressed the view that if Caller ID is to be permitted at all, approval must be conditioned upon the offering of universal per call blocking. See generally, Tudor Direct Testimony, Tr. 810-40; Rebuttal Testimony, Tr. 841-53.

It is important to recognize at the outset that Mr. Tudor's views are by no means typical of the law enforcement community as

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<sup>55</sup> Mr. Tudor clarified at the hearings that he does not advocate that blocking should be offered free of charge. He stated that cost is not a significant concern. Tudor, Tr. 875-76.

a whole. As noted previously, law enforcement leaders around the country have spoken out in favor of unrestricted Caller ID.<sup>56</sup>

In formulating his conclusion that blocking is the only way to retain anonymity for undercover operatives, Mr. Tudor relied upon accounts of "difficulties" faced by undercover personnel in areas where Caller ID has been made available.<sup>57</sup> However, Mr. Tudor is unable to detail the incidents he has mentioned, admitting that he lacks any firsthand knowledge of any instance in which Caller ID allegedly jeopardized law enforcement operations. Tudor, Tr. 898-99, 916; Tudor Deposition, Ex. 28, at 28-29, 107-13, 140. In any case, careful examination of these perceived problems reveals that all can be met by solutions much more limited than universal blocking.

Simple education about the initiation of Caller ID service is a basic, but essential, first step. Tudor Deposition, Ex. 28, at 66. Mr. Tudor cites an example in which he received a call in

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<sup>56</sup> See supra, §III.B.1.a.; Elseewi, Tr. 423 (citing law enforcement's favorable view of Caller ID in New Jersey and Elizabethtown, Kentucky.) The IACP resolution, which Mr. Tudor disagreed with and was unaware of at the hearings in this case, specifically opposed "any legislation, state or federal, requiring telecommunication companies to offer 'call blocking,' as this effectively negates the major benefits to be derived from 'caller id.'" Tr. 860; IACP Resolution, quoted at Tr. 865.

<sup>57</sup> Tudor, Tr. 821-22. In assessing the severity of Mr. Tudor's concerns, it is important to remember that they extend only to a certain segment of undercover officers, rather than to police operations as a whole. Tudor, Tr. 857-58; 884. In addition, local law enforcement agencies in Florida conduct their own major undercover operations with no assistance from the FDLE. Tudor, Tr. 879. These agencies typically have not expressed the level of concern with Caller ID that FDLE has. See, e.g., Easley, Tr. 870.

March 1988 from an agent in Orlando who became concerned because the informants he called were able to tell the agent the number of the telephone from which the agent called. Tudor, Tr. 822. Had the agent been aware of the existence of Caller ID service, this incident would never have occurred. In fact, it is unlikely that many officers today remain ignorant of the possibility that Caller ID is or will be implemented, given the high level of publicity surrounding the service.

GTEFL does not deny the unfortunate, but inevitable, fact that the criminal element will quickly learn to employ new technologies to its advantage. Tudor, Tr. 814, 857. The widespread use of telephone pagers and cellular telephones by drug dealers is perhaps the best known example of this phenomenon. However, just as law enforcement learned to deal with cellular technology, awareness of Caller ID will prompt officers to tailor their operations accordingly. Law enforcement officials agree that dealing with Caller ID, and even turning the service to police advantage, should not be difficult. Tallahassee Police Chief Tucker cites a number of examples in which police officers have successfully circumvented or used to their advantage new technologies with apparent potential to hinder law enforcement investigatory abilities. Tucker Direct Testimony at 1-3. While Mr. Tudor has expressed the contrary view that programs to raise awareness and provide education about Caller ID will be unduly burdensome, he

has failed to substantiate this assertion in any detail. Tudor, Tr. 924-25, 927-28; Tudor Deposition, Ex. 28, at 9-10.

As a means of supplementing educational efforts, GTEFL plans to offer Protected Number Service. The asserted problematic situations described in Mr. Tudor's direct testimony provide a convenient means to explain the utility of PNS. Mr. Tudor tells of reports from New Jersey and Virginia where suspects obtained the calling number of an informant or undercover agent from a Caller ID display. Operations were assertedly jeopardized because the return calls were answered by individuals who were not involved in the respective cases. Tudor, Tr. 822-23, 876. The ability of PNS to send a "dummy number" will prevent these types of situations from occurring. Radin, Tr. 453. Calls back to this number would be immediately identifiable as originating from a suspicious source because their ring could be readily distinguished from that of a "normal" call.

GTEFL is at a loss to understand why Mr. Tudor believes that blocking is superior to PNS for the situations he posits as troublesome for undercover operations. Mr. Tudor appears to favor universal blocking for its ability to enable officers to "blend in" with the rest of the population. Tudor, Tr. 824. However, PNS is a more desirable service even under this rationale. A blocked number will transmit a privacy indicator -- a "P", for example -- while a PNS call will display an actual telephone number. If it is true, as Mr. Tudor points out, that even the

smallest amount of suspicion could jeopardize an undercover operation, Tudor, Tr. 833-34, it appears that PNS would afford an increased ability to avoid raising undue suspicion about the origin of the call. Radin, Tr. 444-45. Additionally, while officers would need to be trained to use PNS, they would also require instruction on universal blocking in order to avoid inadvertent exposure. Tudor, Tr. 926.

Finally, among the factors Mr. Tudor cites as forming the basis for the FDLE recommendations in this proceeding is drug dealers' reported use of Caller ID to force buyers to transact business from designated telephones. Tudor, Tr. 816, 823. Blocking would in no way remedy this perceived problem and, again, would likely arouse greater suspicion than would an actual number transmitted through PNS. Drug dealers, for instance, could easily require those with whom they transact business to make unblocked calls.

In addition to FDLE, the Florida Coalition Against Domestic Violence has been an outspoken opponent of Caller ID. This group, however, has adopted an even more extreme posture with regard to blocking. Although there has been some confusion among FCADV witnesses as to the operational specifics of blocking, Brown, Tr. 975; Dunn, Tr. 1012-13, it appears that they favor the adoption of free, universal per-line blocking. Phoenix, Tr. 952, 954, 956; Brown, Tr. 987; Dunn, Tr. 1025.

As explained earlier, any type of blocking would undermine Caller ID service. Per-line blocking would subvert Caller ID to an even greater degree than would per call blocking. Although a subscriber might wish to block calls in only a very few instances, the installation of per-line blocking will take away this decision-making capacity from the consumer. This unnecessary reduction in the amount of numbers delivered through Caller ID would, of course, substantially diminish the value of the service.

Per-line blocking could also have undesirable consequences for public safety. Sims, Tr. 311-12. A call for emergency assistance that is not placed via enhanced 911 service would not pass location information, even though the caller in these instances would clearly prefer that it did.

The FCADV's reasoning in formulating their position on blocking is somewhat difficult to understand. There is little reason why any form of blocking would need to be instituted on a universal basis in order to protect the interests of battered women's shelters. The per-line blocking for shelters and volunteers that Southern Bell has offered would adequately meet their needs. Under this plan, blocking would be offered both to shelters and to volunteers at their homes. No number would be passed, so a victim could not be located through the operation of Caller ID. Since the principal objective of the calling party is to conceal her location, rather than her identity, display of a privacy indicator should not be a concern.

GTEFL's PNS service will adequately remedy the concerns of FCADV and other social services agencies, since it will not reveal any information that might be used to locate the caller.<sup>58</sup> In fact, Ms. Phoenix agreed that if PNS were made available in volunteers' homes, as well as shelters themselves, it could remedy FCADV concerns. Phoenix, Tr. 960-61. Moreover, there is no "labelling" problem associated with the service, since GTEFL will have no discretion in determining who will be given the opportunity to subscribe. See Brown, Tr. 985, 988, 990. PNS will be made available to all who ask for it. Since GTEFL will place no user restrictions on PNS, the service will also negate asserted problems with Caller ID that have been raised by the Department of Communications and the FMA.

GTEFL believes that some entities with concerns about revealing their number may not have given adequate consideration to PNS. FCADV witnesses, for example, professed limited or no knowledge of GTEFL's PNS proposal. Brown, Tr. 987; Dunn, Tr. 1015; Phoenix, Tr. 960. Should they examine PNS more closely, GTEFL believes that these interests will conclude that the service will meet their needs.<sup>59</sup> The company is, of course, willing to discuss the

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<sup>58</sup> In any case, shelter telephone numbers can easily be obtained, since they are customarily published in telephone directories. Phoenix, Tr. 957.

<sup>59</sup> Even though Centel plans to offer per-call blocking, company witness Kurtz admitted that the needs of law enforcement and social services agencies could "certainly" be met through means other than universal blocking -- for example, PNS. Kurtz, Tr. 542.

operation and advantages of PNS with any party that wishes to learn more about it.

GTEFL believes that narrowly targeted services, such as PNS, are the only appropriate answer to certain groups' needs to preserve their anonymity. Certainly, potential misuse of new technology is not a sufficient reason to deny introduction of innovative telecommunications services, or to handicap them with broad restrictions, such as blocking.

#### IV. SPECIFIC RESPONSES

ISSUE 1. For the purposes of this docket, what is the definition of Caller ID?

RESPONSE: Caller ID describes a CLASS service that delivers calling party identification information to the called party's on-premises telephone equipment, which can display that identification information or use it for other identifying purposes. Currently, the calling party identification information delivered is the calling party's telephone number, which can be delivered via either Automatic Number Identification (ANI) or Calling Number Identification (CNI).

ANI, which is provided via a trunk-side connection to the serving central office, has traditionally been used by both exchange carriers and interexchange carriers to

identify telephone numbers for billing purposes. ANI is currently provided as part of Feature Group B and D access service. ANI may also be used by interexchange carriers for non-billing purposes and by customers of interexchange carriers and local telephone companies for customer account verification and other purposes. CNI, which is provided via a line-side connection to the serving central office, is a service made available by deployment of Signaling System 7 ("SS7") to exchange carrier end offices. With SS7, CNI is delivered from the calling party's serving office to the called party's serving office and from the called party's serving office to the called party's telephone equipment. To provide CNI service, the office serving the calling party, the office serving the called party, and the interoffice telephone facilities must be equipped and interconnected with SS7 capability.

In the future, a number of alternative calling party identification methods, such as special coded identifiers or calling party names, may provide substitutes for ANI and CNI, depending on the application.

**ISSUE 2.** Is Caller ID a trap and trace device as described in Chapter 934, Florida Statutes?

RESPONSE: Caller ID does not fall within the statutory definition of trap and trace device. Fla. Stat. §934.02(21) describes a trap and trace mechanism as "a device which captures the incoming electronic or other impulses which identify the origination number of an instrument or a device from which a wire or electronic communication was transmitted." In contrast, the intelligence that enables calling number identification services to operate resides in the network itself, rather than in any instrument. Specifically, Caller ID relies upon the ability of the network to switch and transport the calling party's telephone number across the SS7 architecture to the called party's terminating end office switch.

ISSUE 3. Does Caller ID violate any federal laws or any laws of the State of Florida?

RESPONSE: Caller ID does not violate any federal or Florida state laws. The provisions of potential relevance to the legal analysis of Caller ID are the Electronic Communications Privacy Act ("ECPA"), on the federal level; and Chapter 934 of the Florida Statutes, in the state arena. The Florida statutory scheme closely tracks federal law in all respects relevant to the instant inquiry, as it was expressly revised to conform to the ECPA.

As the above response to question 2 explains, calling number identification services, such as Caller ID, cannot be categorized as trap and trace devices under Florida law. Analysis under federal law yields the same conclusion, since the ECPA definition of "trap and trace device," 18 U.S.C.A. §3127(3), is identical to that set forth in Fla. Stat. §934.02(21). Therefore, Caller ID service does not fall within either the state or federal provisions governing interception of communications. Legislative history supports this view, clarifying that these laws were intended to address surreptitious interception only. See, e.g., S. Rep. No. 541, 99th Cong., 2d Sess. 3 (1986).

Even if the Caller ID feature could be considered a trap and trace device, it falls squarely within one or more exceptions permitting use of these devices without the court order otherwise required. One of the broadest exceptions found in both the federal and state schemes allows the installation of a trap and trace device where the consent of the user of the service has been obtained. Fla. Stat. §934.31(2)(c); 18 U.S.C.A. 3121(b)(3). Under the only plausible reading of this provision, the consumer's subscription to Caller ID service necessarily constitutes compliance with the

statutory consent requirement. Moreover, the Florida Code explicitly permits the use of trap and trace devices as authorized under federal law. Fla. Stat. §934.03(2)(i). Since federal law requires only one-party consent for lawful interception of communications, there can be no doubt that this standard would apply to the trapping of telephone numbers, a much less intrusive practice. Under §934.03(2)(i), this same standard will apply in Florida, unequivocally permitting use of a Caller ID device upon the subscriber's consent.

**ISSUE 4. Does Caller ID violate Florida's Constitution?**

**RESPONSE:** Caller ID does not violate Florida's Constitution. Consideration of the privacy issues that have been linked with Caller ID may prompt an examination of Article I, §23 of the Florida Constitution. This section states, in relevant part, 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." The language of this section is unambiguous; it is concerned only with governmental intrusions into one's privacy. Caller ID, however, is activated upon the request of the individual subscriber and is utilized as that person chooses. Thus, the service does not violate Florida's constitutional privacy restrictions on government invasions of

privacy. On the contrary, Caller ID promotes the "right to be let alone" because it allows the consumer to accept or reject calls as he chooses.

Even if Caller ID did implicate Article I, §23, one cannot presume that any anonymity interest of the calling party supersedes the privacy interest of the called party. As set forth more fully in the following responses, a subscriber is, at various times, both a called and calling party. This factor must be considered in devising a Caller ID policy that best serves the public interest. Above all, it is essential to remember that the existence of anonymity concerns in no way compels the conclusion that the service should not be offered.

**ISSUE 5.** What are the benefits and detriments to Florida's consumers of Caller ID services?

**RESPONSE:** The benefits of Caller ID and related services are numerous. The service can provide increased privacy protection to residential subscribers, improved law enforcement and public safety capabilities, and opportunities for improved productivity and effectiveness to business customers. For example:

- Residential customers can use Caller ID to protect their privacy interests by screening calls, prioritizing calls, identifying the source of annoying or obscene telephone calls, and identifying callers who might refuse to identify themselves.

- From a security and public safety perspective, Caller ID can be used not only to identify nuisance or obscene callers, but also to track bomb threats and false fire alarms. Emergency service personnel currently use a type of Caller ID as part of E911-type services, but Caller ID could also improve the effectiveness of law enforcement and other public safety organizations in responding to emergency calls that are not placed via E911. Some states are considering using Caller ID in Telecommunications Device for the Deaf ("TDD") Relay centers so that the information would be available for an emergency or for calls subsequently sent to 911 centers, in addition to its use for billing purposes.

Businesses can use Caller ID in various ways to improve business productivity:

- Businesses can use Caller ID for call distribution. When a call is received by the main number, it can be

automatically routed to the appropriate service representative and by automatically cross-referencing the customer's telephone number to appropriate data bases, the customer's account information and profile can be automatically displayed before the call is even answered. This capability yields greater productivity and faster and more accurate responses to consumers' inquiries, since keying errors would be eliminated.

- Businesses such as pizza parlors can use Caller ID to verify phone numbers just as a pizza parlor may verify phone numbers for deliveries to eliminate prank orders and falsified information.

- In some cases, Caller ID may be matched or translated to location data to provide additional applications. A bank, for example, could indicate automatically via a Voice Response Unit to a caller calling from a pay telephone the location of the closest Automatic Teller Machine.

- Caller ID, coupled with Personal Identification Numbers, passwords, etc., can provide secure access to software or data base services or capabilities. In this case, Caller ID is a network-provided "password" that is

safe from tampering, falsification, or theft by unauthorized users.

- For cable television companies, Caller ID can permit verification of accounts, customer telephone numbers, and individual requests for pay-per-view services.

- Caller ID can provide the basis for determining what services have been selected by the incoming caller, allowing the call to be routed to an appropriate program or data base, such as selection of "weather" vs. "sports" from an audiotex service.

- Through association of Caller ID and other customer account status information, incoming callers' access to certain program or data base services could be blocked if the account is delinquent.

Concerns with respect to Caller ID service have been focused primarily on the loss of anonymity of the calling party. Some parties have expressed concern that Caller ID will compromise the security of police undercover agents. Concerns have also been expressed by some social service organizations (such as "hot lines") that the confidentiality of callers will be compromised, and

by battered spouse organizations that the location of the battered spouse will be revealed through Caller ID. Some have argued that all customers should have a choice about forwarding their number to a third party. While GTE Florida is sensitive to these concerns, as discussed in the responses to the following issues, most of the concerns can be alleviated through existing or future network capabilities.

**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?

**RESPONSE:** No existing CLASS service is able to function as an effective substitute for Caller ID. While certain other services offer similar types of advantages, none can provide the set of benefits specific to Caller ID. Perhaps most importantly, no other service can provide the unrestricted call screening function that is the primary distinctive feature of Caller ID. For instance, Call Return stores and redials only the last incoming number, while the Caller ID hardware is able to store multiple numbers. Call Block requires the recipient of an annoyance call from an unknown number to first listen to the call before adding the number to the blocking list. Further, since Call Block will not allow completion of a call from a listed number, the subscriber may

not choose to accept a call from that number only in particular instances. Call Tracing Service is a tool for emergency use, rather than a general screening device. It provides legal documentation to aid in prosecuting harassing callers. Since Call Tracing provides no means to stop offensive calls before the point at which the telephone company is permitted to disconnect service, it lacks the deterrent potential of Caller ID. Moreover, Call Tracing will not be effective in preventing calls which are not obscene, but that a caller does not want to accept, such as calls from marketing organizations.

Caller ID has none of these limitations. It gives the customer the freedom to choose how to screen his calls. The customer can choose to answer only calls from familiar numbers, he can answer all calls except those from specific numbers, or he can pick and choose when he will accept or reject calls from unrecognized numbers. In this way, the Caller ID subscriber is provided the optimal ability to be let alone from intrusive telephone calls.

The rate structures that will apply to the GTE CLASS offerings are appropriate and consistent with the particular functions of each service. Each service covers its costs, with rates set on the basis of market considerations and comparisons with other, similar services.

In short, all of the CLASS services are distinct from one another and each is tailored to address a specific demand. GTEFL believes that allowing the consumer to choose the service that best suits his needs is the only course consonant with the public interest.

**ISSUE 7.** What effect will the provision of Caller ID have on nonpublished number customers?

**RESPONSE:** Nonpublished number services are services that permit a customer to control dissemination of his or her telephone number to the public at large. Any customer subscribing to nonpublished number service should expect that listing information will not be disclosed to third parties requesting it via directory assistance or in published telephone directories. This service thus can protect the customer's privacy, to a degree, by restricting the availability of the nonpublished subscriber's telephone number to the general public, which might otherwise result in unsolicited and unwanted calls to that subscriber. Nevertheless, nonpublished numbers

are still delivered in certain circumstances. For instance, the number will be delivered through ANI and will appear on the bill of a recipient of a collect call.

The availability of Caller ID in no way affects the ability of nonpublished number service subscribers to restrict the availability of their telephone number to the general public via directory assistance or in published telephone directories. While some parties believe that Caller ID compromises the privacy of nonpublished customers, the service actually can enhance privacy by increasing the ability of nonpublished subscribers to screen unsolicited and unwanted calls before answering.

Some parties believe that calling number identification for nonpublished customers should not be delivered to the called party, since their telephone number would be made known to the called party. The premise of their position appears to be that the telephone number for these customers should not be disclosed to any third party, even when those customers initiate calls to that third party. In essence, this position is based on the

perception that the rights of the calling party supersede those of the called party. In reality, these customers are, at one time or another, both calling and called parties, and the privacy/anonymity issue should be addressed with that reality in mind.

The rights associated with nonpublished number service that preclude disclosure of telephone numbers to the general public should not be equated with any "right" to make anonymous telephone calls. In fact, tariffs have for many years advised customers that as a condition of using their telephone service, their identity must be disclosed to the called party. GTEFL believes that no legitimate expectation of anonymity currently exists when a call is initiated by any subscriber. A Commission decision that permits nonpublished or any other general class of customers to preclude the delivery of Caller ID to the called party is tantamount to concluding that the anonymity interests of the calling party are more important than the privacy rights of the called party. Any telephone customer, including a nonpublished one, can be either a called party or a calling party on any given call. Permitting a particular calling party to control Caller ID delivery directly conflicts with

that same subscriber's right to receive the calling number.

The broad delivery of calling number identification in conjunction with services such as Caller ID provides these customers with even greater control over incoming calls and would in many ways enhance their privacy.

**ISSUE 8.** What alternatives to Caller ID blocking are available and do they sufficiently protect customers' anonymity?

**RESPONSE:** Alternatives to Caller ID blocking are available that can provide calling parties some control over delivery of their primary telephone number to the called party. However, GTE Florida questions whether calling parties have the "right to anonymity" implied by this question. Certainly, individuals should have some control over intrusions into their personal lives, but such control does not suggest that anyone has a right to make anonymous telephone calls. In fact, GTE Florida tariffs and federal and state regulatory rules require that calling parties identify themselves to called parties.

GTE Florida's Protected Number Service ("PNS") can provide the calling party some control over delivery of their primary telephone number to the called party by forwarding a secondary number that, when redialed,

provides a long-long ring that can be used to identify calls from individuals who received the number via Caller ID. Legitimate calls using the primary number will trigger a distinctive ring. PNS subscribers therefore can identify calls from parties to which they have voluntarily revealed their primary number and those parties that have received the secondary number via Caller ID. Based on the difference in rings, the PNS subscribers can choose to not answer calls to the secondary number, or to answer them in a special way.

Since operator-handled calls, credit card calls, and coin telephone calls do not deliver an identifying telephone number for Caller ID service, use of these services can permit calling parties to remain anonymous, at least with respect to their telephone numbers. In the future, use of special coded identifiers or calling party names may provide calling parties control over delivery of their telephone number. GTE Florida will support industry efforts to develop such alternative solutions.

**ISSUE 9.** Should the Commission allow or require the blocking of Caller ID? If so, to whom and under what rates, terms and conditions?

**RESPONSE:** As a general principle, GTE Florida believes that the public interest is best served if some form of calling

party identification is delivered to the called party on virtually all telephone calls. A widely-available offering enhances privacy rights in general and, at the same time, promotes the development and deployment of a widely-available advanced telecommunications/information network infrastructure. Any extensive offering of services that block Caller ID delivery will significantly reduce the level of privacy available to residence subscribers, the utility of Caller ID-based services to business subscribers, and the economic viability of SS7-based services in general.

Some have argued that customers should have a choice about forwarding their number and that blocking is the only viable solution. They believe that callers will no longer be able to control when and to whom they give their telephone numbers, since Caller ID will make the decision for them. They argue that if called parties do not want to receive calls for which the number has been blocked, they have the right not to answer. An analogous argument could be made on behalf of the called party. For example, called parties should have a choice about whether they can see the number of the calling party before they answer. Callers can still control when and to whom they give their telephone numbers, by

simply not placing calls to those parties to whom they do not wish their numbers to be delivered. They have the right not to place the call.

The dilemma is that calling parties are also, at one time or another, called parties whose interests may not be best served if the number is blocked. This Commission must, therefore, balance these potentially divergent concerns and develop policy that is in the overall best interest of society.

While GTE Florida believes that the public interest is best served if Caller ID blocking is not made available on a general basis, it is sensitive to the anonymity concerns that have been expressed by various customer groups. GTE Florida will continue to work with these groups to develop solutions to their concerns with Caller ID. The company believes that most of the concerns can be alleviated through existing or future network capabilities, without implementing broader restrictions on the delivery of the calling party's number.

Should the Commission conclude otherwise, however, GTEFL suggests that an acceptable course would be an Order

requiring per-call blocking on a subscription basis. The subscription aspect will ensure that blocking will be available only to those who have made a deliberate, well-considered decision that they do not wish to reveal their numbers in certain circumstances. In this way, the costs of implementing blocking can be kept to a minimum and the utility of Caller ID service preserved. In no event should the Commission mandate ubiquitous deployment of blocking capability.

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

**RESPONSE:** As stated previously, use of Caller ID by law enforcement operations can greatly enhance some law enforcement capabilities. Caller ID can be used not only to identify nuisance or obscene callers, but also to track bomb threats and false fire alarms.

Emergency service personnel currently use a type of Caller ID as part of E911-type services, but Caller ID could also improve the effectiveness of law enforcement and other public safety organizations in responding to emergency calls that are not placed via E911.

GTE Florida understands that Caller ID has been opposed by some law enforcement agencies engaged in undercover

activities. GTE Florida is sensitive to these concerns and intends to continue to work with these agencies to develop workable solutions to the expressed concerns. GTE Florida believes that its proposed Protected Number Service will provide adequate protection in most situations, while operator-handled calls, credit card calls, and coin telephone calls may be viable solutions in other cases. Caller-activated blocking of Caller ID delivery could also be made available to enhance inaccessibility as required. However, Caller ID blocking does not control delivery of ANI and no technical means exists to control ANI delivery. PNS avoids problems raised by ANI delivery in that it will not deliver the subscriber's "real" number.

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

RESPONSE: Protected Number Service could provide number delivery control for police undercover agents, spousal abuse centers, or other special groups with justification to control delivery of their "real" telephone number. PNS would provide this control for Caller ID services based on SS7 technology, as well as for ANI-based services.

The concerns of some social service organizations (such as "hot lines") that the confidentiality of callers will

be compromised can be addressed by simply not subscribing to the Caller ID service and publicizing that fact.

For others with a special interest in controlling delivery of their number, operator-handled calls, credit card calls, and coin telephone calls may be viable solutions. Calls placed via these methods would provide number delivery control for Caller ID services based on SS7 technology, as well as for ANI-based services.

For the limited number of subscribers with compelling security concerns, such as authorized violence intervention and law enforcement personnel, limited caller-activated blocking of Caller ID delivery could be made available to enhance inaccessibility as required. However, the Commission should understand that, other than the use of PNS, no technical means exists to control problems associated with ANI delivery.

**ISSUE 12. Is Caller ID in the public interest?**

**RESPONSE:** Yes, Caller ID is in the public interest. As detailed in the previous responses, the service provides the consumer with a high level of ability to manage and control incoming calls, thereby supporting his right to be let alone. Legitimate confidentiality concerns of

law enforcement operations and personnel can be satisfied through the use of PNS, out dial-only lines, or other means.

The public policy question at issue with Caller ID service is not limited to that specific service, but has much broader implications for emerging technologies and economic development. The accelerating evolution of telecommunications and information technologies is thrusting the State of Florida, the United States, and indeed the world, into the Information Age. Continued evolution and convergence of these technologies in the future should yield a wide array of new and innovative services to benefit the consuming public and strengthen the position of the United States in the rapidly developing global economy.

Emerging technologies such as SS7 will have great social and economic benefits, but they also may affect users of telecommunications/information services in previously unanticipated ways, particularly with respect to privacy or anonymity concerns of customers. The Commission should be sensitive to the Caller ID privacy concerns that have been voiced by some, but these concerns should not be overly emphasized at the expense of the privacy

rights of other customers or the broader social and economic benefits that are made available by technological developments. Caution should be exercised when considering possible regulatory rules that may stifle technological developments that are critical to bringing Florida consumers fully into the Information Age. Regulation should be applied only when necessary to address specific, actual privacy abuses and not to discourage the innovation of new technologies that are in the public interest. Such regulation should control the conduct or abuse that gives rise to the concern, and should not attempt to "legislate" technology.

The public interest is best served if Caller ID can be made available to the called party for virtually all telephone calls. Such delivery will enhance the privacy of the called party, contribute to increased public safety, and permit new and innovative services to be brought to the marketplace.

**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?

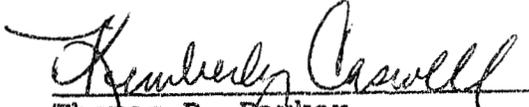
**RESPONSE:** As explained in the above response to Issue 12, the rapid development and implementation of innovative telecommunications technologies is critically important

on both social and economic levels. Advanced services, such as Caller ID, should be made widely available to consumers with the minimum possible delay. GTEFL thus believes that the Commission should permit initiation of Caller ID services on a permanent basis as of March 4, 1991, the date set for issuance of the order in this proceeding. This permission should extend to all companies who have filed Caller ID tariffs. While Caller ID service should not be subject to universal blocking requirements, PNS would be offered to law enforcement and other agencies with a legitimate need for anonymity.

V. CONCLUSION

For all of the foregoing reasons, GTE Florida Incorporated moves the Florida Public Service Commission to adopt its position on each and every issue contained herein.

Respectfully submitted this 11th day of January, 1991.

  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of GTE Florida Incorporated's Post Hearing Brief in Docket No. 891194-TL has been furnished by U.S. mail on this the 11th day of January, 1991, to the parties on the attached list.

  
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