

HB

54

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: April 2, 1993

FURTHER REFERRALS:

Date of Committee Action: 4/13/93

The FINANCE Committee considered:

HB 54

HOUSE BILL NO. 54

TELEPHONE CONSUMER PROTECTION

"An Act relating to eavesdropping, telephone caller identification, and telephone directory listings and solicitations."

RECOMMENDATIONS:

be replaced with CS HB 54 (L+C) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

1 fiscal note(s) DCED 3/17/93

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Eileen P. Mahan</u> <small>Mahan</small>		<u>Larry Martin</u> <small>Martin</small>		<input checked="" type="checkbox"/>	
<u>Ronald J. Lason</u> <small>Lason</small>	<input checked="" type="checkbox"/>	<u>Benjamin Gruenendorf</u>		<input checked="" type="checkbox"/>	
<u>Mark Standley</u> <small>Standley</small>	<input checked="" type="checkbox"/>				
<u>Sam Rarnell</u> <small>Rarnell</small>	<input checked="" type="checkbox"/>				
<u>Tay Brown</u> <small>Brown</small>	<input checked="" type="checkbox"/>				

Ronald J. Lason E.P. Mahan
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: HB 54

Revision Date: _____
Title: An Act relating to eavesdropping, telephone caller I.D.,
telephone listings and solicitations.
Sponsor: Brown/Navarre
Requestor: Labor & Commerce

Department Affected: Commerce and Economic Development
BRU: Alaska Public Utilities Commission
Component: Alaska Public Utilities Commission
COMPONENT SERIAL NO. _____

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY 93) impact: 0

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Robert A. Lohr, Executive Director
Division: Alaska Public Utilities Commission

Phone: 276-6222
Date: 2/11/93

Approved by Commissioner: Paul Fuhs
Agency: Commerce and Economic Development

Paul Fuhs
Date: 2-12-93

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Sponsor Statement

CS HB 54 (L&C) addresses protection of Alaskan's right to privacy and personal safety:

- *Would provide Caller Identification "call blocking" or "line blocking" services without charge to telephone utility customers. This will protect those who for their own safety must keep their location confidential.*

Additions and amendments to Alaska Statutes provided by this legislation would make it clear that a citizen's right to individual privacy includes the right to prevent electronic identification of the subscriber's name, phone number, or address.



CS for House Bill 54 (L&C)
Telephone Privacy

Representative Kay Brown

Sectional Analysis

Section 1.

Adds a new section to Alaska Statute 42.05. **AS 42.05.335 CALLER IDENTIFICATION SERVICES AND CALL BLOCKING.** (a) If a telephone utility offers caller identification service to its customers, then it must also offer to its customers, without charge, "call blocking" and "line blocking" services. This would allow a subscriber the option of keeping their phone number, subscriber's name and address confidential.

(b) Defines "caller identification" as the unit that displays the telephone number of a calling party.

Section 2.

Immediate effective date.

HB 54: "An Act relating to eavesdropping, telephone identification, and telephone directory listings and solicitations."

Most states have required utilities to provide free blocking of caller I.D. Free blocking is consistent with the commission's proposed statement of privacy principles. The commission has scheduled a workshop on the proposed privacy principles later in February and will work with the public and the utilities to refine those principles.

Eavedropping: This section falls outside normal commission jurisdiction.

Telephone Solicitation: The commission has reviewed the proposed changes to AS 45.50.475 regarding telephone solicitation and believes the requirements are clearly outlined in statutes and, therefore, no regulations are necessary.

The commission would like the Legislature to consider amending 475(c) to give local exchange telecommunications companies the responsibility of informing parties of the telephone solicitation provisions of this section.

Section 475(c) could be amended as follows:

[THE ALASKA PUBLIC UTILITIES COMMISSION SHALL, BY REGULATION, REQUIRE THAT] Local exchange telecommunications companies are required to inform parties of the provisions of this section. Notification may be made by

- (1) annual inserts in the billing statements mailed to parties;
- (2) conspicuous publication of the notice in the consumer information pages of local telephone directories.

This change would effectively make enforcement of these provisions a matter for the Attorney General's office under fair trade practices.


Paul Fuhs, Commissioner

2. 12 - 93
Date

MAR 8 1993

Bill No.: HB 54

Date: March 8, 1993

Contact: Marcia Lynn McKenzie
465-4356

POSITION PAPER - Council on Domestic Violence & Sexual Assault

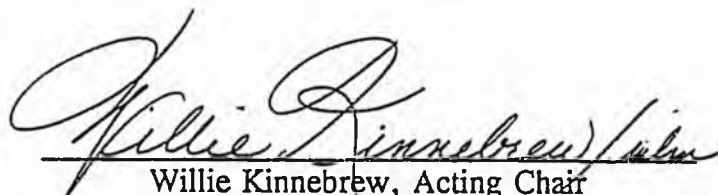
Title: "An Act relating to eavesdropping, telephone caller identification, and telephone directory listings and solicitations."

The Council on Domestic Violence & Sexual Assault supports HB 54 which would ensure that telephone caller identification (caller ID) service must be accompanied by a service, without charge to the customer, that prevents the caller's number from being read by the party with caller ID service.

The availability of unrestricted caller ID service would jeopardize the lives and safety of victims of domestic violence. A battered woman may have physically escaped her perpetrator but have need to contact him concerning child visitation or financial support. If the perpetrator subscribed to caller ID service, when a victim called him, he would easily be able to track down where she was through the use of a reverse telephone directory. This would not only endanger the victim herself, but could result in harassment or danger for those sheltering her, such as a safe home provider or shelter staff and other residents.

At least thirty-seven states have dealt with the issue of privacy and caller ID services. In New Jersey, which is one of only a very few states which allows caller ID service without blocking, shelters have reported that confidentiality of clients' whereabouts have been breached and that shelter staff have received abusive phone calls as a result of the caller ID service. Thus it is critical that caller ID service be accompanied by a blocking service.

The Council is also concerned that the blocking service be made available at no charge to the customer. Victims of domestic violence who flee their homes for protection often have little or no money. Also, shelter programs are non-profit community-based agencies with minimal financial resources. The additional financial burden of having to pay for caller ID blocking services will only reduce resources available for direct services for victims.



Willie Kinnebrew, Acting Chair
Council on Domestic Violence
& Sexual Assault

correspondence





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 STATE GOVERNMENT
 NJ HISTORICAL
 COMMISSION

FOR IMMEDIATE RELEASE

February 1, 1993

ASSEMBLYMAN RUSSO INTRODUCES LEGISLATION TO BLOCK CALLER ID

Assemblyman David C. Russo, R-Ridgewood, has introduced legislation that will require New Jersey Bell to provide its customers with the no-cost option of having Caller ID blocked. Caller ID is a service that provides the date, time, and telephone number of an incoming call.

Approximately 200,000 of New Jersey Bell's 3 million customers have Caller ID. The service costs \$6.50 a month.

Since the service was introduced to subscribers in 1988, New Jersey Bell has offered it only in unrestricted form. The service was introduced to New Jersey Bell customers as a way to discourage obscene callers and other harassers. But others believe that it invades the privacy of those who have their telephone numbers unlisted. Some even cite instances where it has been harmful to women who are seeking shelter from their abusive boyfriends or husbands.

The State Board of Regulatory Commissioners recently voted to reconsider its 1988 decision approving unrestricted Caller ID. The case will be sent to a state administrative law judge. However, the board will still have the authority to accept or reject the decision of the judge.

Russo's proposal will offer blocking of Caller ID as a no-cost option to the telephone subscriber. Of the 26 states that currently provide Caller ID, all but six offer the blocking option. In fact, Pennsylvania banned the service outright, after a court ruling there found caller identification services to be an illegal invasion of privacy and violation of the state's wiretap law.

"It's important that New Jersey Bell offers the no-cost option to block Caller ID for those individuals that may want their privacy protected," explained Russo. "Telephone companies in other states offer blocking of Caller ID service. I don't see why we can't have the same option here in New Jersey."

The measure, A-2236, has been referred to the Assembly Transportation and Communications Committee for review.

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Michael Tavella
PATENT AGENT

FEB 9 1993

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February 4, 1993

The Honorable Kay Brown
Pouch V
Juneau, Alaska 99811


The Honorable Mike Navarre
Pouch V
Juneau, Alaska 99811

Dear Representative Brown and Navarre:

I have recently reviewed a copy of HB 54, involving, among other things, telephone caller ID. I am the co-author of a paper on the subject of caller ID, entitled: Privacy and Technology: A Workable Balance. This paper was presented at the eighth Biennial Regulatory Information Conference sponsored by the National Association of Regulatory Utility Commissioners (NARUC). I believe this paper may be of interest to you.

I hope you find this paper useful as HB 54 moves through the legislature.

Yours truly,


Michael Tavella, P.E.

Representative Kay Brown

ALASKA STATE LEGISLATURE

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March 16, 1993

Representative Bill Hudson
Chair, House Labor and Commerce Committee

Dear Chairman Hudson:

At the last hearing on HB 54, Telephone Privacy, you asked me to provide written testimony on some pertinent facts concerning "Caller ID." I hope this letter adequately addresses your questions.

How many states currently have Caller ID and offer free per-line and per-call blocking?

Utilities in 26 states provide Caller ID. Of those, only 6 states do not require some form of call blocking. 13 states require free per-line and per-call blocking. Those states are: Washington, Oregon, California, Nevada, Wyoming, Arizona, North Carolina, New Hampshire, Vermont, Massachusetts, Georgia, New York, and New Mexico.

If Caller ID is marketed in Alaska, will unlisted telephone numbers be available to persons and businesses with Caller ID?

Yes. Caller ID will, in effect, nullify the privacy provided by unlisted numbers. Currently about 30% of all Alaskans have unpublished numbers. Several states have required that unpublished phone numbers be automatically blocked under Caller ID in order to protect these consumers.

What is the average cost to consumers of Caller ID in states in which it is offered?

Cost varies by state, but averages between \$4 to \$8 per month for residential customers. There is no apparent increased cost to customers in states which require free per-line and per-call blocking. For instance, in Washington, PTI markets Caller ID at around \$4 per month (with free blocking), while New Jersey residents, with no blocking, are paying \$6.50 per month.


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3/16/93
page 2.

What percentage of the population subscribes to Caller ID in states which offer the service?

Around 2% to 5% . For example, in New Jersey out of 3 million customers, about 200,000 have Caller ID. It isn't clear how many of these are business customers rather than residential. It means that over 90% of the population, which does not want the service, has its privacy circumscribed by the 2% to 5% who do.

Thank you for your consideration of House Bill 54, Telephone Privacy.

Sincerely



Representative Kay Brown

Nonlisted Telephone Customers in Alaska

(Nonlisted includes "nonpublished")

Anchorage Telephone Utility (ATU) - 1990:

Residential Lines 76,982
Nonlisted 18,560

24%

Serving:

Anchorage, Bird, Indian, Girdwood
Hope

Telephone Utilities of Alaska (TUA) - 1992:

Access Lines 22,715
Nonlisted 7,675

34%

Juneau, Douglas, Ft. Wainwright

Telephone Utilities of the Northland (TUNI) - 1992:

Access Lines 43,723
Nonlisted 13,503

31%

Coffman Cove, Delta Junction, False Pass,
Halibut Cove, Homer, North Pole, Pedro Bay
etc.

GTE Alaska - 1992:

Access Lines 14,253
Nonlisted 2,743

19%

Barrow, Bethel, Haines, Hyder
Nome, Petersburg, Seward, etc.

Interior Telephone Company - 1992:

Access Lines 3,146
Nonlisted 935

30%

Cold Bay, Cooper Landing, Ft. Yukon
Galena, King Cove, Port Lions, etc.

Sources:

Directory Assistance, Docket R-89-2, APUC
ATU Cost of Service Study, Docket U-92-6, APUC

Vol. 10, No. 2

Yankeevision Consumer Communications

**Exhibit 3
Per-Call Blocking Has Emerged as the Dominant Scheme**

Source: *the Yankee Group, 1993*

RBOC	Caller ID Approved Without Blocking	Caller ID Approved With Free Per-Call Blocking	Caller ID Approved With Per-Line Blocking	Caller ID Rejected or Tariffs Withdrawn	Caller ID Decision Pending
Bell Atlantic	Virginia, New Jersey, and West Virginia	District of Columbia, Delaware*, and Maryland*		Pennsylvania	
BellSouth	Louisiana, Mississippi, and Tennessee	Alabama*, Georgia, Florida*, South Carolina, Kentucky*, and North Carolina	South Carolina#, North Carolina†, and Georgia†		
Meritech		Illinois, Ohio*, Indiana*, and Michigan			Wisconsin
YNEX		New York*, New Hampshire*, Maine*, Massachusetts*, and Vermont*	New York†, New Hampshire†, Massachusetts†, and Vermont†		Rhode Island
S WEST		Arizona*, Colorado*, Idaho*, Iowa*, Nebraska*, New Mexico*, Oregon*, Washington*, and Wyoming*	Arizona†, Colorado†, Idaho#, Iowa#, Nebraska#, New Mexico†, Oregon†, Washington†, and Wyoming†		
Southwestern Bell		Oklahoma, Arkansas*, and Kansas*		Texas	Missouri
Pacific Telesis		Nevada	Nevada†	California	

Note: Tariffs tentatively approved, pending legal review or trial results.

Per-line blocking available for a one-time fee.

* Per-line blocking must be offered to special organizations, such as law enforcement.

† Free upon request



Alaska Women's Resource Center

111 W. 9th Avenue • Anchorage, Alaska 99501 • (907) 276-0528 • Fax: (907) 278-8944

MAR 15 1993

March 12, 1993

Bill Hudson, Chairman
House Labor & Commerce
State Capitol
Juneau, AK 99811-1182

Dear Representative Hudson,

I am writing to support the CS HB 54 on telephone caller identification which was discussed yesterday in your committee. I was at the teleconference site in Anchorage and was unable to testify because of the time constraints.

I urge the committee to move the bill out, preferably with favorable recommendations. In addition I hope that members of the committee will consider co-sponsoring this legislation and work for passage during this year's Session.

Prompt enactment of this proposal -- especially the section 1 provisions on caller identification - is essential in order for you to assure that Alaskans' privacy interests are protected. Absent such a provision, the telephone companies will buy whatever equipment they want (especially now that they are aware of the restrictions we seek). Once that happens, any effort to protect us will be drowned out by cries, "we've already made a substantial investment -- it's too late to change it now."

It offends me that the industry wants to, in Mr. Roy's words, "aggressively market" my identity and address simply because I have a telephone. Mr. Roy's testimony to the effect that caller ID could never be a reality under the proposed legislation is alarmist rhetoric. Perhaps the service will not be quite as profitable, but the technology can certainly be arranged to accomplish the necessary service. Why should the phone companies be allowed to double dip by charging you for subscribing to caller identification and then charging me to keep my name out of your hands?

Those who testified yesterday concerning the safety concerns of women and domestic violence victims covered those topics quite well. AWRC also serves domestic violence victims by providing outpatient counseling. Many times victims do not want us to even try to call them at home for fear the abuser

Representative Bill Hudson, Chairman
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March 12, 1993

will simply find out that they're talking to someone at AWRC. Even in cases where we have arranged to call at a specific time, a system which allowed our business line number to be displayed (or recorded it if the phone is not answered) would create additional risk for these victims.

There is an additional category of telephone users for whom caller identification could pose serious difficulties. AWRC has a residential program for women recovering from substance abuse. We are required by federal law to maintain confidentiality concerning the identity of these clients. They don't have phones in their rooms and we don't even provide them with free local phone service. We do provide a pay phone in the residence. Without an effective system for blocking identification on that line, allowing a client to use the pay phone jeopardizes her confidentiality rights.

I think this last example is important because it highlights the fact that we aren't discussing only individual subscribers or only private (as opposed to pay) telephones.

~~-----~~ I am grateful to you and the Committee for giving this important subject a hearing -- I urge you to move the bill promptly and will be happy to answer any questions.

Sincerely,



Theda Pittman
Executive Director

cc: Committee Members
Rep. Kay Brown ✓

Good job yesterday!

3/16/93

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

419 6th Street, No. 116 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Aid in Crisis (AWAIC); Advocate for Victims of Violence (AVV);
Aiding Women in Abuse and Rape Emergencies (AWARE);
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);
Bering Sea Women's Group (BSWG); Emmonak Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRC);
Marina Regional Women's Crisis Program; Parent Aid Family Support Center;
Safe & Fear-Free Environment (SAFE); Seward Life Action Council (SLAC);
Sitka Against Family Violence (SAFV); South Peninsula Women's Services (SPWS);
Standing Together Against Rape (STAR);
Tongue Community Counseling Center; Tundra Women's Coalition (TWC);
Unabakers Against Sexual Assault & Family Violence (USAFV);
Valley Women's Resource Center (VWRC);
Women in Crisis Counseling & Assistance (WCCA);
Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

HOUSE BILL 54 CALLER*ID TECHNOLOGY

The Alaska Network on Domestic Violence and Sexual Assault is a statewide coalition of nonprofit programs which provide services to victims of domestic violence and sexual assault throughout Alaska. The Network currently has a membership of 22 programs which offer shelter, counseling and assistance on a statewide basis. Last year, programs served over 9000 victims and minor children.

The Network has been following the development and introduction of Caller ID technology in the lower 48 for some time, and with increasing concern. One of the most frightening threats that a victim of domestic violence hears from the perpetrator is "If you leave me, I'll find you. If I find you, I'll kill you." In seeking help, in arranging for shelter, in finding support and assistance, one of the most important facilities a victim has at her disposal is the telephone. With a telephone, a victim can safely -- and up until now, anonymously -- arrange for shelter with our program or a friend or relation. She can safely make the necessary contacts with the batterer regarding finances, issues about the children, or any of the myriad of issues that come up during separation. She can call a relative or be called by a counselor and not fear exposure and resulting punishment.

When Caller ID and connected services are marketed in a state, all that changes profoundly. Caller ID is a service whereby when you call me, your phone number is made available to me. It doesn't matter if your number is unlisted as about 30% of Alaskan telephones are. You won't know that I have this service, and so won't necessarily know that I have your phone number. It won't matter if you're a doctor returning an emergency weekend call, or a psychiatrist returning a call to a disturbed patient, or just a consumer asking about or ordering a product. If the recipient of your call has Caller ID, they have your number. In Alaska's small towns, having your number is often the same thing as knowing exactly where you are.

Unregulated Caller ID will have a tremendous adverse impact on our programs' ability to serve victims, and on victims themselves. Domestic violence victims often cannot initiate calls but can tell us when it's safe to call them, and during these times we're able to provide safety checks, counseling and assistance. In addition, some of our hotlines are fielded in off-hours by a third party, such as a hospital or police department, and volunteers then return the call. Under Caller ID, these calls can be traced by the batterer. It's important to understand that domestic violence and sexual assault programs rely heavily on volunteers such as these. Programs generated over \$1 million in volunteer hours last year. In other states Caller ID has affected the willingness of people to provide the services I've described.

In many smaller communities in Alaska, families open their homes to domestic violence victims on a volunteer basis. These "safe homes" rely on confidentiality, not just to protect the victim but for the very safety of the family itself. With Caller *ID, a phone call by a victim, not just to the batterer but even to an unwary relative, can result in disclosure of a victim's location.

We know this to be so because we've seen it happen in other states, where shelter counselors have been harrassed and threatened at home after performing victim safety checks, where shelters have received obscene or abusive phone calls from batterers, and where women seeking assistance have dropped out of sight after communications with shelter staff were discovered.

The Network does not oppose marketing of this service, but believes that Alaskans should be given a choice as to whether their telephone numbers are released under the service, and that the cost of the service should be born by the parties who want it. Utilities should not be able to charge both the customers who want the service and the customers who don't. About a dozen states require free per-line and per-call blocking. These include Washington, Oregon, California, Nevada, New York, Arizona, Wyoming, North Carolina and Georgia. Several states require all unpublished numbers to be blocked.

The Network believes that there are other, important consumer issues presented by Caller ID that merit attention, including the use of Caller ID by businesses to retrieve names, addresses and demographic information on unknowing consumers (e.g., Metronet handout), but the primary issue that concerns our programs is the immediate safety and privacy of the 9,000 victims and children we see each year. The Network urges your support for section 1 of House Bill 54 so that as Caller ID is introduced in Alaska, it will not endanger our efforts to end domestic violence.

NEW JERSEY COALITION FOR BATTERED WOMEN
2620 WHITEHORSE-HAMILTON SQUARE T.D., TRENTON, NJ 08690
609-584-8107

MEMORANDUM

DATE: March 13, 1991
TO: Advocates
FROM: Barbara Price, Executive Director
SUBJECT: Caller ID

By now many of you are aware that New Jersey has Caller ID. It has existed in New Jersey for over three years. As such we now have the dubious distinction of being the model for Caller ID in every other state. Bell Companies seeking to have Caller ID implemented in their states point with pride to New Jersey to prove the success of this new technology. They have documented many stories on how Caller ID has saved lives, cut down on bomb threats, saved business dollars, and reduced the complaints of harassing phone calls by fifty percent. We do not question the validity of these stories, however in all fairness, we feel we must present another view of the effects of Caller ID in New Jersey.

As I have stated in a previous memo, Caller ID is available in eighty percent of the state. Only three to four percent of New Jersey Bell's customers subscribe to the service which has risen to this level over a three year period. Many of the customers are police, fire departments and businesses. Without knowing the numbers involved, it is probably safe to assume that this group represents possibly one third to one half of the subscribers or one to two percent. This means the remaining 2 percent could be residential customers. If we assume that all of these residential customers are living with or involved with another person, and extrapolate from national domestic violence statistics, we could say that one half are possible abusers. The population in New Jersey is 7.7 million and the domestic violence programs in New Jersey responded to 53,706 hot line calls and provided shelter or outreach services to 13,589 victims in 1989. The probability that we are making contact with all Caller ID customers who are also abusers is minuscule. Given this limited statistical sample, the NJ Coalition for Battered Women feels strongly that it is impossible to accept the blanket statement by New Jersey Bell that Caller ID is a success.

Contrary to the picture painted by New Jersey Bell, there are problems with Caller ID. Some of these problems can be solved by the remedy suggested by the phone company which requires the placement of additional phones for special outgoing only lines wherever phones currently exist. Clients and staff alike would be asked to use the outgoing only phones when they do not wish to reveal their location. The phone number for this outgoing only phone would still go forward to the Caller ID phone. However anyone returning a call to that line would get a recording saying the number reached is not in service. NJ Bell offered these extra phones to all shelters, counselors in their homes, and even clients. After a test effort in one shelter, they have not continued to offer these phones to counselors or clients and have only responded to two other programs' inquiries. Both have had technicians in to look at wiring, and one received credit cards for two counselors to use. They have not contacted the Coalition about any further efforts. Since we are currently pursuing other means of resolving the Caller ID issue, we have made no further requests of NJ Bell.

The solutions suggested by New Jersey Bell are cumbersome and do nothing for individual women who don't contact our programs. Given the nature of domestic violence and the way victims respond, there is no way for the Coalition to know how many abusers are using Caller ID to isolate and control their victims. The following incidents have been reported by domestic violence programs in New Jersey since the summer of 1990.

- Hotlines are receiving calls from males wanting to know where the phone number they're calling originates. In the space of ten days, one shelter received three such calls. This program works with victims on a non-shelter basis who are still with their batterers. They have been forced to revise their intake procedures to include asking clients if they have Caller ID and if it is safe to call them at home. In addition they ask if they know how to erase the number from the tape and provide instruction on how to do so if they do not know. Many of our programs are now adopting this procedure.
- Several shelters have reported that men calling asking where this number originates have been very nasty and verbally abusive.
- A resident used the shelter phone to speak with her landlord. At some later point he called the shelter and asked to speak with her. He was told they could not confirm or deny her residence. He informed them he knew she was there because she had called him, and he had Caller ID. He also said he was a government worker and if they didn't let him speak with her, he could easily find the shelter and her. They did not comply.
- A volunteer made a personal call from one of the direct shelter lines that is unpublished. She called her son who was not home. When he returned, he called the number that showed up on his Caller ID tape. His mother answered the phone and was shocked to hear her son's voice. It became immediately apparent to the volunteer how dangerous Caller ID could be for the shelter. The program has now instituted a new policy that does not allow personal calls on the house phone.
- A student researcher from a local university contacted a client, with permission from the client and shelter, to interview her for a research project. When the woman's husband returned home, he found the number on the Caller ID tape. He called the number and told the student to leave his wife alone. He was very abusive and threatening. This program is near a major university and frequently has students involved as interns and researchers. Caller ID puts this work in jeopardy.
- Counselors from another program often call clients from home to cancel or re-schedule support groups or meetings with clients. A counselor did not know the client had Caller ID. Later that evening the client now having the counselor's home phone number, called her. While this situation did not present a particular problem for this counselor, it did illustrate the potential for possible abuse, harassment or disruption of the counselor's private life. This will certainly have a chilling effect on a program's ability to employ counselors who may not be able to do all their work from the program offices. New Jersey Bell has not given us any indication that they will change phone numbers for people caught in this situation for free.

Another program which offers batterers counseling had a man participating who had been referred by his employer. His wife was not part of the program for victims and may have been unaware that he was doing this. A counselor had occasion to call the man, and the program number showed up on the Caller ID machine. The wife called the number and upon discovering what it was, became very upset about what the program might be telling her husband. When her husband returned they got into an argument and a fight ensued. The police were called. Both husband and wife were arrested and now both are court ordered into counseling.

STATE OF ALASKA

ALASKA PUBLIC UTILITIES COMMISSION
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

WALTER J. HICKEL, GOVERNOR

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April 1, 1993

Dan Austin
c/o Representative Kay Brown
State Capitol
Juneau, AK 99801-1182
FAX 465-2278

Dear Mr. Austin:

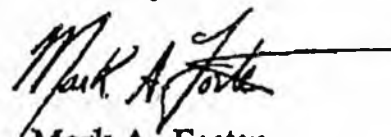
You asked about the implications of "call blocking" of calling number identification services, a.k.a. "caller ID", on the ability of emergency services providers to identify the calling number.

To the extent that the emergency service provider subscribes to an enhanced 911 service, such as the one described in the enclosed literature from Northern Telecom, the identification of the call is obtained through use of the Automatic Number Identification (ANI). This information is obtained independent of whether the calling party has employed either per-call or per-line blocking of calling number identification service.

Also, please note that Call Trace is a feature that allows a called party to have a calling party number traced whether or not the calling party has employed either per-call or per-line blocking of calling number identification service.

Please let me know if I can be of any further assistance.

Sincerely,


Mark A. Foster
Commissioner

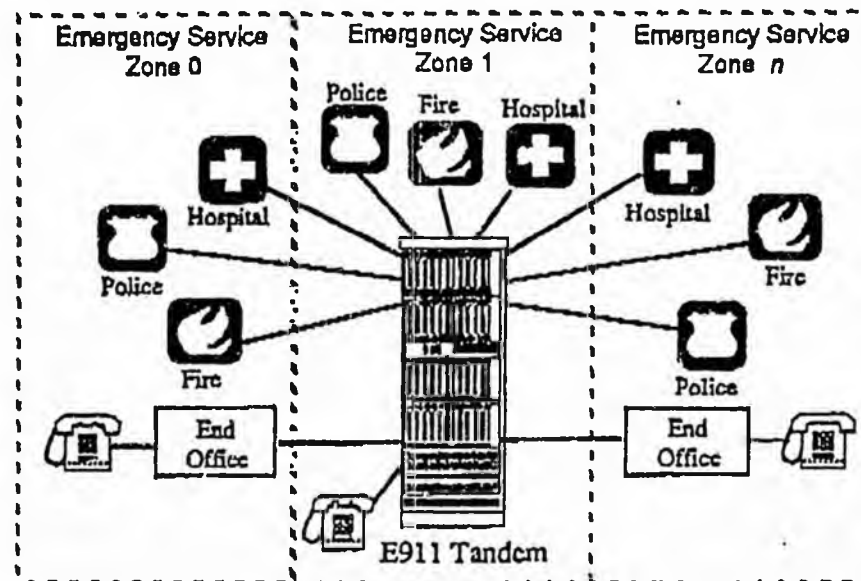
Enclosures

Enhanced 911

ENHANCED 911 (E911) EMERGENCY SERVICES

Enhanced 911 (E911) is a quick, efficient, and reliable method of reaching the appropriate emergency services. These services include police, fire, and hospital. Primarily, what makes E911 different from basic 911 service is the ability to selectively route an E911 call so that it reaches the correct emergency service located closest to the caller. Automatic selective routing is made possible because the DMS-100 is programmed with E911 software to direct the call based on geographical and other information contained in the caller's incoming signal.

The call is received by the closest agency which answers emergency calls for police, fire, hospital, and other services and is known as a Public Safety Answering Point (PSAP) agency. At the PSAP, information containing the caller's address as well as those agencies serving the caller is automatically and instantly displayed to the attendant from an external database. Emergency calls are processed quickly since all required information is readily available as soon as the call is answered. With E911 service, emergency assistance is sent immediately—even if the connection is broken or if the calling party is unable to provide a location.



E911 Service Configuration

Two software packages—E911 Tandem (NTX447AA) and E911 Database (NTX451AA)—form the basis of E911 service. The tandem package allows one end office to serve as tandem access and receive 911 emergency calls from other end offices as well as from customers served by the same E911 tandem office.

The tandem office routes an emergency call, using the Automatic Number Identification (ANI) of the calling party, to the calling party's PSAP. The ANI information is used by the PSAP equipment to access an external database and retrieve information, including the calling party's address and any pertinent medical information. The information obtained is displayed to the PSAP attendant.

With the DMS-100 Family Selective Routing Database provided in the database package, the E911 tandem provides an optional capability to route a 911 call selectively to the primary PSAP associated with the originating telephone number. The selective routing database (SRDB) associates the telephone number served by the tandem with its appropriate Emergency Service Number (ESN). An ESN is a unique combination of three digits that is assigned to an Emergency Service Zone (ESZ). Each ESN distinguishes a specific ESZ and points to a particular set of PSAPs that serve a particular area (see illustration). Every ESN is assigned a primary PSAP and up to six secondary PSAPs.

Since BCS33, E911 PSAPs can obtain the advantages of DMS Meridian Automatic Call Distribution (ACD) service (NTXF61AA).

BCS33 At a Glance

Package	Feature	Name	Description
NTXN59AA	NC0030	Ringback to E911 Callers	Gives the Public Safety Answering Point (PSAP) agent the capability to ringback a line to attract the attention of someone else at the caller's location when an E911 caller reaches an agent and is unable to communicate.
NTXN17AA	AF2146	E911 Direct Access to ALI Database	Provides interfaces that allow the E911 tandem to facilitate the supply of Automatic Location Identification (ALI) service to the PSAPs without the need for extensive, non-switch-based equipment.
NTXN60AA	NC0162	Dial-Up Into ALI Database for SRDB Update	Allows a DMS-100 switching system serving as an E911 access tandem to schedule periodic events that will initiate the asynchronous transfer of recent change information from the ALI database and the subsequent update of the E911 Selective Routing Database (SRDB).

Future Deliverables

Package	Feature	Name	Description	GA
NTXP58AA	NC0295	VFG Support for E911	Eliminates need for loop-around trunks for local E911 calls and non-dedicated trunks, thus saving telephone operating companies money and increasing overflow capabilities.	34
	NC0294	Local Access to E911	Provides E911 Originate and Ringback functionality for local access 911 calls routed through an E911 VFG.	34
NTXP99AA	NC0317	E911 Remote Call Event Record	Allows Remote Call Event Records (RCERs) to be transmitted over an asynchronous ASCII Multi-Protocol Controller (MPC) link.	34
NTXQ18AA	NC0337	E911 Memory Management	Provides information regarding use and capacity consumption of table E911 selective routing database memory.	35
NTXN60AA	NC0501	SRDB Update Enhancements	Updates to the SRDB data base can be done directly without the delays and inconvenience of reformatting tape and file formats.	36
NTXR63AA	AN0102	Large Capacity SRDB	Provides the ability to address the special SRDB requirements of large metropolitan areas.	36



Alaska Women's Resource Center

111 W. 9th Avenue • Anchorage, Alaska 99501 • (907) 276-0528 • Fax: (907) 278-8944

April 27, 1992

The Honorable Ted Stevens
United States Senate
522 Hart Building
Washington, D.C. 20510-0201

Dear Senator Stevens:

I am writing to alert you to problems which I believe will be created for Alaska's substance abuse and domestic violence program providers under the provisions of S. 652, the Telephone Privacy Act of 1991.

Most people don't have a clue to the fact that when they call an 800 or a 900 number, the number they call from and the name/address of the phone they use are -- or soon will be -- readily available to the owner of the number.

I understand this is true even if the call is made from an 'unlisted' number and that the situation will get even worse if the only remedy for Caller ID is per call blocking as proposed in S. 652 for states like Alaska which have taken no action on such services.

Safety is the first and most important issue domestic violence victims must address for themselves and their children. It has been clearly documented that violence often increases when a victim first takes steps to prevent continued battering. The requirement to enter a special code prior to making any call in order to protect the privacy of the location from which one is calling (per call blocking) is an absurd concept for a victim of domestic violence. In addition, as a service provider, AWRC would have to start warning its clients that even incidental calls made from the Center might help their batterer to track them down.

Legally, the situation would be even worse for AWRC and its substance abuse clients. New Dawn, AWRC's halfway house for women in recovery and their children, presently has a pay telephone in the residence for the use of residential clients. Under federal law we are required to maintain the identity of such clients in absolute privacy and may not even acknowledge that someone is, or has been, a client.

The location of that phone (111 W 9th) and the name of the account, even if we managed to use a name less well-known than

"New Dawn," established through Caller ID would clearly undermine our efforts to comply with federal confidentiality requirements.

Caller ID is being promoted as a way to keep people safe, but I believe it will have just the opposite effect for a great many. The anecdote for Caller ID must not be costly or impractical to use. It appears that Alaska is in a particularly vulnerable position since there has been no regulatory debate on Caller ID or decision concerning its availability.

I urge you to examine the proposals of S. 652 carefully and work to assure that privacy interests are not sacrificed through it.

Sincerely,

A handwritten signature in cursive script that reads "Theda Pittman".

Theda Pittman
Executive Director

"New Dawn," established through Caller ID would clearly undermine our efforts to comply with federal confidentiality requirements.

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I urge you to examine the proposals of S. 652 carefully and work to assure that privacy interests are not sacrificed through it.

Sincerely,

A handwritten signature in cursive script, appearing to read "Theda Pittman".

Theda Pittman
Executive Director

SERVICE STATISTICS
NUMBER OF SERVICES PROVIDED
FY91

ALL PROGRAMS

CLIENT SERVICES PROVIDED:

ADVOCACY:

Medical Accompaniment	788
Transportation	2,569
All Other Advocacy	5,113

COUNSELING:

Group	28,130
Crisis Counseling	8,499
Other Counseling	43,190

LEGAL ASSISTANCE:

Temporary Restraining Order	1,852
Divorce/Dissolution	609
Court Services (includes accompaniment & representation)	897
Advocacy to Law Enforcement	598
All Other Legal Assistance	4,611

OTHER:

Follow-up	2,647
Safety Checks	3,792
Child Care	7,073
Other	2,847
Report to DFYS	640
Consultations	19,901

REFERRALS:

Number from:

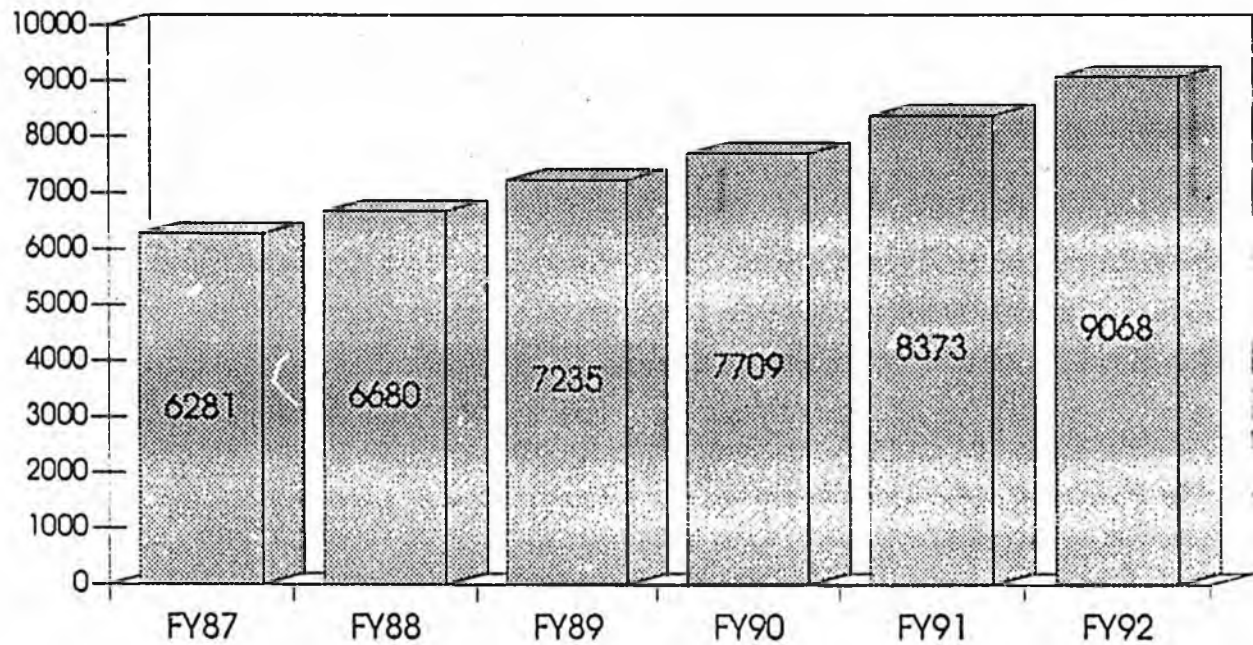
Social Services	106
DV/SA Agency	360
Medical	171
Mental Health	92
Alcohol Agency	2,407
Program Outreach	753
Criminal Justice	860
All Other	880

Number to:

Social Services	295
DV/SA Agency	1,169
Medical	2,086
Mental Health Agency	1,569
Alcohol Agency	295
Criminal Justice	1,160
All Other	2,066

Victims Served by Council-Funded Programs FY1987 to FY1992

Number of Victims Served



Percent Change from FY87 to FY92 = 44% Increase

Provided by the Alaska Network on Domestic Violence and Sexual Assault
Source: Council on Domestic Violence and Sexual Assault

Alaska Telephone Association

3805 Arctic Blvd./Suite 102
Anchorage, Alaska 99508
(907)568-4000/FAX(907)568-8776

Jack H Rhyner
President

Tom E. Roy
Executive Director

**STATEMENT FROM THE ALASKA TELEPHONE ASSOCIATION
regarding HB54 before the
ALASKA HOUSE OF REPRESENTATIVES
Judiciary Committee**

The Alaska Telephone Association, representing all 21 local telephone companies in the state, testified on March 11 before the House Labor & Commerce Committee opposing HB54. At that time, ATA had serious reservations about the three sections that then constituted the bill. As it now lays before the House Judiciary Committee, the bill deals only with the provision of Caller ID.

Due to rapid technological innovations, the telecommunications industry in Alaska is preparing to offer state-of-the-art Advanced Custom Calling Services (CLASS) to Alaska consumers. Caller ID has proven to be the most popular of these new services since they were introduced a few years ago in the lower 48.

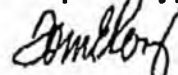
As HB54 presently reads, the offering of Caller ID to our customers would have to be accompanied with free per call and per line blocking. We recognize the need and desire for some calls to be blocked from identification, especially in domestic violence shelters, referral agencies, and some areas of law enforcement. We also recognize that all of us, as consumers, are having to adjust more rapidly than we would sometimes like to the exploding technology in the area of telecommunications.

In an effort to strike a middle ground between offering a new and popular service to our customers and protecting our customers need for privacy, ATA supports retention of per call blocking and deletion of per-line blocking as found on line 9 of the bill.

This language would allow any customer, without charge and at any time, to block their number from being identified to those who have purchased the Caller ID option. It would also allow our member companies to fully market and develop Caller ID and other CLASS services.

Finally, we urge caution in the legislative treatment of emerging new services in the national public telecommunications network. As we struggle to revitalize our economies by answering the call for an "information highway" across our nation, it is essential that Alaskans be afforded the best technology we have to offer.

Respectfully,

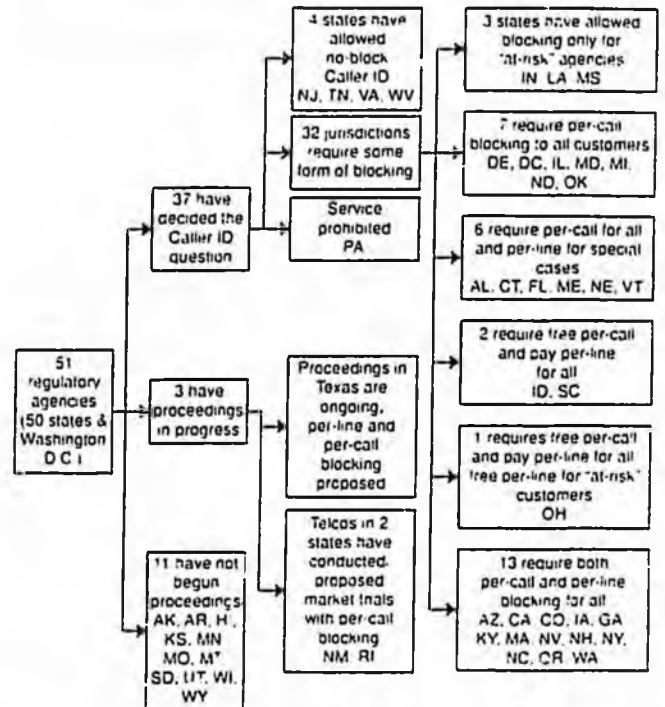


Tom E. Roy
Executive Director

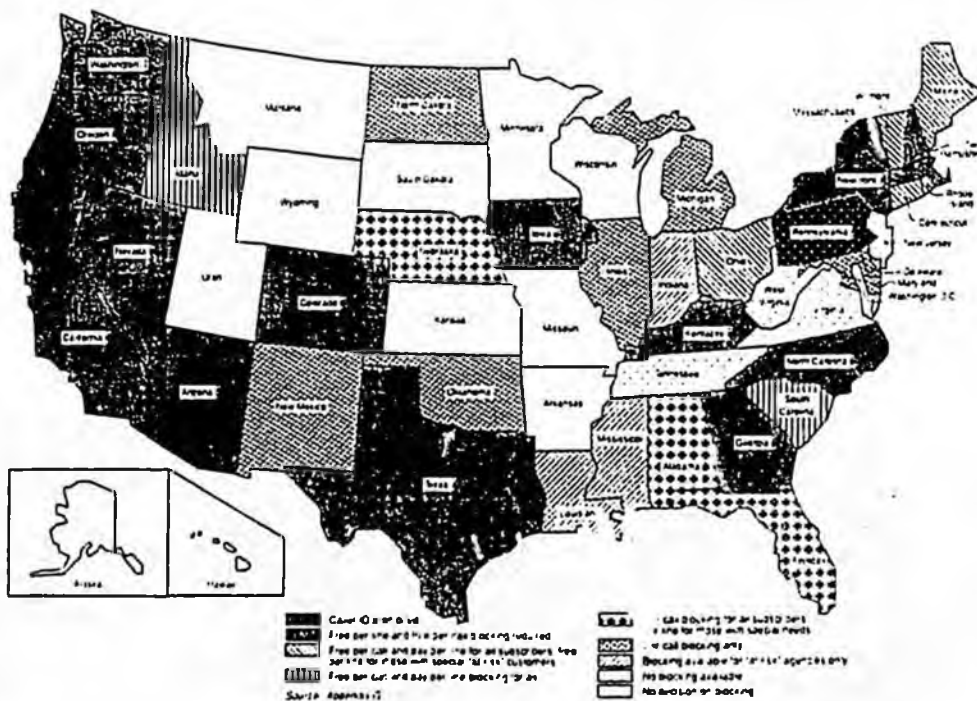
CALLER ID UPDATE

Only four states permit Caller ID without any accompanying blocking service, according to a comprehensive report by the National Regulatory Research Institute at Ohio State University. The District of Columbia and 31 states require some form of blocking, either per-call blocking (in which the caller activates a code each time he or she wishes not to have the number displayed to the recipient of the call) or per-line blocking (in which display is blocked on all calls from the line unless a non-blocking code is activated), or a combination.

The 250-page reference book provides the most complete available description of state regulatory action on Caller ID (as of August 1992). It goes far beyond Caller ID and the accompanying CLASS telephone services; it also describes public-service commission actions on other privacy-sensitive policies by telephone companies and other utilities. The report concludes that Caller ID is only the tip of the iceberg, because telephone companies are handling more transaction-generated information and because "the utility culture is changing from one based on the public interest to one based on marketing."



"A utility is in the unique situation of having been granted a franchise area in which it is a monopoly...This provides the utility with a near-total population of consumers from which it can obtain information," say the authors, lawyer Robert E. Burns, communications specialist Rohan Samarajiva, and researcher Roopali Mukherjee. "An argument can be made that utilities must be held to a higher standard than that



contained in the common law of privacy." Utility Customer Information: Privacy and Competitive Implications is available for \$39.50 from NRRI Publications, 1080 Carmack Rd., Columbus, Ohio 43210-1002, 614/292-9404, fax 614/292-7196. New Jersey was the first state to approve Caller ID and gave it carte blanche -- no blocking at all. Now the ACLU has petitioned for a rehearing (No. TO 92070699). Bell Atlantic has moved to dismiss.

ALASKA NETWORK
ON
DOMESTIC VIOLENCE
AND
SEXUAL ASSAULT

479 6th Street, No. 116 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women's Aid in Crisis (AWAIC); Advocates for Victims of Violence (AVV);
Aiding Women in Abuse and Rape Emergencies (AWARE);
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);
Berling Sea Women's Group (BSWG); Emmonak Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRC);
Maniilaq Regional Women's Crisis Program; Parent Aid Family Support Center;
Safe & Fear-Free Environment (SAFE); Seward Life Action Council (SLAC);
Sikans Against Family Violence (SAFV); South Peninsula Women's Services (SPWS);
Standing Together Against Rape (STAR);
Tongass Community Counseling Center; Tundra Women's Coalition (TWC);
Unalaskans Against Sexual Assault & Family Violence (USAFV);
Valley Women's Resource Center (VWRC);
Women in Crisis Counseling & Assistance (WCCA);
Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

AUG 31 1992

August 26, 1992

Rosemary Karish
Rep. Kay Brown
3111 "C" Street, Suite 435
Anchorage, AK 99503

Dear Rosemary:

Sorry for the delay in sending this material to you.

As I explained, Caller ID provides recipients of phone calls with the phone number of the caller through a device installed on the telephone. I understand that one company has begun listing the account name as well. This concerns the Network because it will place domestic violence victims in immediate danger. I've enclosed several statements and memos from other State coalitions on that point. Other groups, such as doctors, attorneys, and counselors, are also likely to oppose unrestricted Caller ID-- not to mention the great number of Alaskans that currently have unlisted numbers for privacy.

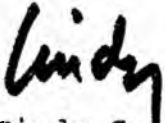
For some time, the Network has been following the problems raised by Caller ID for domestic violence victims. We were prompted to look into action here in Alaska when a piece of federal legislation was introduced which prevented State regulation of Caller ID more restrictive than that outlined in the bill. That legislation eventually stalled. It is only a matter of time before this service is marketed in Alaska.

Rosemary Karish
Page Two

The Network would like to look at legislation that, at a minimum, requires companies marketing Caller ID in Alaska to provide free per call and per line blocking. This solution was adopted by the Oregon Utilities Commission after hearings on the issue there. I have asked Fran Ulmer's staff to see if she might be interested in sponsoring such legislation, and have not yet heard back from them. I'll let you know as soon as I hear anything.

I hope you're having a great summer!

Best wishes,



Cindy Smith
Executive Director

PROCEEDINGS OF THE EIGHTH
NARUC BIENNIAL REGULATORY INFORMATION
CONFERENCE

Volume III: Multi-Utility

The National Regulatory Research Institute
The Ohio State University
1080 Carmack Road
Columbus, Ohio 43210

September 9-11, 1992
Fawcett Center for Tomorrow
Columbus, Ohio

PRIVACY AND TECHNOLOGY: A WORKABLE BALANCE

By

The Honorable Daniel Patrick O'Tierney, Esq.

And

Michael Tavella, P.E.

Alaska Public Utilities Commission¹

Technological advances often affect privacy. At times, technological change has outpaced the legal parameters of privacy or has, otherwise, presented a dilemma for policy makers. Ironically, the very technology that threatens privacy rights can engender related technology to protect or enhance privacy. The current state of the evolution of Caller ID² technology is an example of that dynamic.

Caller ID has created controversy involving the use, ownership and control of telephone numbers. With the announcement last November of proposed FCC rules on Caller ID, this controversy reached federal proportions. Caller ID represents an ongoing attempt to achieve a balance between competing expectations of privacy - between telephone callers and those who are called. This paper will explore that balance by considering a fundamental question: Does a caller have a legal right to prevent his or her identity from being transmitted to the call recipient by transmitting the caller's phone number to the recipient?

Introduction

Although people are social beings, individuals require and value privacy in their lives. Society's view of what is considered private has changed considerably over time. Technology has reduced distances between continents and the time needed to send information. Facsimile machines and cellular phones now enable almost continuous accessibility to anyone in the world. As access is increased, many people feel pressured by the seemingly constant information flow, as well as disturbed by the proliferation of detailed marketing databases. Thus, while people seek greater accessibility through improved communications, they also seek to restrict access to their identities. One might say that people desire some type of anonymous accessibility.

¹The views and opinions of the authors do not state or reflect the views, opinions, or policies of the Alaska Public Utilities Commission, the NRRI, NARUC, or other NARUC member commissions.

²Caller ID is a system that provides the caller's telephone number to the receiving telephone. A translator device can then display this number to the call recipient prior to answering the phone. Some systems include a database that will also give the name of the caller.

Historically, the telephone has been strongly associated with privacy by its users. To a large extent, perhaps, telecommunications technology is representative of the general concern about the (mis) uses of individual personal information by businesses and the government.

Clearly people have a sense of privacy about their affairs. The right to privacy, however, is bounded by the law of privacy. Thus, an examination of the basic tenets of privacy law is in order. As part of that analysis, we will initially consider the idea of property rights associated with a phone number. Further, we will examine the constitutional aspects of privacy with respect to a caller's expectation of privacy regarding his phone number. This is the pivotal issue in Caller ID cases: does the person making a call have an absolute right to anonymity so as to prevent involuntary transmission of his phone number?

Another issue that may emerge is the possibility of federal preemption on Caller ID. The FCC has issued proposed Caller ID regulations that will seek to create some uniformity among the states. At this point, the proposed regulations conflict with some state decisions with respect to acceptable blocking methods.

When the Abstract for this paper was prepared, we intended to explore the diversity of opinion on these issues. At that point, only a handful of state public utility commissions had addressed them. Today, 23 commissions have issued orders approving Caller ID. Essentially, these commissions have uniformly addressed privacy concerns through a technological means: call blocking. In most of the cases decided to date, commissions found that the best way to balance the need for the service provided by Caller ID and the need for customer privacy is to simply provide the customers with the ability to block calls from being identified. This can be accomplished by either per-call blocking or by per-line blocking³ and the respective requirements of the state commissions differ in this regard. Four commissions have approved caller ID without mandating blocking.⁴

In view of the number of decisions that have been forthcoming, this paper will consider whether an emerging *de facto* Caller ID policy is discernible from the various state commission decisions.

³Per-call blocking is a system that permits the caller to enter a code that prevents her number from being transmitted to a person with a Caller-ID device for that call. Per-line blocking automatically prevents the caller's number from being transmitted on every call made.

⁴Status of Caller ID Service and Privacy 1992 Telecom Publishing Group, Briefing Report, p. 2.

Property Rights of a Phone Number

One preliminary question that should be examined is whether a telephone subscriber has a proprietary interest in his phone number. If that were the case, the subscriber would have some legal rights regarding whether his phone number can be disseminated to others without consent. Phone numbers are typically issued by the phone company upon subscription and are retained by the company after the customer ceases service.

The question of whether a phone company has a copyrightable interest in the white page listing of phone numbers was addressed in Feist Publications, Inc., v. Rural Telephone Service Co.⁵ Feist Publications sought to publish a regional phone book that contained subscriber telephone numbers of several telephone companies. Rural Telephone refused to give Feist the numbers of its subscribers. Feist used Rural's numbers anyway by copying them and Rural sued Feist for copyright infringement. The United States Supreme Court held that the mere alphabetical listing of names, addresses and phone numbers in a telephone white pages directory is a non-copyrightable compilation of facts. In so holding, the court characterized the alphabetical compilation, as well as the information contained in the white pages (including telephone numbers) as ordinary:

As mentioned at the outset, Rural's white pages are entirely typical. Persons desiring telephone service in Rural's service area fill out an application and Rural issues them a telephone number. In preparing its white pages, Rural simply takes the data provided by its subscribers and lists it alphabetically by surname. The end product is a garden-variety white pages directory, devoid of even the slightest trace of creativity.

Rural's selection of listings could not be more obvious: it publishes *the most basic information -- name, town, and telephone number --* about each person who applies to it for telephone service. (Emphasis added; citations omitted.)⁶

In Feist, the U.S. Supreme Court rejected a telephone company's claim that compilation of telephone white page information into a directory was entitled to protection under copyright law. The Court did so on the basis that such a compilation was not sufficiently original or creative. As such, the court rejected an alleged proprietary interest by a third party in, among other things, subscriber telephone numbers. Although Caller ID clearly has nothing to do with copyright law, the Feist court's characterization of telephone subscriber numbers as "the most basic

⁵ ___U.S.____, 111 S.Ct. 1282. (1991)

⁶Id. at 1296.

information" certainly does not suggest any particular significance would necessarily be given to a telephone number in and of itself.

In the case of Caller ID, the question is whether the telephone subscriber, as opposed to the telephone company, has any proprietary interest in her telephone number which would entitle the subscriber to control over involuntary display of that number to the person called. Arguably, there is a closer nexus between a telephone subscriber and her telephone number than between a telephone company and the numbers it issues to its subscribers.⁷ Telephone subscribers already have the option to elect to have their number treated in a more private manner as an unpublished number. It may be unlikely that a subscriber has a property right in a telephone number. However, it is also unclear whether the Feist copyright decision is necessarily relevant to whether there exists a proprietary relationship between a telephone subscriber and his telephone number.

The Right of Privacy and Caller ID

Until recently, existing telephone technology could not transmit any information as to the phone number or identity of a caller. Thus a caller has enjoyed the ability to remain anonymous while making a call. For the vast majority of calls, this anonymity is unimportant. People call others to pass information and, usually, they want the receivers to know who they are. This is true when calling friends and relatives or when calling to transact business, schedule appointments, and to gather information. However, the 1980's saw a great increase in phone calls from total strangers, largely because of the growth in telemarketing technology and the possibility that businesses would collect, process and resell calling number information without the caller's consent.⁸

For subscribers that consider cold sales calls over the telephone to be intrusive, Caller ID can alert them to the telephone number of the caller before they answer, enabling them to refuse to take the call. Similarly, Caller ID (without blocking) can effectively curtail the practice of obscene or harassing telephone calls. On the other hand, use of Caller ID (without blocking) can jeopardize police investigations and threaten the safety of victims of domestic abuse who seek to maintain the anonymity of their place of refuge.

⁷See Kester v State, 291 S.E.2d 497, 504 (Ga 1982) (no expectation of privacy in telephone toll or billing records because records belong to telephone company, not defendant).

⁸Status of Caller ID Service and Privacy 1992 Telecom Publishing Group, Briefing Report, p. 2.

These competing concerns inform the perceptions of what "rights" one possesses when using a telephone. They are bounded, however, by the law of privacy. We must then ask: does a caller have a legal right to prevent his or her identity from being transmitted to the call recipient by the Caller ID display of the caller's phone number to the recipient?

Common law privacy rights have evolved under both federal and state law.⁹ The U.S. Constitution does not explicitly provide for the right of privacy. However, the Supreme Court has recognized that a right of personal privacy or a guarantee of certain areas or zones of privacy, does exist under the Constitution. This federal constitutional right to privacy emanates from the penumbra of certain guarantees provided by specific amendments to the Constitution.¹⁰ This source of the right to privacy has not been explicitly defined, other than on a case by case basis. The Supreme Court has noted, however, that "personal rights found in this guarantee of personal privacy must be limited to those which are fundamental or implicit in the concept of ordered liberty."¹¹ Where competing privacy interests are at issue, the legitimacy of those interests must be weighed in the balance.¹²

To date, the U.S. Supreme Court has not had occasion to review the privacy issues specifically related to Caller ID. However, in Smith v. Maryland¹³ the Court addressed the privacy expectations of a caller relating to disclosure of the caller's phone number in the context of constitutional search and seizure law.¹⁴ Smith involved a robbery where the victim later began receiving threatening and obscene calls from a man identifying himself as the robber. The telephone company, at police request, installed

⁹Federal and state statutory bases for privacy protection are beyond the scope of this paper and, therefore, are not discussed.

¹⁰See Roe v. Wade, 410 U.S. 113 (1973).

¹¹Paul v. Davis, 424 U.S. 693, 713 (1976).

¹²See Whalen v. Roe, 429 U.S. 589 (1977)

¹³442 U.S. 735 (1979)

¹⁴The Fourth Amendment to the U.S. Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

a pen register¹⁵ at its central offices to record the numbers dialed from the telephone at the defendant's home. Using the pen register, the police were able to obtain sufficient evidence linking the defendant to the robbery. The defendant was tried and convicted.

On appeal, the defendant argued that the use of the pen register constituted an illegal search under the Fourth and Fourteenth Amendments. The court rejected the defendant's privacy arguments in holding that the defendant caller had no reasonable expectation of privacy in relation to the phone number of the victim he had called.

In examining the privacy questions, the Court cited a two-part test: "first is whether the individual, by his conduct, has exhibited an actual (subjective) expectation of privacy . . . whether . . . the individual has shown that he seeks to preserve [something] as private The second question is whether the individual's subjective expectation of privacy is one that society is prepared to recognize as 'reasonable' . . . whether . . . the individual's expectation, viewed objectively, is justifiable under the circumstances."¹⁶

The Court then reviewed the use of pen registers in terms of a Fourth Amendment search and found that

"[g]iven a pen register's limited capabilities, therefore, [defendant's] argument that its installation and use constituted a 'search' necessarily rests upon a claim that he had a 'legitimate expectation of privacy' regarding the numbers he dialed on his phone. *First, we doubt that people in general entertain any actual expectation of privacy in the numbers they dial.* All telephone users realize that they must 'convey' phone numbers to the telephone company, since it is through telephone company switching equipment that their calls are completed. All subscribers realize, moreover, that the phone company has facilities for making permanent records of the numbers they dial, for they see a list of their long distance (toll) calls on their monthly bills." (Emphasis added.)¹⁷

The court went on to add that " it is too much to believe telephone subscribers, under these circumstances, harbor any general

¹⁵A pen register is a mechanical device that monitors the electrical impulses produced by a rotary or pulse type dialer, records these impulses, and translates them into the numbers dialed.

¹⁶442 U.S. 735, 740 (citations omitted).

¹⁷Id. at 742.

expectation that the numbers they dial will remain secret."¹⁸

In rejecting the petitioner's argument that he had a reasonable expectation of privacy in making a call from the privacy of his own home, the Court noted that his conduct may have been calculated to keep the contents of his conversation private, but added that his conduct "was not and could not have been calculated to preserve the privacy of the number he had dialed."¹⁹ The Court then found that even if the petitioner had held an expectation of privacy this expectation was not one that society recognized as "reasonable."²⁰

In the criminal procedure circumstances of this case, the Smith court did not find any reasonable expectation of privacy in a phone number dialed by a caller for the purpose of Fourth Amendment protection. It seems apparent that the Court did not view phone numbers as generally having any special quality that entitled the defendant to constitutional protection of his alleged privacy related to the phone number he had dialed.

The operation of Caller ID is different, however, from the situation involving the pen register in Smith. Smith involved, among other things, the question of privacy expectations regarding the number dialed by a caller. Caller ID involves the privacy interests in the number that the caller dials from. Nevertheless, the stated rationale of the Smith court may well be relevant to Caller ID. In Smith, the court indicated that subscribers realize that the phone company keeps permanent records of the numbers dialed for billing purposes and, therefore, they do not generally entertain an actual expectation of privacy in the numbers they dial. By the same token, the number of the dialer must also be transmitted to enable the phone company to allocate the bills to the proper customers. To that extent, the Smith rationale would argue against the reasonableness of the caller's expectation of privacy regarding Caller ID transmission of her number.

In any event, while Smith is certainly not dispositive of the questions involving Caller ID privacy, it offers little to support the notion that one's telephone number is afforded special constitutional protection.

State Constitutional Protection

Most state constitutions follow the federal model. A minority of state constitutions, however, provide explicit privacy protection.

¹⁸Id. at 742.

¹⁹Id.

²⁰Id. at 743.

For example, the Alaska Constitution, provides that:

The right of the people to privacy is recognized and shall not be infringed.²¹

This provision is not absolute, however, and courts have defined limits to that privacy right. For example, in a recent criminal case²², the Alaska Court of Appeals reversed the court below in holding that the defendant had no "reasonable expectation of privacy which society is prepared to recognize in his name and address and the locations where he received utility services."²³

The trial court found that the defendant had a reasonable expectation of privacy partially because the utility had a written policy that prohibited disclosure of the name, address or telephone number of a customer absent his consent, a subpoena or a court order. The Alaska Court of Appeals found, however, that the disputed information "was information which was available because Chryst [the defendant] was a consumer of a public utility. Few people would regard the fact that they are consumers of the services of a public utility to be private information."²⁴

The Court noted "what appears to be the majority rule that a person's name and address, by themselves, do not constitute information about which a person can have a reasonable expectation of privacy which society is willing to recognize."²⁵ Of course, the facts of this case dealt specifically and exclusively with the consumer's name and address, not his telephone number. The question remains whether the Alaska court would hold that a caller has an expectation of privacy in his or her telephone number when making a call.

Similar explicit privacy protection is found in the constitutions of other states. Arizona's privacy provision was recently examined in a Caller ID proceeding.²⁶ The Arizona Commission found that there are no constitutional impediments to the

²¹Constitution of the State of Alaska, Article I, Section 22.

²²State v. Chryst, 793 P.2d 538 (Alaska Ct. App., 1990).

²³Id. at 542.

²⁴Id.

²⁵Id.; Contra People v. Chapman, 679 P.2d 62 (1984); State v. Butterworth, 737 P.2d 1297 (1987).

²⁶See Re U.S. West Communications, Inc., 131 PUR4th 486, 502 (Arizona Corporation Commission, March 27, 1992).

provision of Caller ID in Arizona.²⁷

Many other Commissions have decided that Caller ID, when some type of blocking is available, does not present a constitutional problem.²⁸

Therefore, it appears that Caller ID, offered with blocking options, will be found constitutionally sound in nearly all state jurisdictions, at least at the administrative agency level.²⁹

The Federal Preemption Question

The Federal Communications Commission (FCC) has announced that it intends to promulgate regulations regarding the provision of Caller ID.³⁰ There is apparently some federal concern about state regulations which would prohibit Caller ID unless customers have the option of per-line (as opposed to per-call) blocking. The proposed FCC regulations which have been noticed for comment do not provide for per-line blocking on demand where the phone company would automatically be required to block a customer's number from being displayed at any time. If this remains the case, there will be a direct conflict between the states that provide for per-line blocking and a national policy that excludes per-line blocking. At this time, the FCC has received over 130 comments that cover a wide range of opinions. The FCC is expected to complete work on these regulations this year.

Conclusion

Throughout history, technology has helped form society and its institutions. From the first tools of agriculture to satellite communications, our institutions have evolved to address the impact that technology has had on society. Likewise, over time, the law has been modified to address new technologies and the effects of those technologies on privacy rights. Often, the issues developed in these cases have ethical and moral, as well as, legal implications. Suicide machines and test tube babies are often sensationalized, contemporaneous examples of technology clashing with societal norms, as reflected in current legal doctrine. Caller ID is only one small link in a chain of technological innovations that are rapidly changing the fabric of the telecommunications industry.

²⁷Id. at 503.

²⁸See, e.g., Re U.S. West Communications, Inc., 133 PUR4th 326 (Colorado PUC, May 20, 1992).

²⁹ The Pennsylvania Supreme Court struck down a Caller ID offering as being illegal under a state wire-tapping statute. Barasch v. Penn. P.U.C., 576 A.2d 79 (Pa. Commw. Ct. 1990)

³⁰See FCC Docket CC 91-281.

Changes in telecommunication technology are not merely the stuff of academics or engineers. Caller ID is a perfect example of the fact that these changes are staring consumers in the face. In the case of Caller ID - it is the electronic display of the number of the incoming telephone caller.

From our review, call blocking options provide a simple technological solution that should forestall, if not eliminate, many of the current privacy problems associated with Caller ID. The use of blocking, however, is not without cost. The value of Caller ID is reduced with each customer that subscribes to blocking. Nevertheless, call blocking provides a simple technological solution that balances the privacy needs of the caller and recipient. The provision for blocking varies by state.³¹

The clear trend among state utility commissions over the past year has been to approve Caller ID service, so long as blocking is readily available (and, in some cases, available without cost to the consumer). The federal scheme is still under review. It appears that the current controversy regarding Caller ID privacy is being adequately resolved by blocking technology. In that respect, related technology has provided the resolution to the privacy issue that the introduction of Caller ID technology created.

³¹See fn. 4, supra.

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Appendix A

Overview of PTI Communications CLASS Services Trial

I. Introduction

PTI Communications seeks authority from the Washington Utilities and Transportation Commission (Commission) to offer, on a trial basis, several exciting new telecommunications services. As described in more detail in Section III, the new services are Last Call Return, Continuous Redial, Calling Number Identification, Calling Name and Number Identification, Selective Call Forwarding and Call Trace. All the new services are commonly referred to in the telephone industry as customized Local Area Signalling Services, or CLASS. The Company is proposing its service area in Gig Harbor as the site of a one-year trial.

The new CLASS services will be offered to customers under the product name "Custom Calling II." Many customers are familiar with existing custom calling features known as Call Forwarding, Call Waiting, Three Way Calling, and Speed Calling. The new CLASS services are the next generation of central office based services available in the emerging world of intelligent telecommunications networks. The Company hopes to gain useful experience and information from the trial, with the eventual goal of introducing these services throughout its service areas.

II. Public Interest Benefits

Custom Calling II services provide customers with new options and increased flexibility in managing telephone calls. They also offer customers' greater convenience in placing calls. Many customers may already be familiar with the advanced telecommunications services and features that are commonly available in the workplace. Now, residential customers can have some of the more powerful, convenient, and flexible telecommunications features as well.

Some of the Custom Calling II services enable called parties to identify in advance, and temporarily retain, information about calls placed to their telephone line. As discussed in Section IV, PTI Communications is proposing to provide two blocking options as part of the trial offering of these services.

III. Custom Calling: IX Services**Last Call
Return**

This service allows customers to place a call to the telephone number of the last incoming call without having to know the actual telephone number associated with the call. Customers initiate Last Call Return by dialing the short activation code *69 (1169 for rotary lines). A benefit of Last Call Return is the inclusion of a two-level activation process that gives customers increased flexibility for returning calls. After dialing the activation code customers receive the telephone number (unblocked only) of the last incoming call. Customers then have the option of dialing "1" which initiates Last Call Return. If the called number is busy, processing of the call attempt continues until the called line is idle. Continual processing of calls placed using Last Call Return can be deactivated by dialing the code *89 (1189 for rotary lines). If customers do not want to place a call to the telephone number of the last incoming call, after identifying that number using Last Call Return, they may simply hang up and terminate use of the service. Thus, flexibility is provided to customers who, for example, may not want to return calls to certain parties.

**Continuous
Redial**

This service allows customers to automatically place a call to the last dialed telephone number without having to redial that number. Customers initiate Continuous Redial by dialing the short activation code *66 (1166 for rotary lines). The service enables customers to contact parties they have been unable to reach or re-initiate interrupted conversations. The service works regardless of whether the last number dialed is answered, unanswered, or busy. If, when placing a call using Continuous Redial, the called line is busy, processing of the call attempt continues until the called line is idle. When both lines are idle, the calling party will be prompted by a special ring and,

when the calling party picks up the line, the called line rings. Continual processing of calls placed using Continuous Redial can be deactivated by dialing the code *85 (1186 for rotary lines).

**Calling
Number
Identification**

This service allows customers to identify, and temporarily store telephone numbers of incoming calls. Depending on the capability of the telephone set or separate display unit, the date and time of incoming calls are also displayed which enables customers to determine the order in which calls are received. Calling number information is displayed on telephone sets or adjunct display devices capable of displaying incoming numbers.

**Calling
Name and
Number
Identification**

This service allows customers to identify the listed name associated with the telephone number of incoming calls. Calling Name and Number Identification allows faster recognition of the source of incoming calls and gives customers more information as they determine whether to answer calls.

**Selective Call
Forwarding**

This service allows customers to designate that incoming calls from up to 31 telephone numbers be automatically forwarded to another location. Customers activate forwarding of the designated incoming telephone numbers by dialing the code *63. The deactivation code is *83. Customers also have the ability to change the designated numbers at any time.

Call Trace

This service allows customers who have been receiving harassing or obscene calls to place an immediate trace of the last incoming call. The service may be accessed by customers by dialing the activation code *57 (1157 from rotary lines). Upon activation, customers will be informed that there is a charge (\$1.50 for residential customers and \$3.00 for business customers) if they wish to proceed with the trace. Information from successful traces will be produced on an output report which will be held in confidence by PTI Communications and will

only be forwarded to law enforcement agencies pursuant to the arrangement discussed in Section VIII. For each successful trace, the calling party's telephone number, blocking status, date, and time of call will be specifically recorded.

IV. Privacy Considerations and Special Customer Notification

The Company will provide customers with Per Call Blocking or, when requested, All Call Blocking. Both blocking services will be available to all customers at no charge. Per Call Blocking allows calling parties to enter the code *67 (1167 for rotary lines) which instructs the telephone central office to block transmission of the telephone number (and name) to the receiving telephone line for a single call. All Call Blocking allows calling parties to block the transmission of the telephone number (and name) for all calls made from a particular line. Per Call Blocking is more flexible than All Call Blocking.

The Company will provide all customers with an initial option to select All Call Blocking without incurring a recurring or non-recurring charge. This option may be exercised at any time by present and future customers. There will be no charge for removal of All Call Blocking, however subsequent requests for All Call Blocking will incur a modest non-recurring charge to recover administrative costs. This arrangement is similar to the manner in which 900 service blocking is now being provided.

Because it is important to provide notice to all customers of the blocking options for the new CLASS services before implementation of the services, PTI Communications proposes the following implementation schedule:

March 9	Date of Tariff Filing
March 20	Special Customer Notice Mailed to All Customers
April 22	Commission Approves Trial Tariff
May 1	Tariff Becomes Effective and Implementation Begins

In response to the special customer notice, all customers will be able to call PTI Communications toll-free to learn more about the service options that are available. Furthermore, customers that desire All Call Blocking will be able to designate verbally their choice through the Company's customer service representatives. No written notice or special form will be required.

Calls placed by a calling party that is using either blocking option will not be identified on the CLASS-based CPE used by customers of Last Call Return, Calling Number Identification, and Calling Name and Number Identification. Instead the words "Private Caller" are shown on the display device. Additionally, it should be noted that for all the identification related Custom Calling II services, only unblocked calls which both originate and terminate within the trial service area will be displayed. Long distance calls from outside the Company's Gig Harbor service area or miscellaneous calls (including cellular), will be shown on the display device as "Out of Area" or "Unknown Caller".

Calls placed to E-911 systems will not be affected by either Per Call Blocking or All Call Blocking. Additionally, Per Call Blocking or All Call Blocking does not affect the provision of automatic number identification (ANI) used by other telecommunications companies for identification and billing purposes.

To prevent possible problems with telephone lines that are normally used in a transitory fashion, the Company is proposing to bar both forms of blocking from semi-public lines, public access lines (PAL lines) and its own public telephone lines. Because there is not a compelling privacy interest attached to public and semi-public pay telephone lines the Company believes that in the interest of curbing or eliminating the possibility of harassment from such lines, blocking in either form should be prohibited.

V. Trial Length

The Company is proposing a one-year trial to obtain practical experience with the services on a manageable basis. Implementation is contingent on approval of the proposed tariff by the Commission. Assuming a successful trial, PTI Communications will file tariff revisions to continue the services on a permanent basis.

The concept of a trial is not unusual for new telecommunications services. There have been many CLASS trials across the country. The useful experience from a limited market trial will provide the information ultimately necessary to introduce these services statewide.

VI. CLASS Based Customer Premises Equipment (CLASS-Based CPE)

Because some of the new services require special Customer Premises Equipment (CPE), and because the Company is initially proposing a trial, CLASS-based CPE will only be available on a lease basis from PTI Communications (with an option to apply lease payments towards purchase if the services become permanent) for customers who subscribe to Custom Calling II services. PTI Communications will not be selling CLASS-based CPE during the trial. The leasing approach addresses any concern that customers could be stranded with unnecessary equipment in the event that the services are discontinued at the end of the trial period. The leasing approach also ensures that customers will be able to return the CPE to PTI Communications at no additional charge. Equipment obtained from any other vendor will not be covered by the Company's offer. PTI Communications may also elect to offer special equipment promotions from time to time for CLASS-based CPE.

VII. Location

The trial will be conducted in the Company's Gig Harbor service area which encompasses the communities of Gig Harbor, Arletta, Burley, Fox Island, Key Center, Purdy and Lakebay. All the communities covered by the trial are PTI Communications' service areas and long distance charges do not apply to calling within and between each community (i.e., calling within the entire trial area is toll-free). There are approximately 22,700 residential and business customers in these communities.

VIII. Community Issues

PTI Communications has been working with various community organizations in the Gig Harbor area to help them understand the Company's proposal. Formal presentations were made to the following organizations; Gig Harbor Rotary Club, Gig Harbor Chamber of Commerce, Gig Harbor Business Association, and Gig Harbor Kiwanis Club.

The Company has also discussed the new service offerings with law enforcement agencies and other potential emergency related organizations. The Company's goal was to identify and solve any problems associated with the services in advance to address as many concerns as possible in advance of the trial.

For Call Trace, the Company has developed the following arrangement with the Pierce County Sheriff's Department and Gig Harbor Police Department. Customers who successfully place a trace using Call Trace, will be instructed to call a special telephone number for further information. The recorded message on that number and all further procedures that must be followed by customers in pursuing obscene or harassing telephone calls will be the responsibility of, and will be provided by, those law enforcement agencies.

The distinct advantage of Call Trace is the ability to generate permanent information about a call without going through the current and costly process which requires manual intervention by telephone operating company personnel. Use of the information generated by Call Trace will be restricted. PTI Communications will not release this information without an appropriate court order. However upon request, the Company will confirm to law enforcement agencies that a successful trace has occurred.

IX. Conclusion

The digital age of telecommunications enables companies like PTI Communications to offer services that allow people to communicate as never before. The Gig Harbor trial is a small yet notable step forward for enhanced communications capabilities for all consumers. PTI Communications is pleased to be taking that step.