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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION
TALLAHASSEE, FLORIDA

IN RE:

Proposed tariff filing by SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY clarifying when a non-
published number can be disclosed (T-89-506 filed
9/29/89) and introducing Caller ID to TouchStar
Service. (T-89-507 filed 9/29/89).

DOCKET NO. 891194-TL

BEFORE:

Chairman Thomas M. Beard
Commissioner Gerald L. Gunter
Commissioner Michael Wilson
Commissioner Betty Easley
Commissioner J. Terry Deason

PROCEEDINGS:

Special Agenda Conference

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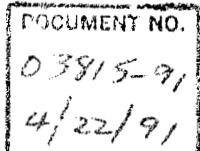
REPORTED BY:

PATRICIA L. GOMIA
Notary Public in and for the
State of Florida at Large

* * *

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4 JEFF GRISWOLD, FPSC Communications Division

5 MARK LONG, FPSC Communications Division

6
7 * * *

8 ISSUE: To consider and make final decision regarding
9 Southern Bell Telephone and Telegraph Company's tariff
10 filings.
11

P R O C E E D I N G S

1
2 CHAIRMAN BEARD: Good morning. We are here on a
3 non-controversial item.

4 MR. LONG: Commissioners, today's special agenda
5 will deal with staff's recommendation on the hearings
6 conducted on Southern Bell's Caller ID tariffs.

7 Before we start with the issues, I would just like
8 to reiterate that Caller ID is not the same technology
9 as another recent Bell proposal, Automatic Number
10 Identification or ANI. We have been exploring ANI in
11 recent weeks, and I have a staff engineer here to help
12 answer any questions that you may have on the two
13 technologies, similarities and differences. And if
14 there are no questions we can go directly to the
15 issues.

16 CHAIRMAN BEARD: Commissioners, do you have
17 initial questions or comments?

18 COMMISSIONER DEASON: Mr. Chairman, I would like
19 to make an initial comment. For the record, back on
20 March the 6th, I sent a memo to all the parties in this
21 docket advising them of my limited participation in
22 this case as an employee of the Office of Public
23 Counsel, and unfortunately nobody asked me to be
24 recused, Mr. Chairman.

25 CHAIRMAN BEARD: Everybody has gotten used to your

1 plan at this time.

2 COMMISSIONER DEASON: So I am assigned to this
3 docket. But I understand that your main interest in
4 having me assigned to this docket would be in the event
5 that there were a tie vote, that I would be the fifth
6 Commissioner and would break that tie, and I have taken
7 that assignment as such. I have thoroughly reviewed
8 staff's recommendation and am familiar with the issues,
9 however, I have not reviewed the record.

10 It's my intent not to vote today. In the event
11 that there is a tie vote, I will review the record and
12 I will break that tie. I do plan to participate here
13 today and ask questions so that I can better educate
14 myself in that unlikely event that there is a tie vote,
15 well, then I will be that, just that much more
16 knowledgeable when the time comes.

17 But I think this is the fair thing to do for all
18 of the parties involved because the other sitting
19 Commissioners have had the benefit of extensive public
20 hearings, extensive technical hearings, cross
21 examination of various experts throughout various
22 fields and with different points of view, and so I
23 think it's only fair that those Commissioners be the
24 ones to make the initial decision. If there is a tie
25 vote, then I will review the record and make my

1 decision based upon the record. So with that
2 preliminary, that is the basis of my participation in
3 this case at this time.

4 CHAIRMAN BEARD: This will be your first exposure
5 to the secret hand signal technique we use to make sure
6 that we get a two-to-two vote so you do get to.

7 COMMISSIONER DEASON: Please don't go out of your
8 way to do that.

9 CHAIRMAN BEARD: No.

10 COMMISSIONER EASLEY: I thought the newspapers had
11 solved your problem for you, Commissioner, when they
12 designated Commissioner Mark Long to break the
13 potential tie.

14 COMMISSIONER DEASON: Maybe we could do that on a
15 temporary basis.

16 CHAIRMAN BEARD: Through the kindness of my
17 Commissioners at the time, I managed to dodge that
18 bullet on a decision between a combined cycle and
19 a coal-fired unit in the annual planning hearing along
20 about the Spring of '87, and I was looking at a record
21 of about that, having to read, and I still owe them for
22 that one. Yeah. I will never forgive them. So
23 hopefully we won't put you in that box, but we'll just
24 have to see what happens.

25 Okay. Commissioners, do you all want to hear

1 comments first from staff with respect to Caller ID
2 versus ANI?

3 COMMISSIONER GUNTER: No.

4 COMMISSIONER EASLEY: I'm pretty clear on the
5 distinction.

6 CHAIRMAN BEARD: Okay. Let's, as we say, rock and
7 roll. Issue by issue, is that your pleasure?

8 COMMISSIONER GUNTER: Yeah.

9 CHAIRMAN BEARD: Okay.

10 MR. GRISWOLD: Commissioners, Item No. 1 addresses
11 the definition --

12 COMMISSIONER WILSON: Before we go on. Let me,
13 can I make a suggestion. I think that if we just sort
14 of jump to the chase here and go to issue number, I
15 guess nine would do it?

16 MR. LONG: Nine should do it.

17 COMMISSIONER WILSON: It will probably moot a lot
18 of other issues, and we can get down to the meat of
19 this pretty quickly.

20 COMMISSIONER EASLEY: Okay.

21 CHAIRMAN BEARD: Let me, and then I'll make a
22 comment because having been the, probably the greatest
23 detractor from blocking, but understanding reality, I
24 am at a point where I think we, I can certainly accept
25 blocking. I have some things that I would like to talk

1 about with that. I have come to the position of Henry
2 Geller, who, those of you who know him, out of
3 Washington D.C. his philosophy is if you've got it
4 technologically let it happen. Blocking, block the
5 blocker, block the blocking blocker, whatever
6 technology can provide, go for it, and it will sort
7 itself out.

8 And he and I had a debate on that. Obviously from
9 a national perspective I lost the debate because I
10 think that is inevitable. And I don't see -- I think
11 there are some things we may want to do with the per-
12 call versus line blocking, but I don't think there is
13 any question that that is in the cards, at least from
14 my perspective.

15 COMMISSIONER WILSON: Well, it also seems to me
16 that one of the things that we have been talking about
17 in this hearing, this proceeding that has been going on
18 for a while, which by the way I am grateful I think to
19 the parties who have participated in this, and quite
20 frankly the lengthy period of time this has taken and
21 the extensive hearings we've had, because since we
22 first considered this tariff there have been a lot of
23 states that have considered this issue, courts have
24 addressed it. We've seen professional publications
25 address this. We've seen studies generated. There's

1 been a lot of debate in congress, and different states
2 and here at the Commission, that I think has gone a
3 long way towards illuminating some of the implications
4 of this kind of technology, and I think that process
5 has probably served us well by doing that, taking the
6 time we have and having the extensive hearings we've
7 had.

8 I think we are talking about a couple of things
9 here. One is clearly privacy of both the calling and
10 the called party. And the other thing I think we are
11 talking about is the ability of people to have some
12 control over their own life.

13 We often have discussed the promises of an
14 information age and information world. Some of the
15 technology we are dealing with here is a part of that,
16 and the discussion is usually by giving consumers
17 access to services and products that are going to make
18 their lives easier and richer, or help them manage
19 their lives, educate their children, help small
20 businesses and this, that and the other.

21 And it would be to me the height of irony if we
22 hold out this kind of technology as being for consumers
23 convenience and comfort at the price of their privacy.
24 So I think we have to be real cognizant of the privacy
25 rights of both the called and the calling party.

1 I think the staff recommendation on this issue,
2 which is to allow Caller ID with free per-call blocking
3 is a good one, that with the prospect of the new
4 technology and block the blocker either CPE or software
5 will give an appropriate balance that a called party
6 can choose whether to receive calls from someone who
7 blocks their number, and a person who makes a call can
8 choose whether to reveal their number or not. So that
9 each party on each end of the line has the amount of
10 privacy that they choose to exercise with respect to a
11 call.

12 CHAIRMAN BEARD: If I can, one thing that you said
13 is bothersome, but I don't know that I'm going to flail
14 it to death. Inherently I'm bothered, if I choose to
15 get Caller ID I pay for it.

16 Let me first extract law enforcement agencies and
17 certain social agencies from this discussion, because I
18 think that is a separate entity. But the general
19 population, me as John Q. Public, if I choose to have
20 Caller ID, there is a cost associated with that
21 service, and I pay that cost plus some minimal
22 contribution perhaps, perhaps not.

23 If I choose to purchase when it's available block
24 the blocker, I suspect that I should pay some
25 associated costs because I think there is a cost with

1 providing that service. If nothing else from a moral
2 standpoint there is a cost associated with per-line and
3 per-call blocking. And I don't know what the cost is,
4 I'm sure it's minimal. But it would seem to me fair,
5 whether it's a nickel, or a dime or a quarter, I don't
6 know what it is on per-call blocking, that there should
7 be some minimal charge. There is certainly some
8 minimal cost. Again I don't know that exact figure.

9 The \$5 per-call trace is not what I'm talking
10 about. At least from that standpoint that when
11 customers generate some cost there should be some price
12 with that, and again not huge. I quite frankly am not
13 sure, I started not to even bring this up because I
14 think per-call blocking in the general population is
15 going to rapidly diminish.

16 Because the first time, as our friend from Cox
17 Publishing testified, the first time you call there,
18 and if you can block, for example, ANI moving forward
19 it's not similar, it's different, but the first time
20 that you try to get that service and don't allow that
21 information to roll forward, they simply won't provide
22 the service. So then you as the customer can decide,
23 well, I'll call them back and I won't block it this
24 time, and or I just won't be able to avail myself of
25 those services. And I think it will probably rapidly

1 diminish.

2 But I guess just from a theoretical standpoint it
3 seems in fairness if you are paying for all the other
4 services associated with that, there ought to be some
5 minimal charge to that. End of speech.

6 COMMISSIONER EASLEY: The only problem that I have
7 with that is that I'm not sure what happens in these
8 early stages until technology catches up with itself.
9 and what happens in those central offices where the
10 switches aren't available. And I'm calling out, I'm
11 assuming that I don't need to block mine because it
12 can't be transmitted anyway, is that correct, so I
13 wouldn't have a worry about a charge one way or the
14 other? Or if I'm in an exchange where I can't get
15 Caller ID, do I need to block my call going out, or
16 will my call be identified anyway?

17 MR. LONG: My understanding is that if Caller ID
18 is not available in a switch, that it either has not
19 been turned on in that switch, or that switch is not
20 capable of Signaling System 7. If it's Signaling
21 System 7 capable, they can load per-call blocking in.

22 COMMISSIONER EASLEY: A per-call charge would mean
23 nothing one way or the other unless the switch were put
24 in?

25 MR. LONG: Correct.

1 COMMISSIONER WILSON: I can't recall whether we
2 addressed in the hearing, or - don't recall reading it
3 in the recommendation, although it may be there, did
4 anyone address notifying customers or warning them that
5 SS-7 is available in your area, therefore your calls
6 are susceptible to being IDed if they are sent in the
7 event that we authorize this service?

8 MR. LONG: I don't recall anything in the record.
9 Customers in Southern Bell's territory were notified
10 last year when it was tentatively approved through a
11 bill insert.

12 COMMISSIONER WILSON: Would you contemplate that
13 if we indeed authorize per-call blocking that
14 advertisement of the availability of that service, per-
15 call blocking, would carry with it the information that
16 says your calls may be identified when you make that
17 call, if you have available per-call blocking service,
18 which is implemented by doing this, this, and this,
19 whatever?

20 MR. LONG: Correct. We -- I did not have the
21 logistics worked out of getting that included in the
22 recommendation. I do have a supplement to Issue 13
23 that outlines, I passed it out yesterday. If you do
24 not have a copy of it I have some extra copies of it
25 here, the notice requirements that staff is

1 recommending before the tariff goes in to place.

2 COMMISSIONER EASLEY: Mark, the only thing that I
3 can think of that was in the record is I remember
4 specifically asking a question about either putting
5 something in the telephone book or in some way
6 identifying those businesses that had Caller ID. The
7 question was asked, I don't remember the answer. It
8 seems to me that the answer had -- my recollection is
9 that the answer had contained in it some logistical
10 problems and some financial problems that made it kind
11 of difficult to do it that way. But it seems to me
12 that there is something in the record about identifying
13 those who did subscribe to Caller ID, if that helps you
14 any.

15 MR. LONG: I recall.

16 COMMISSIONER EASLEY: Or something someplace. It
17 may have been in one of the public hearings. I'm not
18 sure precisely where it was. But I remember asking the
19 question.

20 COMMISSIONER GUNTER: With that amendment that you
21 put out that you spoke of on 13 --

22 MR. LONG: Yes, sir.

23 COMMISSIONER GUNTER: -- that we got yesterday
24 afternoon --

25 COMMISSIONER WILSON: I haven't seen that.

1 COMMISSIONER GUNTER: It does have a bill insert
2 to the May and June bills, as well as the next
3 publication of the telephone book, have that on the
4 cover page.

5 COMMISSIONER GUNTER: I've got it.

6 COMMISSIONER DEASON: I loaned him my copy.

7 COMMISSIONER WILSON: Thank you anyway.

8 COMMISSIONER DEASON: Mr. Chairman, I have a
9 question concerning your point that if, the Commission
10 maybe should authorize some type of a minimal charge
11 for per-call blocking, assuming that the Commission
12 thinks per-call blocking is the proper way to go.
13 The Commission has gotten extensive, the benefit of
14 extensive legal analysis by various parties. At least
15 more than one of those parties presents the position
16 that there are potential problems with Florida and with
17 federal law unless there is the consent received from
18 both the calling party and the called party. And they
19 take that one step further and say the only way that
20 that consent can be obtained is if free per-call
21 blocking is authorized.

22 And I guess I'm asking the legal staff is that a
23 concern that the Commission should have as to whether
24 the per-call blocking is free, or if there's a minimal
25 charge? Could it be asserted that a minimal charge

1 violates this, violates the law that says there is not
2 consent of the called and calling party?

3 MS. GREEN: Yes, Commissioner, I think that would
4 be a very colorable argument that you make, yes.

5 CHAIRMAN BEARD: Well, you need to carry it out,
6 because I don't understand that.

7 COMMISSIONER EASLEY: I don't either. Explain to
8 me why consent could not also consist of dialing the
9 prefix number or whatever the designation is or not
10 dialing it?

11 MS. GREEN: I'm sorry, I thought his question was
12 having to pay to make your choice known.

13 COMMISSIONER DEARSON: My question was whether, if
14 there is a charge, no matter how minimal, could there
15 be an argument made that that somehow puts a hurdle
16 before people and that that could not be considered
17 consent on the calling party; that people will be
18 hesitant to pay that charge; and that we somehow, if we
19 assume that those arguments are valid, those legal
20 analysis are correct, that we somehow would be in
21 violation of the law.

22 COMMISSIONER EASLEY: I guess I just don't -- let
23 me see if I understand what you are asking, because
24 maybe that is my problem. Is your question -- I'm
25 assuming that what I thought I heard you all say was

1 that consent in your example was demonstrated by having
2 a fee attached, minimal or not, and that the
3 willingness to pay the fee constituted consent. Am I
4 getting it exactly backwards?

5 MS. GREEN: Yes, ma'am.

6 COMMISSIONER EASLEY: Thank you. That helps.

7 COMMISSIONER GUNTER: Are you ready for a motion?

8 COMMISSIONER WILSON: I think the question was
9 whether requiring payment of a fee really negates or
10 discourages the consent portion of the blocking, and
11 there is a concern that that doesn't, and one of the
12 reasons -- or that it does. One of the reasons that I
13 suggest that we move to the issue of voting on the per-
14 call blocking is that we do the per-call blocking free,
15 then you really don't have to address a number of these
16 other issues, because they don't have any relevance any
17 longer to some of this.

18 COMMISSIONER EASLEY: I misunderstood the
19 question, I apologize.

20 CHAIRMAN BEARD: I'm not going to flog the issue,
21 and I think Commissioner Gunter is ready to make a
22 motion. But I still have difficulty with the hurdle of
23 me in my home paying a fee for Caller ID, okay, to try
24 to have some governance over my privacy, okay, and a
25 more significant fee I believe on the per-call

1 blocking, or what I had envisioned. But the same is
2 not applicable on the other side.

3 I'm not going to attempt to understand that,
4 because I think that is open for debate ad nauseam by
5 whomever's legal opinion happens to be available and
6 have the microphone at that time.

7 You've got a motion?

8 COMMISSIONER GUNTER: I'm going to move staff's
9 recommendation on Issue 9, Mr. Chairman.

10 COMMISSIONER WILSON: I'll second.

11 COMMISSIONER EASLEY: Second.

12 CHAIRMAN BEARD: The motion has been moved and
13 seconded. All of those in favor signify by saying aye.
14 Opposed. Okay.

15 COMMISSIONER GUNTER: We go back to the beginning.

16 COMMISSIONER EASLEY: If we are going back to the
17 beginning, I just have one comment that I would like to
18 make on the executive summary on Page 8. And my
19 concern only is that I disagree with the staff
20 conclusion, and I'm not sure that I want the order to
21 say it quite this way. The third paragraph --

22 COMMISSIONER GUNTER: "The staff has concluded --"

23 COMMISSIONER EASLEY: "The staff has concluded
24 that although a majority of customers, sometimes the
25 vast majority," I must tell you that my feeling coming

1 out of those public hearings, and I was actually
2 keeping a little score card on the testimony was that
3 it was just about evenly split as far as numbers were
4 concerned. Now, some of that had to do with the fact
5 that you had identical groups appearing at all of the
6 hearings.

7 But nevertheless I don't want -- I'm not
8 comfortable with, let me say it that way, I am not
9 comfortable with having a statement that says,
10 "sometimes the vast majority consistently favor." I
11 did not see it that way at all. I would have told you
12 that it was about evenly divided. As a matter of fact
13 what I came down with was everybody wants to know who
14 is calling, but nobody wants their number displayed and
15 nobody wants to pay for either privilege.

16 CHAIRMAN BEARD: Well, Commissioner Long, how does
17 your telephone poll work out? I got quite a few calls
18 actually, and they probably split.

19 Okay, Issue No. 1.

20 MR. GRISWOLD: Commissioners, Item No. 1 addresses
21 the definition of Caller ID for use in this docket.
22 The staff recommends that Caller ID be defined as those
23 class services that deliver calling party
24 identification to the called party. Staff also
25 recommends this definition not include ANI.

GOMIA AND ASSOCIATES

1 CHAIRMAN BEARD: Questions, Commissioners?

2 COMMISSIONER GUNTER: No. Move it.

3 COMMISSIONER EASLEY: Move staff.

4 COMMISSIONER GUNTER: Second.

5 CHAIRMAN BEARD: Moved and seconded. Issue No. 1
6 without objection is approved.

7 Issue No. 2.

8 MS. GREEN: Issue No. 2 addresses whether or not
9 Caller ID is a trap and trace device as defined in the
10 Florida Statutes. The staff's recommendation is that
11 it technically meets that definition. A separate issue
12 is whether or not it is then illegal which comes in
13 Issue 3.

14 COMMISSIONER WILSON: Haven't we mooted this?

15 COMMISSIONER GUNTER: Do what now?

16 COMMISSIONER WILSON: Isn't this issue now moot?

17 MS. GREEN: I don't see how it can be.

18 COMMISSIONER WILSON: Let me explain why I think
19 it can be. If, as most parties in here I think agree,
20 if you have per-call blocking, that renders it legal
21 under anyone's definition of whether it's a trap, or
22 anyone's analysis of whether it's a trap and trace
23 device, so if you decide that you are going to have
24 per-call blocking, then there is really no necessity to
25 reach this issue, is there? Because the structure of

1 the service renders the question sort of irrelevant.
2 If you are not proposing to do something that is
3 claimed to be illegal or a trap and trace device, then
4 do you have to even answer the question that if you did
5 it a different way, would it constitute a trap and
6 trace device.

7 The fact of the matter is we are not doing it a
8 different way, we are doing it with blocking, which I
9 think everybody, unless I have misread all the briefs,
10 I thought everyone agreed with blocking. This wasn't a
11 question.

12 MS. GREEN: That's, in Issue 3 is the legality of
13 it. There are ways that a trap and trace device can
14 still be legally used, and that is addressed in Issue
15 3. And I believe the Florida Medical Association's
16 brief is that Caller ID is illegal no matter what you
17 try to do to fix it.

18 COMMISSIONER GUNTER: Well, my point is, I'm not
19 sure we have to reach the conclusion that staff has
20 recommended. In the State of Florida that
21 determination as to whether that is or is not in
22 violation of the law should rest with the court of
23 competent jurisdiction. And let me carry that a step
24 further.

25 We have, and I guess cursed by memory, we had

1 some companies come in for intrastate 800 service. And
2 if you are providing that number, the same process as
3 Caller ID on 800 service, there is an illegal service
4 that we have provided. And 800 service, you get the
5 number, you get the called party number.

6 Now, there is no -- there may be a distinction
7 without a difference in your mind, but in mine I'm not
8 ready to draw a conclusion that it's in violation of
9 law. I think that that is a thing for a court of
10 competent jurisdiction to make.

11 MS. GREEN: Okay. Issue No. 2, as I said, there
12 was an attempt to separate out the definitional portion
13 of the trap and trace question from the legality
14 portion of it. I do believe that you need to reach a
15 decision, however, it is your decision. And if you do
16 not believe that you need to reach it, so be it.

17 COMMISSIONER WILSON: Let me tell you what my
18 reluctance is here to go ahead and address this issue.
19 The phrase trap and trace seems to carry a lot of
20 implications for a number of things. If you ask the
21 question does Caller ID display the number of the
22 incoming call. Absolutely, yes, it does. Is it a trap
23 and trace device? Well, why do I have to answer that
24 question? Why does somebody want me to say this is a
25 trap and trace device or this isn't a trap and trace

1 device?

2 For purposes of our analysis and decision here,
3 this decision doesn't really appear to be necessary.

4 MS. GREEN: Okay. There may be a possible --

5 COMMISSIONER WILSON: There could be a conclusion
6 that the unit that you buy and the service that you
7 purchase from the telephone company displays the number
8 of the incoming call is sufficient information for
9 regulatory purposes for us to proceed with the analysis
10 and the decisions that we are doing here.

11 COMMISSIONER EASLEY: Mr. Chairman, perhaps there
12 is a solution here, because I had not had as much
13 concern with those first two issues, two and three, as
14 I had with Issue 4 for a slightly different reason, but
15 it's all the same thing. My, my argument on Issue 4 is
16 that we do not determine constitutionality.

17 COMMISSIONER GUNTER: I agree with that.

18 COMMISSIONER EASLEY: I think what has happened is
19 Issues 2, 3 and 4 are really staff's legal opinion,
20 which we should have. Those have been raised. They
21 have been briefed. And I think staff has done what
22 staff should do, that is give us their legal opinion in
23 response to those issues.

24 Maybe what we ought to do here, instead of voting
25 as to whether or not these are the answers to those

1 questions, we should acknowledge that staff has given
2 us their legal opinion on these issues and simply go
3 from there. Because I think that staff needed to do
4 that. But I would argue specifically in Issue 4 that
5 --

6 There isn't anybody that can determine
7 constitutionality except the Supreme Court. We say up
8 on the Hill that if you were for it, you said only the
9 Supreme Court decides constitutionality, and if you
10 were against it, you said it's unconstitutional. So
11 you know.

12 But I would like to perhaps treat these three as
13 staff's legal opinions, acknowledge them, tell you they
14 are well done. I'm not disagreeing with your
15 conclusion. Maybe what the problem is is voting on the
16 legal opinion.

17 COMMISSIONER WILSON: Well, I think that the
18 quality of the argument by all of the parties, and the
19 analysis, and the analysis by staff was extremely well-
20 done.

21 COMMISSIONER EASLEY: Yes.

22 COMMISSIONER GUNTER: I do, too.

23 COMMISSIONER EASLEY: I do, too.

24 COMMISSIONER WILSON: Very thorough. I thought it
25 was very good. My only, my point is here if it's

1 unnecessary for us to reach that at this point, then
2 it's unnecessary for us to reach that at this point,
3 and I would suggest that we not.

4 I don't have any problem with the discussion of
5 this, that this is what the parties' positions are, and
6 that there is some concern in this area. But the
7 reason we moved to the bottom-line issue to begin with
8 was to make the substantive decision, and then see
9 whether you had to subsequently address any of those
10 decisions that led, that preceded it here in the
11 analysis.

12 COMMISSIONER GUNTER: I agree with you both. Two,
13 three and four, I don't think there is any reason for
14 us to do anything other than say it was great reading.
15 It was very thought provoking, and well-done so you
16 could understand it.

17 CHAIRMAN BEARD: I agree.

18 COMMISSIONER EASLEY: And I don't mind saying for
19 the record that I agree with the conclusions, but I
20 think that is as far as I want to go with it.

21 COMMISSIONER WILSON: Well, the issues raise a
22 couple of kind of puzzling things to me. One is when
23 you talk about security of communications, I guess
24 conceptually I always thought that you were talking
25 about protecting communications between two parties

1 from interception by either the government or a third
2 party. And here we are talking about somebody, if you
3 use that kind of language, someone intercepting their
4 own call, which in terms of logic doesn't quite make a
5 lot of sense.

6 So the analysis that decides that you are tapping
7 your own phone or using a trapping and trace device on
8 your own phone for your end of the line just presents a
9 little conceptual problem to me, and it raises kind of
10 a puzzling issue. But I don't need to decide that to
11 decide this case because by offering or requiring per-
12 call blocking to be offered, it's not necessary to even
13 use this analysis to reach a decision, because it isn't
14 raised if you don't allow open-ended Caller ID.

15 The constitutional issue is, the discussion is a
16 good one. There may not be a right to privacy in the
17 constitution other than that prohibiting the government
18 from intruding unnecessarily in to peoples' private
19 lives. There probably ought to be. But that doesn't
20 mean that the Commission can't consider the idea of
21 privacy as a right or something that customers ought to
22 be able to exercise.

23 I think where we have a rare chance to protect
24 peoples' privacy that we ought to in fact do it. But I
25 don't know that that derives from the constitutional

1 prohibition. And the argument on trying to stretch
2 state action to include the actions of this Commission
3 is, I mean I admire the effort to make that argument,
4 but quite frankly it just doesn't, I don't think it
5 carries the day. But I don't think we need to reach
6 that either, because it's unnecessary to our decision
7 here.

8 COMMISSIONER DEASON: I would like to make a
9 comment please. I generally agree with the discussion
10 here. I tell you what my concern is as far as Issue 4
11 is concerned concerning the question of state action.
12 I agree with that analysis, but I think we need to be
13 aware that that argument exists, and we need to be
14 cognizant of how we go about, whatever decision is made
15 here today, how that is put down in an order. I think
16 that the order states something to the effect that
17 Southern Bell shall provide this service and shall
18 provide it according to the restrictions as enumerated
19 in this order. That that somehow could be construed
20 as being state action.

21 I think that we are in the process. It's my
22 understanding, if I'm wrong someone correct me.
23 There's been a tariff filed strictly voluntary by the
24 Company to provide a service, and that is being
25 reviewed at this point, and the Commission has some

1 concerns with that provision of service as proposed and
2 is contemplating some changes to that, but that is
3 strictly still at the option of the Company if they
4 want to provide that service with those restrictions.

5 Is that correct?

6 MS. GREEN: That is correct. The decision is that
7 if they want to provide it then at a minimum X.

8 COMMISSIONER DEASON: Okay. So we really are to a
9 point of the state action problem. We just need to be
10 aware of how we, what we order Southern Bell to do, if
11 anything, is that correct?

12 MS. GREEN: Yes.

13 COMMISSIONER DEASON: In reading the
14 recommendation some of the wording could be construed
15 that somehow we were ordering Southern Bell to provide
16 this service and to provide it according to the way we
17 say it has to be provided, and I'm not really sure we
18 in that position. And if I'm wrong, please correct me.
19 I just --

20 MS. GREEN: No, I think that --

21 COMMISSIONER DEASON: That is my understanding.

22 MS. GREEN: I think that argument always exists.
23 It's one that has been out there as a state action
24 question. But what convinced me of the error of that
25 argument when it's stretched is that if you accept that

1 getting involved in the proceeding, the more you are
2 involved in it makes it more and more state action,
3 then the argument turns into one that by affording due
4 process you just instantly turn it in to state action,
5 at least in my view that was the --

6 COMMISSIONER DEASON: I agree with you, and I
7 disagree with the argument that if the Commission
8 becomes involved and has extensive public hearings that
9 somehow that implies state action. I agree with you.
10 I'm just saying that we need to, when we, whatever is
11 verbalized in the order, we need to be sure that we are
12 not ordering Southern Bell to provide this service.
13 That is strictly their option.

14 MS. GREEN: That is true.

15 COMMISSIONER DEASON: I don't think -- if they
16 think that the requirements that the Commission sets
17 out somehow are so burdensome that it renders this
18 service useless, that is the decision they have to
19 make.

20 MS. GREEN: That is correct.

21 COMMISSIONER DEASON: Okay, fine. Thank you.

22 CHAIRMAN BEARD: Okay. We'll bypass Issues 2, 3,
23 and 4.

24 Commissioners, I think Issue 5 for a different
25 reason probably falls in to the same category. It's

1 informational.

2 COMMISSIONER GUNTER: It's informational, and it
3 points out the detriments and the benefits, and it
4 shows how if it went solid one way or solid another way
5 the detriments and benefits are there. But if you had
6 the per-call blocking, they are both modified. It's
7 just a good analysis, I think a good analysis of what
8 in fact takes place as a result of what the Commission
9 votes.

10 CHAIRMAN BEARD: Okay. With your concurrence
11 let's go to Issue 6.

12 COMMISSIONER EASLEY: I tell you though, before we
13 do that, Mr. Chairman, I've got to tell you for the
14 staff to take the record that we had, and I haven't
15 seen all of it in hard copy form, but it's got to fill
16 half of this room, and to be able to put it into a book
17 this size with the kind of information they've got in
18 here, I think you all did a remarkable job, and I'm
19 proud of you.

20 COMMISSIONER GUNTER: Yeah, they were able to keep
21 Walter out of this one.

22 COMMISSIONER EASLEY: Is that what did it?

23 COMMISSIONER GUNTER: Yeah. They kept Walter out
24 of it, and it got better.

25 MR. D'HAESELEER: I really did most of it myself.

1 COMMISSIONER EASLEY: Then somebody edited the
2 living daylights out of it, Walter.

3 COMMISSIONER GUNTER: Anybody that will lie will
4 steal. Move Talbott, quick.

5 CHAIRMAN BEARD: Okay. Issue No. 6.

6 MR. LONG: Commissioners, Issue 6 asks whether
7 there are any existing class services that have similar
8 functions and/or benefits as Caller ID. We have
9 recommended that no class service is identical to
10 Caller ID, however, call trace has a similar benefit
11 where annoying and harassing telephone calls are
12 concerned. And because of this similar benefit, we
13 recommend that Southern Bell re-file their call trace
14 tariff with a usage-based rate without presubscription
15 as Centel offers it now. They are not recommending a
16 rate.

17 We plan to bring it back to a later agenda with
18 cost analysis and rate analysis as we do with all
19 tariffs.

20 COMMISSIONER WILSON: Move staff recommendation.

21 CHAIRMAN BEARD: Okay. I would suggest to you,
22 you have to be careful with this thing, because I had
23 occasion to use it because my phone was being called
24 ever 30 minutes, and I would pick up, and hang up; pick
25 up, hang up, every 30 minutes. Come to find out the

1 results was an errant computer that was trying to modem
2 into my home phone and could not do that, so it would
3 hang up on me. And we finally had to get the right
4 number in to the computer so it would quit trying to
5 call and talk to me. It has benefit.

6 Issue 6 is approved without objection.

7 Issue 7.

8 MR. GRISWOLD: Commissioners, Issue No. 7 deals
9 with the effect of Caller ID on unlisted and
10 non-published numbers. The staff recommends the
11 Commission recognize that Caller ID does reduce the
12 anonymity provided by these services, however, should
13 the Commission approve per-call blocking the impact
14 will be substantially mitigated.

15 COMMISSIONER GUNTER: An informational item.

16 CHAIRMAN BEARD: Issue 7 is approved.

17 MR. GRISWOLD: Commissioners, Issue No. 8 examines
18 the alternatives to blocking. These alternatives
19 include pay telephone, operator assistance, outward
20 only lines, answering service, Ringmaster Service, and
21 cellular service.

22 COMMISSIONER GUNTER: This is just informational.

23 CHAIRMAN BEARD: Basically informational, is it
24 not?

25 MR. GRISWOLD: Yes, sir.

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1 CHAIRMAN BEARD: Nine we have handled.

2 No. 10.

3 MR. LONG: Commissioners, Issue 10 asks what
4 special arrangements, if any, should be made regarding
5 Caller ID for law enforcement personnel. The staff has
6 recommended that per-line blocking be made available to
7 law enforcement agencies' office lines at no charge.

8 COMMISSIONER GUNTER: I would move it.

9 CHAIRMAN BEARD: Okay. Without objection Issue 10
10 is approved.

11 MR. LONG: Issue 11 asks what special arrangement
12 should be made for any other group or groups --

13 COMMISSIONER GUNTER: That's the same --

14 MR. LONG: And the domestic violence --

15 COMMISSIONER GUNTER: Move it, Mr. Chairman.

16 CHAIRMAN BEARD: Without objection. Hearing none,
17 Issue 11 is approved.

18 12.

19 COMMISSIONER GUNTER: I would make that finding.
20 Move it.

21 COMMISSIONER WILSON: Move it.

22 CHAIRMAN BEARD: Okay. Issue 12 without
23 objection. Issue 12 is approved.

24 Issue 13.

25 MR. LONG: Commissioners, Issue 13 disposes of the

1 tariffs.

2 COMMISSIONER GUNTER: I would move it, Mr.
3 Chairman.

4 CHAIRMAN BEARD: Without objection then.

5 MR. LONG: The amended, there is a supplemental
6 recommendation. I just want to make sure.

7 COMMISSIONER GUNTER: That's right. My motion
8 included the staff recommendation, as well as those
9 that came on the supplement to the recommendation
10 dated April 17th.

11 MR. LONG: To address Commissioner Deason's
12 concern, if you will look at the recommendation, the
13 first sentence, "Southern Bell should be directed to
14 re-file the tariffs." You may want to put Southern
15 Bell, if electing to provide this service, should
16 re-file the tariff.

17 COMMISSIONER GUNTER: Yeah, that's right.

18 CHAIRMAN BEARD: I think that would clear the air.

19 COMMISSIONER WILSON: When we originally
20 considered this, there was a lot of discussion and
21 concern about the use to which this information would
22 be put in a commercial context, where businesses
23 subscribed to Caller ID and put a call in there. Do
24 the, do those concerns or conditions that were
25 previously expressed survive this discussion?

1 MR. LONG: Correct, that was my last note on here
2 to keep the no resale of numbers language in; that was
3 approved back in December that I did not, that I failed
4 to put here in writing, but the intent was that tariff
5 on non-published numbers, that included the no resale
6 of numbers that was approved and never given an
7 effective date, could be re-filed with current
8 information but with those same parameters in it.

9 COMMISSIONER WILSON: It seems to me that one of
10 the principles that we are dealing with or ought to be
11 dealing with here is the subscriber-specific
12 information that arises by virtue of the mere use of
13 the telephone in this fashion shouldn't be used except
14 for billing purposes probably, without the permission
15 of the subscriber.

16 MR. LONG: I understand what you are getting at
17 there. I don't know practically if this is being
18 disseminated to end users of any kind and not just to
19 telephone companies, how we would be able to enforce
20 that, but if what you are -- is what you are saying
21 then instead of having the numbers not available for
22 resale in there that the numbers to be used for billing
23 purposes only without consent, prior consent or written
24 consent or whatever kind of consent of the user.

25 COMMISSIONER WILSON: I thought that was sort of

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1 what we were getting at anyway under the resale
2 prohibition. People, you call in there and somebody
3 derives a number, and then they take and they match it
4 against another database, and they use all of this
5 stuff together to do something that you never had any
6 idea that anybody was going to do with your number.

7 It seems to me that if we have the kind of
8 concerns with privacy that has been expressed here
9 today, that that ought to be a legitimate concern of
10 the Commission about the use or misuse of information
11 that people inadvertently disclose by, just by virtu
12 of using a telephone.

13 MR. LONG: I think that the only substantial
14 difference there, which I think could be substantial,
15 is that that would preclude the company itself from
16 calling you back. If you were to call a car dealer for
17 information, he wouldn't necessarily have to resell a
18 number to have every salesman call you back for six
19 months. I believe that that inclusion would prohibit
20 even that, unless you told them that he could call you
21 back.

22 COMMISSIONER WILSON: It's sounding better and
23 better. I mean that doesn't bother me particularly.

24 CHAIRMAN BEARD: Maybe I don't understand, but
25 that is one of the luxuries of per-call blocking, you

1 can choose to preclude anyone having that option.

2 COMMISSIONER WILSON: Well, I can decide, I don't
3 mind the recipient of my phone call knowing what my
4 phone number is, but them taking it and doing other
5 things with it is, maybe the resale prohibition takes
6 care of any concerns about the use of that number.

7 COMMISSIONER EASLEY: I think the resale
8 prohibition takes care of the concerns that we have
9 gotten into so far. We talked about part of the
10 problem being the technology that is already out there
11 that already has a great deal more information about
12 you in the great database in the sky that, you know,
13 Lord knows what happens when you call an 800 number now,
14 or you call a couple of retailers and the first thing
15 they do is ask you what your telephone number is, and
16 the minute you give it to them, they've got everything,
17 including your last-born child's name on it.

18 But I thought we had, I thought the purpose of the
19 resale prohibition was to try and take care of that and
20 not get in to some of the other problems that were kind
21 of outside this specific -- in fact, didn't we talk
22 about dealing with it in ANI and dealing with it in
23 some other areas? All of a sudden you are getting into
24 a discussion that is kind of making me a little bit
25 antsy. I thought we were really talking about resale

1 for now.

2 COMMISSIONER GUNTER: Which I thought we had
3 addressed in a previous proceeding.

4 COMMISSIONER EASLEY: Yeah, I thought we took care
5 of that I guess is what I'm saying. Maybe we need to
6 acknowledge it here and refer to it. Am I forgetting
7 something or --

8 COMMISSIONER WILSON: The question that I think
9 arises is what happens to the person who doesn't want
10 to be in that great database in the sky? All they want
11 to do is make a damn telephone call.

12 COMMISSIONER EASLEY: Well, that's why the per-
13 call blocking. To the extent that you can keep out of
14 that great database with per-call blocking, you can do
15 so. There is nothing that you are going to be able to
16 do about that great database that is interstate. There
17 is nothing that you can do in this docket about some of
18 that great database that I'm aware of.

19 CHAIRMAN BEARD: It goes beyond that. You call
20 the car dealer, and you ask for some information, and
21 they say, well, I'll have to call you back. And you
22 give them your phone number verbally, the same option
23 occurs anyway. So I think all you can do is provide
24 the option to curtail that number. We have done that
25 with free per-call blocking. Beyond that there is a

1 limit to what we can do. We don't regulate car
2 dealers anyway. And I'm not sure that the resale
3 prohibition has any effect on them whatsoever.

4 COMMISSIONER EASLEY: It may not. What we have
5 talked about is somebody developing a calling list and
6 selling it like they sell a mailing list.

7 CHAIRMAN BEARD: Okay.

8 COMMISSIONER WILSON: Well, if they don't sell it
9 and they just distribute it and combine it with other
10 database you've still got the same problem.

11 COMMISSIONER EASLEY: I understand. I just don't
12 know how far we can go with it. I mean if we can think
13 of it, somebody else can think of it, and it's just a
14 matter of dealing with it when it gets here, I guess.

15 CHAIRMAN BEARD: Commissioners, what is your
16 pleasure on 13?

17 COMMISSIONER GUNTER: Move 13.

18 COMMISSIONER EASLEY: Move staff.

19 CHAIRMAN BEARD: 13 without objection.

20 COMMISSIONER GUNTER: With the change that you
21 don't direct them to re-file, you give them the
22 opportunity to re-file if they choose to.

23 CHAIRMAN BEARD: Issue 14.

24 MS. GREEN: This begins a series of interesting
25 and fun motions that were filed during the hearing.

1 Issue No. 14 addresses the Office of Public
2 Counsel's motion to consolidate consideration of the
3 Caller ID tariff filings and to conduct a generic
4 proceeding. Basically the Office of Public Counsel had
5 asked that you bring in all the local exchange
6 companies and have one massive hearing to determine
7 your policy statewide.

8 COMMISSIONER WILSON: Move staff.

9 CHAIRMAN BEARD: Staff has been moved. Do we have
10 a second? Or maybe since you were the prehearing
11 officer, I'll pass the gavel and I'll second it.

12 COMMISSIONER EASLEY: Thank you.

13 CHAIRMAN BEARD: Okay. Without objection.

14 MS. GREEN: Commissioners, Issue 15 is reversed on
15 the supplemental issue listing that is before me. And
16 I assume it's also incorrect on yours. The primary
17 recommendation is yes, to grant Public Counsel's motion
18 and strike certain portions of GTE's brief. What
19 appears before you is the alternative recommendation.

20 COMMISSIONER EASLEY: I have both of them. Now,
21 you've got me confused.

22 MS. GREEN: I don't know. There are several
23 versions of this floating around. I just wanted to
24 make sure which one you have.

25 CHAIRMAN BEARD: What I have is the recommendation

1 is yes, that you should grant OPC's motion; and the
2 alternative is no, we should deny.

3 MS. GREEN: Okay.

4 COMMISSIONER WILSON: The point is here it was
5 unsworn testimony, and it can't be relied on as
6 competent substantial evidence --

7 MS. GREEN: Yes.

8 COMMISSIONER WILSON: -- and therefore to the
9 extent that the brief uses it in that fashion, then it
10 ought to be either disregarded or stricken.

11 MS. GREEN: Yes, sir.

12 COMMISSIONER WILSON: I don't have any problem
13 with that.

14 CHAIRMAN BEARD: Without objection, the primary
15 recommendation on Issue 15 is approved.

16 16.

17 MS. GREEN: This is GTE's motion in turn to strike
18 portions of the testimony of Dr. Cooper. It's staff's
19 recommendation that the motion be denied.

20 CHAIRMAN BEARD: What is your pleasure,
21 Commissioners?

22 COMMISSIONER WILSON: I move staff recommendation.

23 COMMISSIONER EASLEY: Second.

24 CHAIRMAN BEARD: Without objection Item 16 is a
25 proved.

1 Issue 17.

2 MS. GREEN: And Issue 17 --

3 COMMISSIONER EASLEY: It's really a fallout, isn't
4 it?

5 COMMISSIONER WILSON: Yeah.

6 MS. GREEN: Well, we believe that by moving staff
7 recommendation in prior parts of this recommendation
8 that the result of that is that you grant in part and
9 deny in part that petition.

10 CHAIRMAN BEARD: I think it's staff's intention to
11 come back with some appropriate data on which to make
12 that decision of what the proper amount is.

13 MS. GREEN: Yes, sir.

14 COMMISSIONER EASLEY: Move staff.

15 CHAIRMAN BEARD: Without objection Issue 17 is
16 approved.

17 Issue 18. I move to deny staff and keep Mr. Long
18 gainfully employed for another --

19 MR. LONG: No problem.

20 CHAIRMAN BEARD: And then Walter can rewrite your
21 recommendation.

22 COMMISSIONER EASLEY: No, no, no-no-no. I've got
23 an alternate recommendation if you are going to do
24 that.

25 CHAIRMAN BEARD: Without objection, Commissioners,

1 hearing none, Issue 19 is approved.

2 COMMISSIONER DEASON: I want to thank the
3 Commission for not making me read the entire record.

4 CHAIRMAN BEARD: Issue number 19 is Commissioner
5 Deason read the record.

6 (Whereupon, discussion on the above item concluded.)
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CERTIFICATE OF REPORTER1
2 STATE OF FLORIDA)

3 COUNTY OF LEON)

4 I, PATRICIA L. GOMIA, Registered Professional
5 Reporter, Certified Shorthand Reporter, and Notary Public in
6 and for the State of Florida at Large:7 DO HEREBY CERTIFY that the foregoing agenda
8 conference proceedings were taken before me at the time and
9 place therein designated; that my shorthand notes were
10 thereafter reduced to typewriting under my supervision; and
11 the foregoing pages numbered 1 through 42 are a true and
12 correct record of the aforesaid proceedings.13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 relative or employee of such attorney or counsel, nor
16 financially interested in the foregoing action.17 WITNESS MY HAND AND SEAL this, the 22ND day of
18 APRIL, A. D., 1991 IN THE CITY OF TALLAHASSEE, COUNTY OF
19 LEON, STATE OF FLORIDA.20
21 _____
22 PATRICIA L. GOMIA
23 216 West College Avenue
24 U.S. Post Office, Room 122
25 Tallahassee, Florida 32301

My Commission expires: June 17, 1994

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