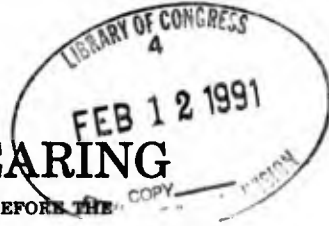


United States

TELEPHONE PRIVACY ACT OF 1990

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HEARING

BEFORE THE

SUBCOMMITTEE ON
COURTS, INTELLECTUAL PROPERTY,
AND THE ADMINISTRATION OF JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

H.R. 4340

TELEPHONE PRIVACY ACT OF 1990

SEPTEMBER 19, 1990

Serial No. 123



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TELEPHONE PRIVACY ACT OF 1990

WEDNESDAY, SEPTEMBER 19, 1990

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, INTELLECTUAL PROPERTY,
AND THE ADMINISTRATION OF JUSTICE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:20 a.m., in room 2226, Rayburn House Office Building, Hon. Robert W. Kastenmeier (chairman of the subcommittee) presiding.

Present: Representatives Robert W. Kastenmeier, Howard L. Berman, William J. Hughes, Mike Synar, Carlos J. Moorhead, Howard Coble, and D. French Slaughter, Jr.

Also present: Elizabeth R. Fine, counsel; Virginia E. Sloan, counsel; Kathrine Urban, research assistant; and Joseph V. Wolfe, minority counsel.

OPENING STATEMENT OF CHAIRMAN KASTENMEIER

Mr. KASTENMEIER. The committee will come to order.
The gentleman from Virginia.

Mr. SLAUGHTER. Mr. Chairman, I ask unanimous consent that the subcommittee permit the meeting today to be covered, in whole or in part, by television broadcast, radio broadcast, and/or still photography, pursuant to rule 5 of the committee rules.

Mr. KASTENMEIER. Without objection, that will be done.

This morning the subcommittee will consider H.R. 4340, the Telephone Privacy Act of 1990. This is a bill which I introduced, along with our colleagues Mike Synar and Don Edwards. It provides that if a telephone company offers its customers Caller ID to register the numbers of incoming callers, it must also offer those customers a device to block transmission of the telephone numbers.

[The bill, H.R. 4340, follows:]

101ST CONGRESS
2D SESSION

H. R. 4340

To amend title 18, United States Code, to protect the privacy of telephone users.

IN THE HOUSE OF REPRESENTATIVES

MARCH 21, 1990

Mr. KASTENMEIER (for himself, Mr. SYNAR, and Mr. EDWARDS of California) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to protect the privacy of telephone users.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Telephone Privacy Act of
5 1990".

6 SEC. 2. TITLE 18 AMENDMENTS.

7 (a) EXCEPTION TO PROHIBITION.—Section 3121 of
8 title 18, United States Code, is amended—

1 (1) in the heading for subsection (b), by inserting
2 "WITH RESPECT TO USE BY PROVIDER" after "EX-
3 CEPTION";

4 (2) by inserting after subsection (b) the following:
5 "(c) EXCEPTION WITH RESPECT TO USE OF CALLER
6 IDENTIFICATION SYSTEMS.—The prohibition of subsection
7 (a) does not apply with respect to the use of a device that
8 allows the recipient of a telephone call to determine any indi-
9 vidually identifying information about the caller or the origi-
10 nating number (other than information voluntarily given by
11 the caller in the course of the communication) if the provider
12 enables any telephone call originator to block receipt of the
13 identifying information."; and

14 (3) by redesignating subsection (c) as subsection
15 (d).

16 (b) CIVIL LIABILITY.—Section 3121 of title 18, United
17 States Code, is further amended by adding at the end the
18 following:

19 "(e) CIVIL ACTION.—Any user of wire or electronic
20 communication service may, in a civil action, obtain relief
21 against any provider who directly or indirectly provides to
22 recipients of telephone calls the ability to determine individ-
23 ually identifiable information, but fails to enable an originator
24 to block receipt of the originating number as required under
25 subsection (b)(3), in the same manner and to the same extent

4

3

1 as a customer aggrieved by a violation of chapter 121 of this
2 title may, under section 2707 of this title, obtain relief
3 against the violator.”.

○

Mr. KASTENMEIER. Caller ID appears to be a controversial issue across the country. There are apparently those who advocate Caller ID with blocking, those who favor Caller ID without blocking, and those who oppose Caller ID entirely. The trend among telephone companies appears to be in favor of some kind of blocking, although some companies strongly oppose this solution.

Caller ID is a fairly recent technology that has competing privacy implications. The task before this subcommittee is to try to balance the privacy rights of telephone call recipients with those of telephone callers.

Caller ID also implicates the Electronic Communications Privacy Act. At my request, the American Law Division of the Library of Congress studied the issue of whether Caller ID is a trap and trace device and, therefore, prohibited by ECPA. The Library's conclusion was, in fact, that Caller ID appears to be prohibited by ECPA.

ECPA was the congressional response to the emergence of many new technologies that were not covered by the wiretap laws. Congress determined that it was important to recognize and encourage these new technologies. It also determined, however, that "privacy cannot be left to depend solely on physical protection or it will gradually erode as technology advances. Additional legal protection is necessary to ensure the continued vitality of the fourth amendment."

Today's hearing is therefore important in light of the fact that telephone companies around the country are offering Caller ID, and in light of this subcommittee's obligation to clarify the law and to review the privacy implications of this technology.

I regret that we could not hear from all of the interested parties on this issue. We, of course, welcome any written statements. But in light of the many pressures on the subcommittee and on the Congress as a whole as we move toward adjournment, we simply are not able to take the testimony of everyone who could have something to offer. I do look forward to today's hearing and the testimony of a variety of witnesses with differing perspectives.

Before we call on our first witness, I would like to yield to the gentleman from Virginia, Mr. Slaughter.

Mr. SLAUGHTER. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate having the opportunity to express my views regarding the Caller ID service which we are receiving testimony on today. This service is currently available in the Commonwealth of Virginia and has proved a measure of assistance to many citizens. While I welcome the variety of comments we are about to receive, I generally believe that a blocking option would diminish the effectiveness of Caller ID.

If people who want Caller ID cannot see who is calling, the service is less valuable, if an obscene caller or someone with violent intentions only has to touch two numbers to block Caller ID. What is the good of having Caller ID at all? In my view, the instances in which a caller legitimately needs to prevent someone from knowing who is calling can be worked out without curtailing the benefits of Caller ID.

Caller ID is currently available without blocking in Virginia and we do not seem to have any problems with the program. In fact, I understand that in less than a year Caller ID has over 15,000 sub-

scribers in Virginia, and a lot of benefits have been realized. I could point out the obvious benefit of deterring obscene callers, but I think the service has proved to be even more valuable in helping law enforcement officials.

For example, a family in Fairfax County, VA, had been out of town on vacation and came home to find they had been robbed. Upon checking their Caller ID box, they found several calls that had been made at late hours from a number they did not recognize. The police were able to trace the strange number which led them to the stolen property.

Mr. Chairman, I'm not convinced of the need for Federal legislation on this issue. In my State, concerns regarding Caller ID have already been worked out by the State corporation commission which has decided that the blocking option is not needed. This decision has also been reached by other States with Caller ID. In my view, the benefits of Caller ID without the blocking option far outweigh any downside of the service. Just as an individual has the right to a peephole on his front door to see who is knocking before opening the door, one has the right to see who has chosen to call on the telephone before answering.

Thank you, Mr. Chairman, for this opportunity to express my views on this issue.

Mr. KASTENMEIER. I thank my colleague.

I would like to acknowledge the presence of a cosponsor of the bill, Mike Synar of Oklahoma.

Mr. SYNAR. I just want to thank the chairman for holding this hearing on a very important subject.

Mr. KASTENMEIER. Our first witness today is a good friend and fellow colleague of mine from the State of Wisconsin, Senator Herb Kohl. The Senator is a leading proponent of Caller ID legislation. In fact, he was the first one to introduce legislation on the issue in either body. I want to welcome him this morning. I'm sure I speak for the committee when I say we're looking forward to hearing his advice on this very interesting and controversial topic.

Senator Kohl.

**STATEMENT OF HON. HERB KOHL, A SENATOR IN CONGRESS
FROM THE STATE OF WISCONSIN**

Mr. KOHL. Thank you, Mr. Chairman. I am very pleased that you called this hearing today and that you've also invited me to testify.

For many years, Mr. Chairman, you have been a champion of privacy rights and individual liberties, and so I'm especially pleased to work with you on this legislation. You and your staff have done an excellent job of putting together what I know will be a comprehensive and fair discussion of Caller ID. I would like to take this opportunity to thank Mike Synar for his support on this issue.

I would like to briefly comment on what I see as the relevant issues here today. This is really not a debate over the value of Caller ID. Most everyone thinks that Caller ID is a good service, and I agree. I, like many other people, want to see it spread as quickly as possible. But the question is, in what form should it spread? Should there be forced Caller ID in which the phone com-

pany requires our phone numbers to be displayed every time we make a call, even if we have an unlisted number? Or should there be voluntary Caller ID, in which callers decide when they wish to give out their numbers? Keep in mind, it's easy to get someone's address with their phone number, so mandatory disclosure can mean revealing where you live and even, very possibly, your name—whether you want the other person to know or not.

Forced Caller ID violates our fundamental right to privacy. I believe we have the right to call a crisis hot line or a Senator's office or an IRS help line without having to say who we are. I believe the phone company shouldn't be able to compel us to identify ourselves when we call a business for information.

There are even times when forced Caller ID is dangerous. Prosecutors often call witnesses at night from home. Surely they should not be compelled to reveal where they live. Battered women often take refuge with friends and then call home to check on one thing or another. They should not be compelled to tell their abusing husbands where they're staying. There are many other dangerous situations, but the point is simply this: The phone company cannot determine when it's safe to reveal your name, your number, and your address. There are clearly too many circumstances and too many variables.

So the answer must be to allow callers to retain freedom of choice, and our Telephone Privacy Act would do just that. Let callers dial three digits on the phone when they want to make private calls. With free, per call blocking, callers can display their numbers when calling friends and family, and they can keep their numbers confidential when they feel the need to do so. The recipients of blocked calls will always see the word "private" flash on the Caller ID box. Then, if they wish, they can ignore the call, screen it with a tape machine, or simply answer the telephone.

Some phone companies would like to frame this whole issue in terms of obscene phone calls. This approach might make for good marketing, and even larger profits, but it is ultimately deceptive. The real truth is that other services such as Call Trace more effectively combat abusive phone calls, even if there is Caller ID blocking. Therefore, it turns out that the ability exists to protect victims and privacy at the same time.

But, Mr. Chairman, before we go any further with Caller ID, we have got to make sure that it's legal. This summer, the Pennsylvania Court of Appeals ruled that Caller ID violates that State's wiretap law, which is similar to the Federal version that you helped draft. The Telephone Privacy Act would amend the Federal law to authorize Caller ID.

There is one more reason to pass legislation. Blocking already exists for the wealthy. A new 900 number allows people to make private calls for \$2 a minute. I believe that is wrong. As a matter of fairness, phone companies should make privacy available to everyone, rich or poor. Blocking is a matter of equity as well as privacy.

I will wrap it up, Mr. Chairman, by pointing out that all around the country States are requiring blocking, and telephone companies are opting for it. I understand that even NYNEX—one of the last holdouts—will be offering per call blocking soon. This recognition

is occurring for a crucial reason: Caller ID with blocking offers privacy protection for callers and for recipients alike. That's a powerful rationale and that is why I believe our legislation will soon become law.

Mr. Chairman, I thank you very much. I am pleased to be here, and I am sure this will be an excellent hearing.

Mr. KASTENMEIER. Thank you very much for your statement, Senator Kohl. I think it was an excellent statement to start the hearing with.

[The prepared statement of Mr. Kohl follows.]

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United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, DC 20510-6275

Testimony of Senator Herb Kohl
 Subcommittee on Courts, Intellectual Property and
 Administrative Practice
 U.S. House of Representatives
 Hearing on Caller ID
 September 19, 1990

I'd like to begin by commenting briefly on what I see as the relevant issues here.

This really is not a debate over the value of Caller ID. Most everyone thinks that Caller ID is a good service, and I agree: I want to see it spread as quickly as possible. But the question is, in what form should it spread? Should there be "forced Caller ID," in which the phone company requires our phone numbers to be displayed every time we make a call -- even if we have an unlisted number? Or should there be "voluntary Caller ID," in which callers decide when they wish to give out their numbers? Since a call recipient can obtain the caller's address with the phone number, mandatory disclosure means revealing where you live, whether or not you want the other person to know.

Forced Caller ID violates our fundamental right to privacy. I believe we have the right to call a crisis hotline, or a Senator's office -- or an IRS help line -- without having to say who we are. And I believe the phone company shouldn't be able to compel us to identify ourselves when we call a business for information.

There are even times when forced Caller ID is dangerous. Prosecutors often call witnesses at night from home. Surely they should not be compelled to reveal where they live. Battered women often take refuge with friends, and then call home to check on one thing or another. They should not be compelled to tell their abusing husbands where they're staying. There are many other dangerous situations, but the point is this: the phone company can't determine when it's safe to reveal your number and address. There are just too many circumstances and too many variables.

The answer must be to allow callers to retain freedom of choice, and the Telephone Privacy Act would do just that. Let callers dial three digits on the phone when they want to make private calls. With free, per-call blocking, callers can display their numbers when calling friends and family -- and they can keep their numbers confidential when they need to do so. The recipients of calls will always see the word "private"

flash on the Caller ID box. Then, if they wish, they can ignore the call, screen it with a tape machine, or simply answer the phone.

Some phone companies would like to frame this whole issue in terms of obscene phone calls. This approach might make for good marketing -- and larger profits -- but it's ultimately deceptive. The real truth is that other services, such as Call Block and Call Trace, more effectively combat abusive calls. For example, Call Trace lets the victim of a harassing phone call automatically send the number of the the harasser to the authorities after hanging up -- merely by dialing a three-digit code. And these new technologies work even if a caller withholds his number -- in other words, even if there is blocking. It turns out that the ability exists to protect victims and privacy at the same time.

But before we go any further with Caller ID, we've got to make sure that it's legal. This summer, the Pennsylvania court of appeals ruled that Caller ID violates that state's wiretap law -- which is similar to the federal version that you helped draft. The Telephone Privacy Act would amend the federal law to authorize Caller ID.

There's one more reason to pass legislation. Blocking already exists for the wealthy. A new 900 service allows people to make private calls for \$2 a minute. I believe that's wrong. As a matter of fairness, I think phone companies should make privacy available to everyone, rich and poor. Blocking is a matter of equity as well as privacy.

I want to conclude by calling attention to something happening outside of this hearing room. All around the country, states are requiring blocking, and telephone companies are opting for it. And I understand that even NYNEX -- one of the last holdouts -- will be offering per call blocking soon. This recognition is occurring for one crucial reason: Caller ID with blocking offers privacy protection for callers and recipients alike. That's a powerful rationale, and that's why I believe our legislation will soon become law.

Thank you.

Mr. KASTENMEIER. The questions seem to be relatively simple: Should companies have Caller ID? Then, if the answer is yes, should they have a blocking device? Those are the two large technical issues. But as you have pointed out, there are a series of side commentaries about alternative technologies that do coexist with those two technologies—Caller ID and the blocking technology. The question is, what is the state of the law and, then, do we need Federal legislation? Can we rely on State public utility commissions to resolve this from State to State? Can we have a system nationally that has different systems within different areas? That is to say, some with blocking devices and some without blocking devices? Who should make that determination? There really are quite a few questions.

Let me ask you first about the need for Federal legislation. Do you see the need for some Federal legislation, notwithstanding how we might come to a conclusion about the utility of blocking devices, or the necessity of them, in terms of privacy? Do you think Federal legislation is needed in this area?

Mr. KOHL. I think so, because it seems to me the issue needs to be resolved on a level that will apply to every State. I would not consider it to be satisfactory to have some States with blocking authorized and legal and other States without it. There is also the question of interstate phone calls, and how do you handle that if you don't have a single piece of legislation that covers the legitimacy of blocking nationwide?

Mr. KASTENMEIER. We obviously currently see the roles of public utility commissions and State legislatures, but nationally, does the FCC have a role in this as well? Have they acted on the subject, as far as you know?

Mr. KOHL. I'm not familiar with any action they've taken.

Mr. KASTENMEIER. Frankly, I'm not either. We certainly want to explore that.

Much of this will be anecdotal in terms of utility, as far as law enforcement needs and, as you point out, obscene phone calls. How do you protect people from disclosure when they make a call and do they have a legitimate right to be protected from having their phone numbers being disclosed upon making a telephone call?

How do you respond to the anecdote of the gentleman from Virginia where, without a blocking device, a couple was able to discover who broke into their house because they had Caller ID? Mr. Slaughter went on to say, had the perpetrators had a blocking device and used it, they would not have been able to discover who the thieves there.

Mr. KOHL. I think it's important to recognize that we're not talking 100 percent either way. We're not talking about a clear issue of Caller ID with blocking being perfect and the other way being totally imperfect. There's a balance that we're looking for. Certainly those who favor no blocking may be able to bring up one or two or three instances where the point is well-taken.

But when you talk about balancing all the competing interests in this country, balancing the need and the legitimacy of people not wanting to have their phone number displayed every time they make a phone call, whether they like it or not, it just seems to me

that the overall equity and fairness clearly comes down on the case of offering blocking.

With respect to obscene phone calls, as you know, blocking does not rule out in any way referring an obscene phone call to the police station immediately for action. If you get an obscene phone call, you just press three digits and that phone call is immediately referred to the police. They are on the phone talking with this obscene caller in a matter of seconds. So I think in most every case fairness and equity comes down on the side of Caller ID with blocking, rather than Caller ID without blocking.

I think the fact that telephone companies for the most part, all across the country, are now voluntarily offering blocking with Caller ID is some indication that even they, who are running companies for profit, recognize that they need to offer blocking with Caller ID.

Another thing. I have never understood why they have offered unlisted phone numbers for so long and recognized that it was a value and a need in our society, and all of a sudden they come along with a new technology and make the argument—and not all of them are—but make the argument that unlisted phone numbers are no longer of any value or need in our society. I guess there's an inconsistency there that I find hard to fully comprehend.

Mr. KASTENMEIER. I thank my friend.

The gentleman from California, Mr. Moorhead.

Mr. MOORHEAD. Thank you.

You know, Senator, it would seem to me that if you have Caller ID and a blocking device, it would be totally unfair, the fact that the call was blocked the information was not given to the recipient of the phone call. I would question receiving a phone call from someone who wanted to block out their number, unless you happen to be a certain kind of agency that was anxious to get every call that came in. If someone wouldn't let you know where they were calling from, why should you want to talk to him?

Mr. KOHL. You don't have to.

Mr. MOORHEAD. But some systems are going to have blocking devices and some aren't. Some people that call will have that capability and others will not. So if they do have that capability to block and they do block, you surely on the other end ought to be able to see it on your phone that it is blocked and be able to reject the call.

Mr. KOHL. You will have—

Mr. MOORHEAD. There would be a disadvantage to the person on one side that would know which number he called; they would know all about you; you wouldn't know anything about him, or who the call was coming from.

Mr. KOHL. You mean if he blocks.

Mr. MOORHEAD. If he blocks.

Mr. KOHL. Then you don't have to pick up the phone.

Mr. MOORHEAD. But if some systems have a blocking device and others do not, unless your phone would reflect the call was blocked, you wouldn't know whether he had blocked it or not.

Mr. KOHL. Right. Well, if I understand, what we're requiring is that all systems—that's the purpose of our Federal legislation—is that all systems that have Caller ID have blocking.

Mr. MOORHEAD. Then would the other people have the ability to see that it's blocked on their own phone?

Mr. KOHL. The recipient?

Mr. MOORHEAD. Yes.

Mr. KOHL. The recipient would know when his telephone rings, if he has Caller ID. If his telephone rings and there is no number on his little device, he knows that——

Mr. MOORHEAD. Then he can reject the call or put it on a tape, as you indicated.

Mr. KOHL. Yes. He can pick up the phone, not pick up the phone, or tape the phone call. But he would know that the caller is blocking their number. Then he has a choice.

Mr. MOORHEAD. It would seem to me, because there can be calls coming from outside the United States or outside the area, that there would be exceptions. It would be much better to require that it shows it is blocked.

Mr. KOHL. Yes. I guess that's another reason why we think there needs to be a single piece of legislation in this country to cover Caller ID, so that you will know in every case that if it's a block, it's a block.

Mr. MOORHEAD. Thank you.

Mr. KASTENMEIER. The gentleman from Oklahoma, Mr. Synar.

Mr. SYNAR. Thank you very much, Mr. Chairman.

Herb, I want to thank you. I think that your statement summarized probably better than I have ever heard the whole issue of this Caller ID and the importance of why we have to provide this blocking.

As is too often the case, when issues first hit, people seem to center in on one issue. With the advertisements on obscene calls, many of us who support this legislation have been held out as being ones who believe that abusive and obscene calls should be OK. I think your statement clearly points out why that is not the case.

I think it's important that you also point out that people do have the right to privacy when they call their Senate office, when they call the IRS, or, if they're in an abuse center, not to have that number revealed. What we're trying to do with this legislation is to try and protect that privacy while also recognizing that there will be opportunities to solve the second problem of obscene calls through the present technology. So I want to commend you for that statement.

I hope that we can get the telephone companies, who seem very supportive of the effort by their voluntary efforts, to help us fashion the advertising which will get a lot more viewership than what we do here today, to really help us sell this message, because I think they want the same types of things.

I can tell you a story about coming here—I'm sure you're in the same situation—when you get here early in the morning and sometimes you answer your own phone because nobody is here. During the height of one of the debates a couple of weeks ago I was sitting in my office and a guy called me. He was yelling and screaming, saying "You tell that jackass Synar that I'm mad as hell at him on the way he's going to vote today." I said, "I'll do that." He says, "you tell that jackass Synar that I'm going to make sure in the

next election that he's going to hear from me." I said, "I'll tell him that." He says, "How do I know you're going to tell that jackass Synar?" I says, "You're talking to the jackass." The phone went "click."

Mr. KOHL. That was me, Congressman.

[Laughter.]

Mr. SYNAR. I would have liked to have had his number. But the fact is, he has the right, as a citizen of this country, to call me up, with the privacy of not identifying himself, and calling me a jackass. That's a right that I think is a very important right to protect. So I want to thank you for your leadership in this, which is very critical. We appreciate it.

Mr. KOHL. I appreciate that.

Mr. KASTENMEIER. Does the gentlemen from Virginia have a question?

Mr. SLAUGHTER. No questions, Mr. Chairman.

Mr. KASTENMEIER. If the gentlemen from Virginia or North Carolina do not have questions, we know that you need to return to the judicial hearings on the other side, which are very important. We appreciate, Senator Kohl, your appearance as a leadoff witness here today. Good luck to you, sir.

Mr. KOHL. Thank you.

Mr. KASTENMEIER. Next I would like to introduce and greet a panel of witnesses. First we will hear from Andrew Poat, Acting Director of the U.S. Office of Consumer Affairs, which represents consumer interests in domestic policy development for the administration. We will also hear from Stephen Moore, public counsel for the Illinois Office of Public Counsel, which represents the interests of consumers in the State of Illinois. Mr. Moore is also on the executive committee of the National Association of State Utility Consumer Advocates and will testify on that association's behalf today.

Gentlemen, we welcome you here this morning. Mr. Poat, would you care to go first?

STATEMENT OF ANDREW L. POAT, ACTING DIRECTOR, U.S. OFFICE OF CONSUMER AFFAIRS, ACCOMPANIED BY PATRICIA FALEY, DIRECTOR OF CONSUMER AND INDUSTRY RELATIONS, AND NICKIE A. ATHANASON-DYMERSKY, GENERAL COUNSEL, OFFICE OF SPECIAL ADVISER TO THE PRESIDENT FOR CONSUMER AFFAIRS

Mr. POAT. Thank you, Mr. Chairman. I am Andrew Poat, Acting Director of the U.S. Office of Consumer Affairs. With me today are Pat Faley, Director of Consumer and Industry Relations, and Nickie Athanason-Dymersky, our General Counsel. We appreciate the opportunity to appear at this hearing today to share an administration perspective on new telecommunications services.

When we first learned about Caller ID just about 1 year ago, our reaction mirrored what we believe to be the first impression of most consumers—here is a valuable new tool with which we may better manage certain intrusive aspects of home telephone service.

Since that time, a national debate has ensued regarding the privacy implications that accompany this technology. Even so, we con-

tinue to be very impressed with Caller ID. Quite simply, consumers want it.

In the interest of brevity, permit me to associate myself with the remarks of the Senator from Wisconsin regarding the benefits of Caller ID for residential use.

Additionally, however, I would like to raise a second area in which associated technology is going to be very important, and that is automatic number identification. This is the commercial version of Caller ID and it also has a value to consumers and to business. When an individual calls a company with an inquiry or complaint, for example, ANI can help speed up responses by giving service representatives instantaneous access to customer account information. The efficiency gains which businesses will realize through this sort of technology offer further testament to the value of Caller Identification.

Clearly, then, we do not underestimate the benefits of Caller ID. Neither, however, do we underestimate its privacy implications. Concern about privacy is both high and sustained.

The recently released Harris poll found that four in five Americans are concerned about threats to their personal privacy. And so, as President Bush has warned, we cannot take these concerns lightly.

Why do Caller ID and ANI raise privacy concerns? They do so because they disclose the phone number of nearly every phone caller without regard to those who have an unlisted number or a specific, legitimate need to prevent disclosure. In some instances, that need is frequent, as with physicians who wish to return calls from patients from their homes during the evening, and yet do not wish to reveal their private phone numbers, or undercover police detectives who need to protect their identity. Teachers, too, often have a need to call parents and should be able to do so without putting their home phone number at risk of being misused by students.

The point is, blocking cannot and should not be viewed solely as the last bastion of protection for telephone harassers. Examples of reasonable uses include not only those I have mentioned but also those who are making anonymous tips to the police, calling drug abuse, suicide and other help lines, and perhaps when calling 800 and 900 numbers.

Permit me to explain that last example. The market for information about our buying preferences, lifestyles and spending habits is burgeoning. The immense technical barriers that once kept data bases of this information separate have been laid flat. In the process, our telephone number has become a speedway connecting our name and address to a great deal of personal information.

In fact, one of the principal uses of ANI is to permit marketers to automatically capture telephone numbers when consumers call, and to match those numbers to databases of information about those callers.

On the surface, it would appear that the Caller ID debate comes down to our right of privacy versus our right to know who's calling. But looking deeper, we see that the parameters of these rights vary greatly, not so much from person to person, but from call to call. Certainly, no one wishes to give obscene phone callers the right to

prevent their identity from being revealed. Yet, everyone would allow abused spouses the right to call home without disclosing their location. Thus, we need a solution that balances these rights with both flexibility and fairness.

The administration believes that this balance is best struck with per call blocking. Trial tests prove that consumers exercise their right to this choice responsibly. Only in a very small percentage of calls did consumers block their numbers. So per call blocking does not negate the value of Caller ID. That is why four regional Bell operating companies now offering, or soon to offer, Caller ID will provide per call blocking.

Those who would use the blocking mechanism irresponsibly are subject to other technologies, such as Call Trace. Call Trace works even if the harasser attempts to block the telephone number.

The legal environment for Caller ID and ANI is unclear at present. A Pennsylvania Appellate Court decision declared Caller ID illegal under the State wiretapping law, a law which closely resembles the Federal wiretapping statute, as well as the statutes of some 15 other States. Two bills in Congress would change Federal law to require those who offer Caller ID to offer call blocking as well.

The administration believes that it is not necessary at this point to separate this telephone service decision from any other telephone rate and service decision, jurisdiction for which is reserved for public utilities commissions. Interstate telecommunications decisions are properly within the jurisdiction of the Federal Communications Commission.

We see telephone companies, direct marketers and others in industry beginning to respond to telecommunications privacy concerns with creative technological solutions, the range of which we do not wish to inhibit. Thus, at this time, and until a demonstrated case for removing this authority from the States presents itself, we would oppose Federal legislation.

In our view, the administration's approach is one that provides the maximum room for consumer choice and enterprising response to consumer privacy concerns in the fast-paced world of telecommunications.

We certainly would be pleased to respond to any questions which you, Mr. Chairman, or other members of the subcommittee might have.

Mr. KASTENMEIER. Thank you, Mr. Poat.

[The prepared statement of Mr. Poat follows:]

PREPARED STATEMENT OF ANDREW POAT, ACTING DIRECTOR, U.S. OFFICE OF
CONSUMER AFFAIRS

Privacy concerns are nothing new to telecommunications. When Americans first started using telephones, the nature of this concern was the switchboard operator who, by virtue of the need to connect one caller with another, knew not only who was calling whom, but perhaps what was being said as well. Who can forget the caricatures of the talkative operator who, over one cup of coffee, could let you know every bit of gossip in town?

Later, party lines were introduced to provide a greater number of Americans with better phone service. While party lines permitted service to a greater number of people, they came with the distinct risk that conversations might be overheard by others.

Today, new technologies continue enhancing and expanding the ways in which we rely on telecommunication services. Just as credit cards have become the financial tool by which many Americans finance transactions, so the telephone is becoming an indispensable way of conducting business. Interconnected with computer capabilities, telecommunications may well be the means by which we conduct the majority of our business. In this regard, most would agree that the telephone is making our lives easier.

With all the advances made possible by these new technologies, we have not yet eliminated the concerns about privacy that have, in one way or another, been a recurrent issue. Indeed, these new technologies, if not implemented with care, can make the privacy

intrusions of any one operator or party line customer pale by comparison.

At issue is the supply and demand for personal information -- something that is growing at both ends. On the supply side, computer technologies have given the information industry (such as credit bureaus) a rapidly expanding ability to collect and manipulate data. The technical barriers, which in the past kept data bases separate, are crumbling. All this as individuals become more reliant on electronic transactions that inevitably leave "finger-prints" which can be aggregated and analyzed.

On the demand side, a growing and lucrative market exists for such information about each one of us -- a market that consists of direct marketers, employers, landlords, financial institutions, medical service providers and insurers, charities, the media and others who want to know more about us -- either as individuals or as categories of individuals.

Today the telephone can provide a wealth of information about individuals or groups of individuals in much the same way as credit cards or bank records can disclose an individual's life style.

The telephone number is now a key that connects a previously rather anonymous individual with a rapidly growing repository of information about him or her.

In addressing the issue of telecommunications privacy, I have taken the position that consumers have an expectation of privacy in their dealings with telephone companies -- an expectation that is now in danger of becoming a thing of the past, without their knowledge.

It is with this in mind that I've divided my testimony into three subject areas each having privacy implications for consumers.

They are as follows:

1. Residential Caller ID Service
2. Commercial Automatic Number Identification Systems
3. Telephone Transaction-Generated Information

At the outset, let me make clear that I am not calling for federal laws at present. In my view, decisions on new telephone services should not be separated from any other service or rate decision for telephones -- which are the domain of the State Public Utility Commissions, and also, for interstate service, the Federal Communications Commission.

1. Residential Caller ID Service

Caller ID is a valuable service with obvious benefits to consumers, giving them the ability to ignore calls from recognized sources, and acting as a deterrent to prank calls. It does this by allowing the recipient of a call to see the phone number from which a call is initiated before deciding to answer.

In most instances, callers have no need to conceal their phone numbers and so the needs of both parties to a phone conversation are not only met, but on the side of the person receiving the call, enhanced.

There are circumstances, however, wherein some individuals may need to preserve the confidentiality of their phone numbers or locations. In these circumstances, some blocking option seems appropriate. These include abused adults or children calling home, or mental health professionals and doctors who return late night patient calls, all without giving any of these parties their home phone numbers.

It is important also to weigh the concerns of the law enforcement community. We, of course, want to make certain that law enforcement officials have the ability to detect and prevent crime. We believe that Caller ID, in combination with other

technologies, would help with the work of law enforcers. Some law enforcement organizations, however, have stated their concerns about Caller ID without blocking.

For example, the Ohio Association of Police Chiefs and the Treasury's Bureau of Alcohol, Tobacco and Firearms have recently added their voices to those calling for some kind of blocking option. Their concern is that law enforcement agencies that utilize "undercover telephones" for covert investigative operations may be subject to discovery if suspects/violators acquire Caller ID. Law enforcement officers from South Florida, raising similar concerns, have caused the Florida Public Service Commission to delay the implementation of Caller ID there.

Phone companies have expressed concern about offering call blocking. They say it will devalue the service to consumers and encourage obscene phone calls; however, the evidence suggests otherwise.

The test marketing of Caller ID with an optional blocking service conducted by U.S. West indicates that, when given the ability to block, consumers actually block few calls.

Furthermore, those called will be wary of calls with blocked numbers and, in most instances, will not be likely to answer them.

And, the fact that harassing phone calls in the New Jersey experiment were reduced by 50% when only 2% of eligible telephone subscribers purchased the Caller ID service suggests that the real threat to prank callers is the knowledge that technology exists to catch them, not the actual subscription rate to Caller ID.

In addition, there is another technology that provides a better means of addressing the problem of truly troublesome callers. Call Trace, the technology by which an individual consumer can capture an offending caller's number -- whether or not it is blocked -- is a real threat to the obscene phone caller and would be a deterrent to obscene calls if marketed in the same high-visibility manner as Caller ID.

Again, the preferences of law enforcement officials are an important consideration. Such officials readily prefer the information made possible by Call Trace to investigate and prosecute. The consumer simply presses a star and two digits and Call Trace makes a permanent record of the call.

Caller ID, without the tracing option, raises an additional concern -- that the victim of obscene calls, upon seeing the number of the caller, will confront that caller and/or take the law into his or her own hands. In this respect, Caller ID and Call Trace are complementary services. Individuals may use Caller ID to gain greater control of which friends, neighbors, relatives, direct marketers and other legitimate users of the telephone may contact them. And for improper calls -- even if they are blocked by the caller -- Call Trace can make a permanent record of the offenses with the phone company for appropriate law enforcement follow up.

2. Commercial Automatic Number Identification (ANI) Systems

The technology which permits Caller ID at the residential level has separate applications at the commercial level. Clearly, businesses do not fear obscene phone callers and would have no interest in screening calls from customers. Yet, commercial ANI systems continue to multiply, usually in tandem with toll free 800 and toll service 900 calls.

One beneficial usage has been to accelerate the response time of companies to their customers by calling up the account on a

computer screen, thus permitting faster service for customers and more efficient use of time on the part of sales or service representatives.

At another level, ANI has also become a means by which companies may identify individuals with which they have had no past relationship in the hope of beginning a new one.

800 and 900 number providers can now capture callers' numbers and through a computerized reverse directory discover the names and addresses of the callers. So that consumers who, for example, call in response to a rock music ad or classical music ad are classified individually and accordingly. Those who call in to talk to cartoon characters are labeled children. Each caller, in return, might be placed on a mailing or telemarketing list to receive future phone and mail solicitations.

The problem here is not that such marketing practices take place, but that they do so without the consumers' knowledge. Consumers should know when their numbers are being captured by marketers and have the final say if they do not want to receive additional mail and telephone solicitations.

In a recent survey by Glamour magazine, 51% of the respondents said they would refrain from calling an 800 or 900 number if they knew their numbers were being recorded. Strategic Telemedia found that about a third of callers would not dial 800 lines if they knew their phone numbers were going to be captured. This cannot be good news for business, inasmuch as they tell us there is no benefit derived from contacting people who do not want to be contacted.

And, we are finding that reputable direct marketers are four-square behind the concept of blocking. In fact, the Direct Marketing Association (DMA), the world's largest and oldest direct marketing trade association consisting of 3,000 members, has recently released its official position. The DMA Board of Directors stated their intent to support legislative and regulatory efforts to implement blocking of commercial numbers.

DMA is an organization of members for which information is their livelihood. Why, therefore, would DMA adopt this position? They know that only some consumers will block their numbers -- and then only some of the time. Further, they know full well, from their own member research, the increasing consumer concern about the lack of control over personal information. They do not want

to alienate consumers by contacting those who are viscerally opposed to being called. This is a well-conceived, balanced approach. It makes good business sense and they are respecting the consumers' right to privacy.

I agree with DMA that consumers should have the choice of blocking their numbers from those who use 800 and 900 numbers. I am told, however, that the technology to block these calls has not been developed and may be years in the offing.

This is disappointing. The developers of residential Caller ID foresaw the public debate now taking place over Caller ID and built in the capability to block. Perhaps those who constructed the 800 and 900 number technology never envisioned the capabilities that now exist. I would therefore urge the telecommunications industry and the providers and users of 800 and 900 numbers to see that a mechanism for blocking be developed expeditiously, not only for the consumers' welfare, but for its own.

Until blocking is technologically feasible, I would urge the industry to disclose to consumers when their numbers are being recorded and give them the opportunity to opt out of any additional uses for their personal information.

3. Telephone Transaction Generated Information

My office held a series of informal meetings on telecommunications privacy. We invited industry, consumer, government and special interest groups to help us define the telecommunications privacy issues of most concern to consumers. What we heard was that Caller ID was just the first of many communications technologies that threaten to reduce, or at least redefine, consumer privacy. Participants identified several concerns including privacy considerations of FAX machines in consumers' homes and whether consumers are aware that conversations on cellular and cordless phones are easily overheard. As a group, however, they were most concerned with telephone-transaction generated information or TTGI.

Put simply, TTGI includes information on who recently signed up for telecommunications services, what telephone numbers they call, what telephone numbers call them, the date, origin and length of calls, as well as credit and billing information.

Because of the break up of the Bell system, many telecommunications companies are sharing the telephone network and the information transported through it. For example, the consumer may originate the call with one local telephone company,

the call then travels to an interexchange carrier, to a telecommunications gateway for enhanced service, via another local exchange carrier and then terminates in a data base service. Each leg of the network needs certain information to process the call and bill the customer. As the number of carriers and service providers has markedly increased so has the amount of information about consumers and their use of telecommunications products and services. There is a question as to how this information is protected, if at all.

A recent "Newsbytes" article reported that, "Hundreds of small phone companies around the country are preparing to follow major firms in compiling dossiers on their customers which can be sold to industry." The article described a press conference at which one telecommunications company announced it is offering its own calling card and "will soon begin collecting databases of Caller ID information for each local firm based on a central file. The data base will include both credit card data created through use of the calling card and lists of who's making calls to where collected through Signaling System 7 technology which is at the heart of Caller ID."

While the practice may be perfectly legal, most consumers would be shocked to know that lists of their calls would be sold

without their knowledge. The mere fact that such practices are technologically possible does not suggest that there should be complete disregard for the privacy of individuals.

With this in mind, the Office of Consumer Affairs worked with a variety of organizations to develop voluntary principles which could be used by telecommunications companies as a guideline to protect consumer privacy in the collection, use and distribution of telephone transaction-generated information. The issues included:

- the responsibility of telecommunications management to protect personal information and to take privacy considerations into account when developing new products and services,
- the extent to which personally identifiable information and aggregate information should be exchanged with third parties,
- the need for consumer education on the collection and use of transaction generated information, and
- the extent to which individual consumers should be able to participate in decisions about how data about them is used and shared for purposes unrelated to providing telecommunications services.

Conclusion

Consumer concerns about privacy in telecommunications continue to change just as the telecommunications system changes to serve them better. The advances we are seeing now are only the tip of the iceberg. Consumers don't fully understand what lies ahead in telecommunications. The general public's current concern about privacy that now exists will in no way compare to the "invasion of privacy" charges we will hear if new technology is put into place without providing consumer choices to protect privacy.

Caller ID is being hotly debated in almost every locality in which the phone companies wish to offer it. In Pennsylvania, an appellate court ruled that the offering of Caller ID would violate the state wiretap laws. In the District of Columbia, the Public Service Commission voted to approve the use of Caller ID only if a blocking device is offered. And in California, the legislature adopted a law that allows Caller ID to be offered only if consumers are offered a free mechanism they can use to block their phone numbers on a per call basis. I expect that we will see similar outcomes from other jurisdictions.

I am seeing some responsiveness on the part of telephone companies. U.S. West is piloting Call Blocking, for example, and Pacific Telesis and Centel have said that they will offer it as well. And all the regional telephone companies have asked to talk with us to hear first hand our concerns.

I do, however, believe that the issues I discussed today will continue to be debated state by state, that the consumer concern will increase, not decrease, and that the telecommunications industry, if it is not responsive, will very soon face either a patch-work of varying legislative requirements or strong Congressionally-mandated laws.

Thus, I would urge the industry to act now to protect consumer privacy.

The U.S. Office of Consumer Affairs appreciates the opportunity to have offered our views on the Caller ID issue. After the others have testified, I would be happy to address any questions the Subcommittee might wish to pose.

Mr. KASTENMEIER. I had wanted to call on Mr. Moore, and then we would have questions of you both, but I note there is a pending vote and I think we need to recess for that vote. We perhaps won't be able to hear Mr. Moore for the entirety of his testimony and we would probably have to interrupt it to go for a vote, so I think maybe it would be best to recess for 10 minutes at this time.

Accordingly, the committee stands in recess.

[Recess.]

Mr. KASTENMEIER. The committee will come to order.

When we recessed 10 minutes ago, Mr. Poat had just concluded his presentation. We would now like to call on Mr. Moore.

STATEMENT OF STEPHEN J. MOORE, PUBLIC COUNSEL, OFFICE OF PUBLIC COUNSEL OF THE STATE OF ILLINOIS, ON BEHALF OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES AND THE OFFICE OF PUBLIC COUNSEL OF THE STATE OF ILLINOIS

Mr. MOORE. Mr. Chairman, thank you. I am Stephen Moore, the Public Counsel of the State of Illinois. I am appearing here on behalf of the National Association of State Utility Consumer Advocates, an organization of 44 members in 38 States that represent the consumers of public utility services.

I am here to support H.R. 4340, and I second the comments of Senator Kohl. On behalf of NASUCA, I can state that we generally support the service of Caller ID. However, we do believe you should take advantage of one of the components of the software that the Bell programmers wrote several years ago, which includes the ability to have per call blocking. So we do support the bill that requires companies to take advantage of that component of the service that is being provided to the companies by the switch marketers.

Now, my written testimony identifies some of the persons that are affected by Caller ID, and Mr. Poat mentioned some of these already—police and domestic violence victims. In addition, you have professionals, volunteer counselors who make sensitive calls from their homes, the users of crisis hot lines, persons making tips, minorities, anyone who wants to restrict the release of their number, certainly people who have unpublished numbers, and anyone who wants to keep their number from becoming one more number on databases or entering one more telemarketer's list of people that can be called.

H.R. 4340 will help these people. It does that by offering them the option of protecting their number. Sometimes, in the case of police undercover officers or domestic violence victims, that protection could save lives. In other cases, it is simply a protection against our increasingly intrusive society.

Now, you will be hearing from a representative of one of the Bell Cos., that those opposing blocking do so in order to protect their customers from harassing phone calls. Don't believe that for a minute. There are other services out there that do that just as well. This is about making money. I have no objection to them making money; it's what they're in business to do. However, in this case, we do have several ways that Caller ID will generate significant

revenues. The obvious ones are simply the provision of the service itself, a monthly service charge. In addition, there is the rental and sale of Caller ID equipment itself. If Congress or Judge Greene ever lifts their manufacturing restrictions, you can also see manufacturing of new telephones as our old ones become obsolete because they don't have Caller ID.

There is also the provision of special services. Again, if the Congress or Judge Greene lifts the modified final judgment restrictions on the provision of information content services, then you could see Bell Cos. around the country providing more than simply a telephone number; they could offer the name, address, anything else that they deem is marketable that could actually appear on a computer screen within a few rings of a person making a phone call. That is a service that could be sold to businesses and would be very valuable to them. They can see exactly who is calling and see whatever other information the Bell company has at their disposal that could be sold.

If the telephone companies were truly interested in protecting their customers against obscene or harassing phone calls, they would not be pushing unrestricted Caller ID. Instead, they would be advocating the use of these other new custom calling services, generally called the CLASS services. These include Call Trace, Call Block, and Call Return. These services actually offer not only the same protection but better protection than Caller ID.

Now, in fact, the most shameful performance of the companies that are opposing Caller ID is the fact that they have not taken full advantage of these other new services. Some of the companies don't even offer them. There is litigation now in Ohio where the company has refused to even offer Call Trace or offer Call Block, so the consumer counsel there has had to try to get the commission to force them to offer these services.

Other companies make their customers pay a monthly fee to use these services, instead of letting them charge a per-use charge, even though the software would let them actually bill customers for each time they use Call Trace or Call Block or Call Return.

All of the telephone companies have reduced the capabilities of these other services in some way or another. For example, every one of them artificially limits the number of calls that could be blocked. The software would let them block 31. None that I am aware of block more than 10. Some block as few as six. So not one company in this country has taken full advantage of these other CLASS services. Not one company has been advertising to the world: "That if you receive an obscene phone call, all you have to do is dial three digits and it's traced. If you make a phone call to one of our customers, you're going to get traced." Instead, they are marketing Caller ID, generally hiding these other services under a basket.

You have already heard that many of the phone companies in this country have already agreed to have per call blocking. Every Bell company west of the Mississippi River, and also just recently NYNEX, has announced that they will be offering per call blocking. That's not enough. Because unrestricted Caller ID infringes on the basic constitutional right of privacy, the right to control the release of information about one's self, all the telephone customers in

this country should have the ability to use the per call blocking to give them the option of deciding who they want to release information about themselves to and who they want to keep it from. H.R. 4340 offers people that option.

Thank you.

Mr. KASTENMEIER. Thank you, Mr. Moore.

[The prepared statement of Mr. Moore follows:]

PREPARED STATEMENT OF STEPHEN J. MOORE, PUBLIC COUNSEL, THE OFFICE OF PUBLIC COUNSEL OF THE STATE OF ILLINOIS, ON BEHALF OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES AND THE OFFICE OF PUBLIC COUNSEL OF THE STATE OF ILLINOIS

Summary of Testimony of Stephen J. Moore,
Public Counsel of the State of Illinois

Caller ID should be allowed only if, at the very least, customers are allowed to block the identification of their telephone numbers on a per call basis without charge.

Persons who need to block:

- *law enforcement personnel engaged in undercover work
- *domestic violence victims
- *doctors, psychiatrists, social workers, probation officers, teachers, lawyers and reporters
- *persons with unpublished numbers
- *volunteer counselors who call troubled individuals from home
- *persons wishing to provide anonymous information to police, investigative agencies or reporters
- *persons wishing to make anonymous calls to crisis hotlines
- *persons calling businesses who wish to avoid callbacks or being put on telemarketing lists or data bases

Caller ID will allow telephone companies to sell data base information on callers to the recipients of calls.

A recent Harris poll shows that 75 percent of the American public believes Caller ID should be prohibited in any form or allowed only with blocking.

Per call blocking will not encourage harassing calls. Other CLASS services, which can be activated by dialing a three digit code after receiving a harassing call, are more effective than Caller ID in deterring such calls.

- *Call Block blocks the most recently received call from getting through again.
- *Priority Call generates a distinctive ring that allows the recipient to identify wanted, or unwanted, calls.
- *Return Call lets the customer call back and confront the harasser.
- *Call Trace sends the harasser's number directly to the local telephone company or to the police.

Despite their professed desire to protect their customers, telephone companies have either refused to offer these other CLASS services or have made them unattractive by pricing them unreasonably and by reducing their functions.

The telephone companies suggest that those who wish to prevent the disclosure of their telephone numbers make calls through operators, calling cards, cellular phones or pay phones. These solutions are expensive, impractical and in some cases, short term. Special services for law enforcement and domestic violence organizations do not address the day to day realities of work in those fields. Any solution that requires customers to prove that they deserve privacy protection is repugnant.

The Privacy Act of 1990 is needed in order to provide a minimum level of privacy protection throughout this country. Individual states may impose greater protections based on state law and public policy considerations.

Testimony of Stephen J. Moore
Public Counsel of the State of Illinois
September 19, 1990

On behalf of the National Association of State Utility Consumer Advocates (NASUCA) and the Office of Public Counsel of the State of Illinois, I would like to express my support for H.R. 4340, The Telephone Privacy Act of 1990.

NASUCA is a national organization composed of 44 members in 38 states and the District of Columbia. Each member is designated by its state to represent public utility ratepayers before state public utility commissions, federal agencies and state and federal courts. NASUCA assists in the exchange of information between its member organizations and provides information on public utility policy issues to the United States Congress and federal regulatory bodies.

The Office of Public Counsel of the State of Illinois is one of the members of NASUCA. It is a state agency authorized by statute to represent the people of the State of Illinois before all state and federal bodies that affect public utility policy and regulation. I am the director of that office and am a member of the Executive Committee of NASUCA.

The telephone companies across the country are introducing a new service, named Caller ID, that allows the recipient of a telephone call to see on a screen the telephone number of the person calling. On its face, Caller ID sounds like a wonderful service. Knowing who is calling, a customer could decide to pick up the telephone and talk, or let the telephone ring. It also equalizes the rights of calling and called parties. After all, people making telephone calls know the number they are calling, so why should the recipients of those calls not have the same information? Additionally, businesses can use Caller ID to provide better service to their customers.

Like any new technology, however, Caller ID has a negative side. Sometimes, callers need to withhold the numbers of the telephones from which they are calling. For this reason, NASUCA believes that Caller ID should be allowed only if callers have the option of withholding the transmission of their telephone numbers for some or all of their calls. Furthermore, NASUCA believes that customers should not be charged for exercising that option. Attached to this testimony is a copy of the resolution of NASUCA reflecting the views of its membership.

Because H.R. 4340 requires telephone companies to provide their customers with the ability to block the identification of numbers, NASUCA supports that bill. In addition, NASUCA urges that the final legislation provide that blocking be offered at no cost to callers.

The Context of the Caller ID Debate

The issue of Caller ID has generated a tremendous amount of attention around the country. That reaction is understandable, given the nature of the debate in most states. The arguments on all sides trigger strong visceral feelings in the listener. Those opposing Caller ID and those supporting restrictions on the service are characterized as the friends of obscene phone callers and callers using telephones to intrude on the peace and quiet of our homes. Those in favor of unrestricted Caller ID are characterized as infringing on the constitutional right to privacy, plus supporting wife beaters, cop killers and anyone else that could find an evil use for the service.

It is unfortunate that the debate has been so narrowly focused. The introduction of Caller ID is only one of several new services now available under the Custom Local Area Signaling Services package (CLASS). These include Call Block, Priority Call, Return Call, Call Repeat and Call Trace. These new services are fundamentally different from existing custom calling services in that the CLASS services have an impact on those who do not even subscribe to them. The effect of each service varies. In some cases, that effect is minimal. In others, particularly in the case of unrestricted Caller ID, the impact on all subscribers could be serious.

This brings me to the two principles that should guide telephone companies implementing Caller ID and the other CLASS services. First, it is necessary to determine how to take advantage of the benefits that can be provided by all of the CLASS services. This can be accomplished by configuring and pricing the package of CLASS services in a way that is in the best interest of their customers.

Second, because the CLASS services affect both users and non users of the service, the nature of basic service will be changed. Caller ID has the largest impact and therefore provides the best example. Today, you do not have to reveal the number from which you are making a telephone call. Some may argue that you have no right to withhold that number, but the fact remains that today you do have that ability. Caller ID eliminates that ability and therefore reduces the value you assign to making telephone calls. Yet your rates will not fall to compensate you for that reduction in value. In order to maintain the same level of service that you have today, you would have to spend additional money to purchase a second line, or make operator assisted calls, credit card calls or pay phone calls. So your choices will be either to pay the same amount of money for a reduced level of service or to pay more for the same level of service.

Combining these two principles, telephone companies should fashion a package of CLASS services that provides the most benefit to users of the new services and at the same time causes

a minimal diminution of the value of basic telephone service to nonusers.

As described in more detail below, however, many telephone companies in this country have violated those principles. In order to enhance their chances of regulatory approval of unrestricted Caller ID, they have diminished the value of the other CLASS services. Furthermore, by insisting on unrestricted Caller ID, they are supporting the form of that service that causes the greatest harm to nonusers of the service.

Requiring that telephone companies allow blocking with Caller ID will protect all customers from a serious diminution in the value of telephone service. Additionally, by taking away the ability of telephone companies to offer unrestricted Caller ID, H.R. 4340 will remove much of the incentive to reduce the value of the other CLASS services.

Disadvantages of Unrestricted Caller ID

The disadvantages of unrestricted Caller ID fall into two categories. First, there are certain circumstances when callers need to withhold their telephone numbers. That need is particularly important given the existence of reverse directories. Giving out a telephone number is equivalent to giving out an address. The specific groups that could be adversely affected by Caller ID include the following:

- * **Law enforcement personnel**
Those engaged in undercover work are concerned that their operations could be undermined and their own lives and the lives of their informants endangered if subjects of investigations discover the telephone numbers of all callers.
- * **Domestic violence victims**
A husband trying to track down a wife who has left the home may use Caller ID to find her if the woman calls home for any reason. Those sheltering the woman, usually family or friends, will be in danger as well as the domestic violence victim herself. Additionally, it is not uncommon for a woman still living with an abusing spouse to call a shelter or organization for advice or help. Callbacks are often necessary, sometimes by personnel in a shelter, other times by volunteers calling from their homes. No longer could the worker or volunteer safely hang up if the husband answered. Even if the woman answered, Caller ID would allow the husband to later discover that such a call was received. He could do so simply by retrieving the numbers of all recently received calls from the Caller ID equipment. Most Caller ID devices keep a record of the last 30 to 60 calls.

- * **Professionals that use home telephones**
Doctors, psychiatrists, social workers, probation officers, teachers, attorneys or other persons who make business calls from home may not want to give out their telephone numbers. In fact, many of these professionals have obtained unlisted telephone numbers or use answering services to protect their privacy. Unrestricted Caller ID would eliminate that protection for these callers and for any other person who currently has an unlisted telephone number.
- * **Volunteer counselors that use home telephones**
Many crisis centers utilize the services of volunteer counselors who use their own home telephones to call back troubled individuals. Those counselors do not want those individuals calling them at odd hours or, even more frighteningly, appearing on their doorsteps.
- * **Hotlines and recipients of tips**
Once the public is aware of the existence of Caller ID, people may hesitate to make calls for help to hotlines and calls with tips to police, investigative agencies or reporters. Despite all efforts of such groups to advertise the fact that they do not have Caller ID on their telephones, people will be suspicious. Those requiring absolute anonymity will fear that their identities will be known.
- * **Minorities and low income individuals**
Unrestricted Caller ID will increase the ability of real estate agents, landlords, taxi cab companies or any business to engage in redlining. The first three numbers of a telephone number coincide with the location of the central office of that customer. In fact, with computerized reverse directories, businesses could know the exact address of the caller before their employees pick up the telephone. Businesses could identify areas of a city that would receive a different level of service and could do so without even having to ask any questions of the caller.

The second group of customers who may want to block the identification of their telephone numbers is composed of those concerned about their privacy rights. That group should consist of all of us. As far back as the 1890 Harvard Law Review article by Louis Brandeis and Charles Warren, it has been recognized that individuals should have the right to control information about themselves. Recent federal laws have provided specific protections against the unauthorized release and dissemination of personal information. (See: Fair Credit Reporting Act of 1970, 15 U.S.C. sec. 1681 et seq.; Privacy Act of 1974, 5 U.S.C. sec. 552a; Fair Debt Collection Practices Act of 1977, 15 U.S.C. sec. 1692 et seq.; Right to Financial Privacy Act of 1978, 12 U.S.C. sec. 3401 et seq.; Cable Communications Policy Act of 1984, 47 U.S.C. sec. 551; Video Privacy Protection Act of 1988, S.Rep. No. 599, 100th Cong., 2d Sess.) With unrestricted Caller ID, callers will be forced to reveal the numbers from which they are

placing calls. That information can easily be turned into the name and address of the caller.

Additional problems are caused by the fact that the telephone number is identified during the silent phase after the first ring. A number is therefore revealed even if the person called does not answer the telephone. Also, most Caller ID equipment stores all of the numbers that have called until that information is erased. A called party will know exactly how many times and when a person tried to call. No longer could people change their minds about completing telephone calls in mid ring. Failing to speak to an answering machine could bring a rebuke from the called party.

Caller ID will also increase the number of unsolicited calls from businesses and telemarketers. Calling a car dealer, insurance agent or other business for price information could lead to countless callbacks. Making calls to businesses may also result in callers being put on telemarketing lists.

Finally, telephone numbers are already a standard entry way into many database systems that can reveal personal and financial facts about virtually every American. Being required to always provide one's telephone number will enlarge the universe of people with the ability to access those databases. In fact, the telephone companies may play a major role in disseminating personal information. Imagine a future world in which a business can purchase a service that provides it with not only the telephone number of the customer calling, but also whatever information the local telephone company deems marketable, such as address, calling habits and bill payment history. Of course, the telephone company could supplement its own data base with more detailed personal information available on the market and sell that too. It could even buy one or more of the credit reporting companies and use their data bases. The potential revenues are unlimited, because this service would be considered competitive and therefore deregulated by most states.

Of course the sale of such information by the Bell companies would run up against the restrictions in the Modified Final Judgment against the provision of information content services. Therefore, the Bell companies would have to obtain a waiver or await the day when those restrictions are lifted. Once they have the right to provide information services, all they have to do is comply with the Fair Credit Reporting Act of 1970, 15 U.S.C. Sec. 1681 et seq., and any cost accounting on separate subsidiary requirements imposed by the FCC or the states. The latter requirements are obviously affected by the recent 9th Circuit reversal of the Computer III rules.

In summary, those that wish to hold on to information about themselves, such as their telephone number, do not necessarily have something to hide. They are simply exercising the right of privacy.

Caller ID Block

Technology exists that will minimize most of the concerns discussed above. The computer software that enables the introduction of Caller ID allows a telephone company to offer customers the option of blocking the transmission of their telephone numbers. Callers wishing to activate the blocking mechanism on a particular call would dial three digits prior to making the call. Because this "per call" blocking is already contained in the Caller ID software, and because the customer does all of the work, there is virtually no cost to the telephone company. Alternatively, a customer could request that his or her local telephone company block all calls made on a particular line. In this case, the company would experience a small, one time cost of programing the local switch to block calls on that line.

When callers activate the blocking function, persons with Caller ID would see a "P" or "private" on their screens. Persons receiving numberless calls could decide not to answer their telephones, let answering machines handle such calls or answer their telephones and be ready to deal with callers who will not reveal their telephone numbers.

Those opposing the utilization of the blocking ability of the Caller ID software argue that blocking reduces the value of the service. To some extent, that is true, because individuals with Caller ID would occasionally see a "P" on their screens instead of a telephone number. The issue is whether or not the reduction in value is a price worth paying to protect the various privacy interests discussed above. In most circumstances, the reduction in value is minimal. One does not have to answer the telephone if callers insist on blocking their numbers.

Is it fair to reduce the value of Caller ID by allowing the use of Caller ID Block? It is when one considers the relative number of persons harmed. Only a small number of residential customers will want to pay \$60 or more for the Caller ID equipment and \$6 or \$7 per month for the service. Unrestricted Caller ID therefore forces the vast majority of people to give their telephone numbers to the few customers who purchase the service. For example, Caller ID has been available for more than two years in the state of New Jersey. Yet only 2.4 percent of the residential customers in areas where Caller ID is available had purchased the service as of April, 1990.

In the State of New York, Rochester Telephone Corporation could not even give Caller ID away. As part of an experiment approved by the New York Public Service Commission, that company had offered 500 free Caller ID units and no monthly charge to the 10,000 customers in one of its exchanges on a first come, first served basis. The most recent data, which covers the first 15 weeks of the experiment, shows that only 393 customers took the free Caller ID service.

The American public agrees that restrictions on Caller ID are necessary in order to protect privacy rights. Numerous studies performed by the telephone companies themselves show that just as many people are concerned about the privacy intrusions caused by Caller ID as find the service to be valuable. In fact, in a recent Harris poll, 48 percent of the respondents indicated that Caller ID should be permitted only with blocking, and 27 percent of the respondents indicated that the service should not be allowed at all. Only 23 percent of the respondents thought that the service should be offered with no restrictions.

The Rochester Telephone Corporation experiment confirms these survey results. In addition to offering free Caller ID service, that company offered free per line blocking and per call blocking to all customers in the exchange. After the first 15 weeks of the experiment, 551 customers had requested per line blocking. Therefore, the number of people who wanted to block the identification of their calls exceeded the number of people willing to take Caller ID for free.

Abusive Telephone Calls

The telephone companies' most appealing argument against blocking is that it would eliminate the ability of Caller ID to stop abusive calls. Presumably, those callers would block the release of their telephone numbers. There are other new services, however, that are more effective in dealing with these callers and that are not affected by the existence of Caller ID blocking. As mentioned above, the technology that allows Caller ID also enables the telephone companies to offer a series of services generically known as "CLASS" services. All of these new services work even if callers block the identification of their telephone numbers. Among these new services are the following:

- * **Call Block** allows a customer to designate telephone numbers that will not be allowed to complete a call on that telephone. The caller receives a message that the called telephone is not currently taking calls. This function can be activated by dialing in the numbers of the calls to be screened or by dialing a three number code to screen the number of the most recently received call. This service can therefore be used even if the recipient of a call does not know the number of the person that just called.
- * **Priority Call** allows a customer to designate telephone numbers that will activate a distinctive ringing pattern. One can assign a distinctive ring to a known number or to the most recently received call.
- * **Return Call** allows the customer to dial the number of the most recently received call. As with Call Block and

Priority Call, the customer need not know the number of the caller. He or she need only dial three digits after hanging up.

- * Call Trace allows the telephone company to automatically trace a call when a customer dials a three number code after hanging up. The telephone company can retrieve that number and report it to the police.

A person that receives an abusive telephone call can simply activate Call Block. When the caller tries again, he or she gets a message. The recipient's telephone never rings. Compare the effectiveness of that action with watching the number of what you know is that obscene caller flashing on the Caller ID equipment at 2:00 AM.

If the abusive caller makes calls from different telephones, thus avoiding Call Block, one could use Priority Call to identify the calls that will be taken. Of course, one could also get Caller ID and only answer calls displaying numbers that are known. A more aggressive form of self help would be to activate Return Call and tell the abusive caller not to call again.

Recipients of abusive calls who wish to involve the telephone company or the police can activate Call Trace. The telephone company obtains a computer record of the calling party's number and time of the call. The telephone company could even run a search of its trace activity and identify particularly frequent abusive callers. The telephone company can then deal with the caller or turn the information over to the appropriate authorities. Because the information is a business record, it is admissible in court proceedings. Simply advertising the existence of Call Trace will reduce the number of abusive telephone calls. Such callers would be afraid that a single call could generate a trace and a report to the police.

As already mentioned, these CLASS services would even function against calls in which the caller activates Caller ID blocking. Therefore, passage of H.R. 4340 would not affect the utility of these other CLASS services.

These other CLASS services have a major advantage over Caller ID--cost. Unlike Caller ID, customers need not pay monthly charges in order to use the other CLASS services. Therefore, those receiving few abusive calls need not pay expensive monthly charges for a service they rarely need. For example, Pennsylvania Bell charges customers one dollar for each use of Call Trace and \$.25 for each use of Return Call. That company also charges customers \$.50 for each day that they use Call Block or Priority Call.

In summary, there are three ways that the other CLASS services are more effective than Caller ID in deterring abusive telephone calls. (1) Customers can take the same actions they

would have taken with Caller ID: call the abusive caller back and tell him or her to desist (Return Call), screen wanted or unwanted calls (Priority Call), or make a complaint to the telephone company or police (Call Trace). Additionally, they can do something Caller ID will not do: stop the abusive caller from getting through again (Call Block). (2) Because the CLASS technology allows the companies to bill customers on a per use basis, these services are more cost effective than Caller ID. (3) Because the other CLASS services do not provide the customer with the number of the abusive caller, they prevent the vigilante justice that may result when a Caller ID customer uses a reverse directory to find the residence of an abusive caller.

Emergency Providers

Another argument against Caller ID blocking is that it may prevent emergency providers such as fire departments, police or ambulance services from locating a caller who fails to provide an address before hanging up. In fact, the telephone companies cite examples of emergency providers that have used Caller ID to call a person back and get needed information, or used a reverse directory to locate an address. The result in each of these cases, however, would have been exactly the same if H.R. 4340 had been in effect. First, common sense should tell us that callers will not dial the three digit blocking code prior to dialing an emergency number. Second, it is not possible to block a call to a 911 number. Therefore, most, if not all, calls to emergency providers will show a telephone number. Third, in the few instances when a caller blocks the identification of his or her number to a non-911 emergency number, the emergency provider can activate Return Call and get the person on the line again or activate Call Trace and obtain the number from the telephone company.

The Reduction in Value of the Non-Caller ID CLASS Services

Many telephone companies in this country have attempted to enhance their chances of obtaining regulatory approval of unrestricted Caller ID and increase their Caller ID revenues by limiting the attractiveness of the other CLASS services. In some states, that effort takes the form of refusing to even offer some of the CLASS services. For example, Ohio Bell has proposed Caller ID but has not proposed Call Trace or Call Block. Think about it. Here are two services that can provide tremendous social benefit. Bomb threats and abusive phone calls can be traced by anyone with the presence of mind to press three digits after hanging up. Obscene callers can be stopped dead in their tracks with Call Block. Yet in Ohio, the telephone company is withholding these services from its customers just so Caller ID will look better.

In other states, the telephone companies are a bit more subtle, using pricing as a discouragement. For example, customers may find infrequent uses for Priority Call and Call Block. They will be discouraged from using those services if they must subscribe to them and pay a monthly fee. The CLASS software was written to take these customers' needs into account. It allows telephone companies to bill on a per use basis as well as on a monthly basis. For example, as mentioned above, Pennsylvania Bell customers can pay either a monthly fee for each service or fifty cents per day of activation of each service. That is a valuable option if you can envision only a rare use of either service. Most telephone companies, however, have not taken advantage of that feature of the CLASS software. They only offer these services on a monthly charge basis.

Another example of the same tactic is the pricing scheme of the Southern Bell Companies, which charge their customers a monthly fee for the right to use Call Trace. Similarly, General Telephone Company in Indiana has proposed that it charge customers five dollars per month for the right to use Call Trace. The pricing of both companies makes Call Trace far less attractive than it is in other states, where the telephone companies charge one to five dollars per activation, without any requirement of monthly subscription.

Finally, most telephone companies reduce the value of the non-Caller ID CLASS services by intentionally reducing their capabilities. For example, most companies limit to less than ten the number of telephone numbers that generate a distinctive ring or that can be screened. They have taken that action even though the CLASS software allows thirty-one numbers to be designated for a distinctive ring or to be screened. There is no cost justification for that limitation.

That brings me back to the first principle that should guide telephone companies introducing Caller ID and the other CLASS services: they should maximize the benefits that can be provided by all of the CLASS services. They can accomplish that goal by offering all of the CLASS services; pricing them on a per use as well as on a per call basis; and not artificially limiting the capability of the CLASS services. None of the telephone companies opposing H.R. 4340, however, have taken those steps. Although they claim that they oppose blocking because they wish to protect their customers, in reality, they have harmed their customers by withholding the full benefits of the other CLASS services in a crass attempt to make Caller ID more attractive.

Solutions Offered by Telephone Companies

Many telephone companies, such as Centel and all of the Bell Operating Companies west of the Mississippi River, plan to offer their customers the ability to block the identification of their telephone numbers. Other telephone companies in this country,

however, oppose giving their customers the option of blocking. Instead, they suggest that their customers avoid the identification of their numbers by making calls through operators, using credit cards or cellular telephones, making calls using pay telephones or getting additional lines that are used for outgoing calls only. Two of these solutions are short term. Caller ID may soon allow users to identify the numbers of calls made using credit cards or cellular telephones. All of these solutions will result in extra costs to the customers and sometimes insurmountable inconvenience. These telephone companies are, in essence, changing the nature of basic service for all of their customers. In the past, callers were able to maintain the confidentiality of their telephone numbers without taking any steps or paying any extra money. With unrestricted Caller ID, however, customers face the choice of having a lower level of service (i.e., no confidentiality) or paying more for the same level of service.

This subcommittee will doubtless hear that the telephone companies are attempting to address the most compelling concerns with unrestricted Caller ID--its effect on law enforcement and on domestic violence victims. These attempts include offering law enforcement groups and domestic violence agencies special services, such as remote lines, unpublished outgoing only lines or blocking on selected lines. None of these solutions recognize the day-to-day realities of work in law enforcement or in the domestic violence field.

For example, providing special services to law enforcement personnel will not help informants who are afraid to reveal their locations to drug dealers, organized crime members or other subjects of investigations. Law enforcement personnel using these special services could also be endangered. Because some undercover officers are working on several investigations at once, they will need to keep track of the lines associated with each investigation. If a mistake is made, an officer could die. Also, numerous special lines or remote lines will be necessary to avoid compromising an investigation when separate targets of investigations discover they are dealing with someone using the same telephone number. Budget strapped law enforcement agencies cannot afford the additional costs of maintaining a sufficient number of lines. For these reasons, law enforcement groups across the country have supported the availability of blocking for all customers. The essence of undercover work is the ability to blend in with society. With the umbrella of protection afforded by universally available blocking, persons working in law enforcement could safely block the identification of their numbers by the subjects of investigations.

Similarly, providing domestic violence shelters with outgoing only lines or free blocking will not assist the vast majority of abused women who rely upon friends and relatives for shelter and assistance. Adoption of these solutions will also fail to assist the volunteers who make calls from their own homes

with counseling and advice to women still living with their husbands.

Finally, any solution that is directed at selected groups creates more problems than it solves. It is repugnant to think that persons or groups with concerns about Caller ID must approach their telephone company or regulatory commission for special treatment, such as the ability to block or the right to discounted outgoing only lines. Who will decide which ones merit special treatment? What criteria will they use? Will those criteria implicitly or explicitly include the social desirability of the activities of the individual or group, their ability to obtain public sympathy if denied, or their political influence? All of these issues are raised once it is determined that only those that "deserve" privacy should get it.

The Need for Federal Legislation

The Privacy Act of 1990 is needed for several reasons. First, any form of Caller ID, even one with per call blocking, may violate Section 3121 of title 18 of the United States Code. The Commonwealth Court of Pennsylvania has ruled that a provision of that state's wiretap law, which is almost identical to Section 3121, prohibits both unrestricted Caller ID and Caller ID with per call blocking. Modification is needed to resolve the ambiguity of the legality of Caller ID. That modification should include the per call blocking restriction contained in H.R. 4340.

Second, the right of privacy, infringed upon by Caller ID, arises from the United States Constitution. It is therefore appropriate that all citizens in this country be provided the same minimum degree of protection that would be given by federal legislation. States would then be free to impose even greater restrictions on the service based on state law and public policy considerations.

Charges for Blocking

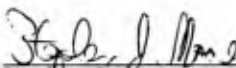
Customers should be able to block the identification of their telephone numbers for free. First, there is virtually no cost to the telephone company when customers activate per call blocking and only a small cost when they request that all calls on their lines be blocked. Second, customers who block are simply maintaining the same level of service and degree of privacy that they have always had. They should not be required to pay extra to maintain those levels of service and privacy.

Conclusion

The National Association of State Utility Consumer Advocates and the Office of Public Counsel of the State of Illinois believe that Caller ID should be offered only if all customers have the option of blocking the identification of their telephone numbers at least on a per call basis and without charge. Allowing blocking will result in only a minor diminution in the value of Caller ID. That diminution is a small price to pay for the maintenance of the basic right of privacy of being able to control the disclosure of information about oneself and the protection of countless persons who could be harmed by unrestricted Caller ID.

September 19, 1990

Respectfully submitted,
The National Association of State
Utility Consumer Advocates and the
Office of Public Counsel of the
State of Illinois



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1989-15

THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

RESOLUTION

Resolving That Calling Number Identification Services
Should Only Be Offered If A Caller *ID
Blocking Mechanism Is Offered At The Same Time

- WHEREAS, Telecommunications Companies are offering or are planning to offer services which will display on separately purchased Customer Premises Equipment the telephone number of the calling party before a call is answered; and
- WHEREAS, Such services, of which Caller*ID is the most prevalent, while providing benefits to people receiving calls and to emergency service providers, also pose threats to those making calls; and
- WHEREAS, Calling number delivery services which do not offer the ability to the caller to block the transmission of his or her phone number when a call is made ("unblockable calling number delivery services") would create a threat to individuals subject to domestic violence by providing a means for abusers to track them down or to locate shelters and harass shelter workers; and
- WHEREAS, Unblockable calling number delivery services pose threats to crisis hotlines for suicide, drugs, alcohol, mental illness and the like by threatening a caller's ability to make calls without betraying his or her anonymity; and
- WHEREAS, Unblockable calling number delivery services pose threats to law enforcement by threatening their ability to conduct undercover activities as well as by reducing the chances that citizens will report crimes or "tips" if their anonymity is not assured; and
- WHEREAS, Unblockable calling number delivery services create inconvenience and hardship for doctors, psychiatrists, social service workers, lawyers, newspaper reporters, teachers and others who return or make calls from their homes but who ordinarily do not give out their private telephone number; and
- WHEREAS, The state of California has enacted a law which requires that if a calling number delivery service is offered in that state, it must be accompanied by a means to block the display of a phone number on individual calls at no charge to the caller; and
- WHEREAS, Telephone company-sponsored marketing studies indicate that just as many people are concerned about the privacy intrusions caused by calling number delivery services as find the service valuable; and

WHEREAS, The telecommunications system which makes possible the CLASS family of services, of which Caller-ID is one, is already designed and programmed to provide Caller-ID Blocking, so that no extra cost or delay would be caused by ordering a Caller-ID blocking ability; and

WHEREAS, Other CLASS services, such as Call-Trace, Call-Block and Call-Return have been found by customers to be just as effective in responding to annoying or obscene calls and these services still would be available to a Caller-ID customer if he or she received an abusive call from someone who had chosen to block his or her phone number from being displayed on the Caller-ID screen.

THEREFORE, BE IT RESOLVED by the National Association of State Utility Consumer Advocates that if calling number delivery services are to be permitted to be offered to the public, such services must be offered with a mechanism which allows customers to block the transmission of their phone number at least on a per-call basis and at no additional charge to the caller.

BE IT FURTHER RESOLVED, that the National Association of State Utility Consumer Advocates authorizes its Executive Committee to develop specific positions consistent with the terms of this resolution on a legislative bill, regulation, or any other type of proposal which concerns the subject of the resolution including the preparation of policy papers and communications reflecting NASUCA's position to the United States Congress. The Executive Committee shall advise the membership of any other proposed actions prior to taking the action, if possible. In any event, the Executive Committee shall notify the membership of any action taken under this provision.

Approved by NASUCA:

Boston, Massachusetts
Place

November 12, 1989
Date

Favorably Reported By:

NASUCA Telecommunications
Committee

November 6, 1989
Date

Committee Members:

Jack C. Shreve (FL), Chairman
Robert Johnson (IN)
Fred Hoover (MD)
Phil Shapiro (NY)
Dan Clearfield (PA)
Ron Binz (CO)
David Conn (IA)
Bruce Weston (OH)
Nick Singh Gumer (DC)
Doug Brooks (AZ)

Mr. KASTENMEIER. Let me see if I understand your positions. Mr. Poat, you basically support Caller ID, and also blocking technology; is that correct?

Mr. POAT. That's correct.

Mr. KASTENMEIER. Your position is at this time that no Federal legislation is required, however?

Mr. POAT. That's correct.

Mr. KASTENMEIER. What would your comments be on the concerns of some, notwithstanding the efforts of local utility commissions and others, that we're going to run the risk of having a patchwork of laws, where some Caller ID systems will not be fully effective anywhere, and some States will have blocking and others will not? That ultimately there will just be a patchwork of technologies and no consistent technology nationwide. Does that not concern you at all?

Mr. POAT. The concern you express, Congressman, is certainly a very appropriate one. At this time, however, we would note that Caller ID is a service which cannot transcend State lines. It is restricted to local telephone calls at this time. So even the availability of call blocking on a local basis would have no long-distance effect, if I may use that term.

Second, the Federal Communications Commission has demonstrated interest in this matter and will be addressing the issue of uniformity.

Finally, I would note that most telephone customers, as was recently pointed out, are going to be receiving the option of Call Blocking voluntarily. The providers of telephone services, certainly to most of the larger States—California and New York amongst them—have decided to offer voluntary Call Blocking. If at some time, through the FCC investigation, or once long-distance identification is possible, the need for uniform national legislation becomes clear, there is no reason why we wouldn't be in a position to reconsider the position which we have expressed today.

Mr. KASTENMEIER. Do you have any notion of whether some sort of long-distance technology across State lines is in the offing?

Mr. POAT. It is in the offing, Mr. Chairman. It is my understanding it will be available some time—I'm informed that AT&T will begin rolling out the capability for that service in 1992.

Mr. KASTENMEIER. I'm glad to have your comment on that because I suggest that we need to think prospectively about the implications of all of this before, like Topsy, technology grows and then we have an incompatible system developed which we can't very well sort out without great economic damage to some systems. That is why, while this Congress may not be doing anything this year on the subject, I would think the next Congress should look very seriously at the issue.

We also have, as you know, a series of lawsuits going on, which suggests that we can't walk away from it. We may have to make judgments about whether the Electronic Communications Privacy Act does or does not find Caller ID offensive in some respects, and if that is the case, clearly we're going to have to legislate.

Mr. POAT. Mr. Chairman, your desire to exercise leadership on this issue is certainly commensurate with your role as chairman of this subcommittee. I would note simply that the Federal Communi-

cations Commission is looking at the issue and State courts are looking at the issue. Bell of Pennsylvania is appealing the decision in Pennsylvania. I would hope that as the Congress resolves the other issues which it has before it in the next several months, and when they reconvene in the next session, that some of these questions would have been resolved and perhaps we'll have a little bit better understanding as to the need for Federal legislation at that time.

Mr. KASTENMEIER. One last question, Mr. Poat. Your statement that you filed with the committee, which we have before us, does not mention any position on the part of the administration, but I think orally you indicated opposition to the legislation, which you have every right to do. My question is, is this a change in position or is this a recent position of the administration with respect to this legislation?

Mr. POAT. No, Mr. Chairman. As a matter of fact, our written testimony reflects almost verbatim the testimony which we had delivered to a similar hearing in the Senate Judiciary Committee 1 month ago and discussed within the administration at least since May.

I would appreciate the opportunity to clarify this point. I think the issue that is being raised here has to do with usage of the word "opposed" at this time. I would emphasize—I believe it's somewhere in the written statement and I can't pinpoint it exactly at this time—we indicated that at this time we do not view that there exists a need for Federal legislation. I would direct your attention to page 3 of the written statement.

Mr. KASTENMEIER. I think you said at the outset "Let me make clear I am not calling for Federal laws at present." On the other hand, I thought your oral statement was more explicitly in opposition to the pending legislation.

Mr. POAT. I think, since this written testimony is conclusive, I would note simply that it is a question of nuance, and there's no question that nuance is important within any written or verbal statement.

Mr. KASTENMEIER. Let me restate it. It is clear at this point in time that you prefer to let the FCC take a look at this. You are not supporting legislation such as this now; is that correct?

Mr. POAT. That's well phrased.

Mr. KASTENMEIER. Mr. Moore, your position is that you support Caller ID, but you support it with the option of a blocking device in every jurisdiction. That is to say, universally, you believe a blocking device should be available in the United States?

Mr. MOORE. Yes. In fact, to be more precise, NASUCA members believe that, at a minimum, there should be per call blocking, which will be available across the country. In addition, there are other mechanisms of blocking—for example, per line blocking and default blocking. Under default blocking, everybody starts out blocked, and in order to participate in Caller ID, one would have to take an affirmative step of either contacting the phone company and asking to unblock your line, or activating per call unblocking, which is also technologically possible by just dialing three digits.

That's a matter that we do understand is beyond the purview of this legislation, but some NASUCA members will be advocating

those measures before the States based on either State law or just simply public policy. But on a nationwide level, it should be at least per call.

Mr. KASTENMEIER. Let me ask you both, do you see any new technology on the horizon affecting telephone technology, in receiving calls or whatever, that should cause us to think ahead and perhaps to anticipate some other problems or some other technology questions that may arise affecting Caller ID? Or something else which affects the nature of calls? Do you see any other technology that maybe we ought to be looking at in terms of its possible future impact?

Mr. MOORE. I can start first.

There have been tests out in the west, in North Dakota, of a service that would actually provide a name instead of the phone number of a person. The person would actually be able to select the name that would be going out when they make phone calls. Now, that's a service that is much more useful to residential customers. I mean, right now, if you see a phone number flashing on your Caller ID, and you have 3 or 4 seconds to decide whether or not to answer it, unless you have a pretty good memory for phone numbers, that's not going to be a particularly useful service to you. However, if you have names that are actually coming across and people are giving you the name of—for example, up to 20 letters of the person making the phone call—that's a service that's useful to residential customers and also doesn't contain some of the problems that Caller ID has.

I could call a business, and all they would know is that Steve Moore is calling. They don't have my phone number and they can't call me back. They can't put my phone number on a telemarketer's list or on some database. So that has some advantages over Caller ID that, if phone companies are truly interested in providing a service to residential customers, they would provide.

Mr. KASTENMEIER. On the other side of the coin, it is also a little more sensitive information with respect to the privacy of the caller, right?

Mr. MOORE. It may be. In fact, I would advocate there also be per call blocking for the name identification. So that's one technology out there. There are other things that I wouldn't call technologies but "events," which I just mentioned in my oral statement, the restrictions in the MFJ may eventually be lifted—restrictions on the manufacturing of equipment and, more importantly, on the provision of information content services.

Allowing phone companies to provide information content along with Caller ID, which gives them a vehicle to send information to businesses that want to buy that information, unleashes all sorts of problems. I can certainly see not much public outcry if they start sending along the name and address. But if they start sending anything that they could buy in a computer data bank from a credit card bureau, we may be seeing some more Federal legislation down the road on that kind of provision of services.

Mr. KASTENMEIER. Thank you.

Mr. POAT. Mr. Chairman, I would very much associate myself with those remarks with respect to the marketing use. I think new technologies are being developed to enable the individual telephone

user to utilize the telephone in new ways. There's no question but that the telephone may in the near future be, along with your television, the means by which you conduct many transactions, which are somewhat sensitive, including banking information, mortgages, or you may be ordering prescriptions and things of that nature.

I would like to deliver to your staff for the record an article from the Newsbytes service which talks about hundreds of small phone companies that are preparing to follow major firms by compiling dossiers on their customers which can be sold to industry. As the telephone becomes a mechanism by which we transact more business, it is simply clear that, without some sort of ability on the part of the consumer to control that information, there could be a huge market out there for information about them being sold without their consent.

[The article referred to above follows:]

SMALL PHONE COMPANIES GET READY FOR CALLER ID

ATLANTA, GEORGIA, U.S.A., 1990 APR 18 (NB) -- Hundreds of small phone companies around the country are preparing to follow major firms in compiling dossiers on their customers which can be sold to industry:

At a press conference during the SuperComm show, the Independent Telecommunications Network, a consortium of independent phone firms, announced it has started offering its own TelCard calling card and will soon begin collecting databases of Caller ID information for each local firm based on a central file. "We've sent out contracts to 1,000 indies in the last 3 weeks, and over 120 companies signed up already," said spokesman Dan Moffat. The database will include both credit card data created through use of the TelCard and what's called SS7 data, lists of who's making calls to where collected through Signaling System 7 technology which is at the heart of Caller ID.

Ray Donnelley, vice president of marketing and sales for ITN, said...[concerning Telcard industry usage]

In response to questions from Newsbytes, Donnelley confirmed that the small independents, like their larger brethren, are opposed to the idea that those with unlisted numbers should have their numbers blocked so that merchants can't collect them. "The feeling is that when you call someone else you don't have a right to privacy," he said. Moffat added, however, that the databases are purely a defensive move. "If you look at our product registration materials for the Regional Bell companies, they ask a lot of things about you, like your income and kids. They're positioning themselves to re-sell this data and we'd like the independents to be positioned for that as well."

(Dana Blankenhorn/Newsbytes: Press Contact: Dan Moffat, ITN, 816-561-9200)

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NEWSBYTES News Network is the largest independent computer industry news service in the world, published continuously since May, 1983.

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NEWSBYTES was honored as one of the few publications in the history of the Computer Press Association awards to win twice, once in 1986, and once in 1990, both in the "Best Online Publication" category.

Mr. POAT. There's nothing sinister about the fact that that market exists. It may well help people serve customers better. But the fact of the matter is that consumers should have some ability to control information about themselves.

Mr. KASTENMEIER. Thank you.

The gentleman from New Jersey.

Mr. HUGHES. Thank you very much, Mr. Chairman. It is a very, very interesting subject. I just have a few questions. I know that time is of the essence and we're going to have a series of votes very shortly.

Do I, as a customer, have a right to privacy in my own home, barred against calls I don't want to take?

Mr. POAT. In my view, Congressman, you do. I think that right is enhanced by caller identification. The test marketing instances that we are aware of so far—New Jersey, Pacific Bell out west as an example, the Canadian Government—

Mr. HUGHES. Let me follow up on that, then.

Mr. POAT. It's simply that people don't block their phone numbers in most instances, so I think the notion that people are going to block every call simply because they have the ability to do so would not be a fair representation.

Mr. HUGHES. But if you permit a caller to be able to block that, they deny you the right to make a decision as to whether you want to take the call. Frankly, I don't know what's accomplished. The moving party is the person that places the call. I don't know about you, but I'm taking more and more calls that I would rather not take, where they randomly select telephone numbers. I'm getting them in my campaign now, from organizations that use a recorded message. They get through and have a very sophisticated technique for selecting and targeting at this point. So the frequency of unwanted calls is increasing.

Why in the world would I want to give somebody the right to deny my right to privacy by giving them the right to block the caller identification? If I were an obscene caller, I would have a blocking mechanism on my phone. If I were somebody trying to harass, as often happens, I would have such a blocking mechanism. Why give somebody the right to do that? What is the right to privacy that an individual who is initiating the call has that overrides my right to be secure in my home from such calls? I don't understand that principle. Have I lost something here?

Mr. MOORE. Well, the right of privacy, which really goes back to the late 1800's, in an article by Justice Brandeis, has two components. It's the right to be left alone, and it's also the right not to give out information about yourself. That's what we're talking about here. Those are two conflicting rights.

Mr. HUGHES. I understand that, but the individual who is initiating the call is the one invading my privacy. There is a presupposition that he's to be accountable for that.

Mr. MOORE. Well, in the case of an individual calling you, if they block, you've got the right to say "I'm not answering the phone. Anybody that blocks and calls me isn't going to get me." That is a right that you have with Caller ID. Therefore, even with blocking, it gives you far more information than if you do not have Caller ID.

Mr. HUGHES. Then I give up my right to have a telephone now. The way I can protect myself against harassing telephone calls, or other telephone calls I don't want to take, is to not answer my telephone. Is that what you're saying?

Mr. MOORE. Well, let me give you some numbers. In Rochester, NY, there was a test recently, and over a roughly 4-month period they had Caller ID with blocking. By the end of that period, there were approximately 100,000 calls per week being made. Of those 100,000, 10 were being blocked on a per call basis. Those are the kind of numbers that we're talking about here. So if you happen to be getting all 10, I can sympathize with you. But the fact is few people are going to be taking advantage of the per call blocking.

Mr. HUGHES. I do know this. The answer to harassing calls is not getting the police involved. I mean, I've gone that route. I served for 10 years before I came here in law enforcement. I took my share of harassing and obscene telephone calls. Attempting to get the police, who were already overburdened, to be able to engage in that activity, when they're overwhelmed with pursuing criminal investigations, you know, is kind of naive. They don't have the resources to do that.

So how do I protect myself? Wouldn't you agree that, if you were an obscene telephone caller, the first thing you would do would be to get a blocking device?

Mr. MOORE. The first thing I would do is to be very careful about my initial conversation and find out if the person has Caller ID. If they don't, then I make my obscene comments. If they have Caller ID, I'm careful.

The fact is that any customer in this country should be able to trace an obscene phone call and send it to the police; any customer in this country should also be able to hang up, dial three digits, and confront that person and say "Don't make that phone call again." Maybe if they get lucky they may actually get the guy's wife.

Mr. HUGHES. Have you ever been in a position where you have attempted to get a law enforcement agency to follow up on a report from the telephone company?

Mr. MOORE. Oh, I know it's extremely difficult.

Mr. HUGHES. I have. I have.

Mr. MOORE. What is Caller ID going to do, though?

Mr. HUGHES. I was in law enforcement and had somewhat of a problem.

Mr. MOORE. But what does one do with Caller ID? I mean, if you get a phone number that you don't recognize, and you pick it up and it's an obscene phone call. With Caller ID, perhaps the next time they call you can recognize that number and not answer it. But if you instead activate Call Block, they can't even get through. They're going to get a message saying this phone isn't taking any messages any more. If you have Call Return, you can return the call to them and say stop it. Or, you can simply trace it. Those are all the same things Caller ID does, plus more. So having blocking doesn't stop people's ability to react to obscene phone calls. There is a whole range of techniques that they can use if the companies would offer them. The problem is they aren't.

Mr. HUGHES. But I don't understand the principle involved, giving somebody who is basically making those unwanted calls the right to deny you the right to find out who it is, whoever is initiating the call.

Mr. MOORE. What are you going to do with that information, though? How can I deal with that information? The steps I would take with Caller ID, if I've got a number, are: I cannot answer the phone the next time they call; I can send it off to the police and have them throw it in the garbage can; I can call them back and tell them not to call. Those are all things I can do with the other CLASS services.

Mr. HUGHES. But the call might be from your son who has run out of money at college.

Mr. MOORE. That's right. With Caller ID, you'll take that call.

Mr. POAT. Congressman Hughes, I think the important point here is that most callers have no reason to block their number. For example, your son calling you. If you think of the everyday telephone usage which most people have, it's calling their spouses, their children, their parents, the local pizza parlor, whatever. In each of those instances, there is no incentive to block your call. If a direct marketer or someone of that nature is trying to call you at 6 o'clock, whether you see their number, which is going to be unfamiliar to you, appear on the display, or you see a blank box, really I think the information that you receive as the recipient of the call is basically the same. Someone with whom I am unfamiliar is attempting to contact me at this point. You would respond by simply deciding whether or not you wish to speak to someone at that point, the identity of which you don't know.

Mr. HUGHES. Would you give whatever agency regulates this area the ability to determine whether or not some individuals, like direct marketers, have that right to block? Would you start to discriminate as to who can block and who can't block?

Mr. POAT. We would prefer that the public utility commissions have overall oversight. We believe that rate and service decision are appropriate at that level.

Mr. HUGHES. As a matter of principle, do you give somebody the right to make that determination as to who should block and who shouldn't block?

Mr. POAT. The individual determination?

Mr. HUGHES. Yeah.

Mr. POAT. Yes. As I said before, the information that the recipient of the call has, whether it's an unfamiliar telephone number on the display, or a blocked display, that information is essentially the same; that is, there's an unidentified quantity trying to reach me, as opposed to my son or daughter trying to reach me to get money, or your next door neighbor or whatever. So the information that's being transmitted to the call recipient is basically the same in either instance.

If I may also note one other thing—your point about law enforcement is an important one. I think it needs to be weighed. I would also point out that the police chiefs of Ohio, as well as the Drug Enforcement Administration in Florida, have answered as parties in favor of some sort of call blocking mechanism so as to protect their undercover operations as well. So I think the point you raise

is a good one, but equally, we also have to recognize that call identification has some important implications for law enforcement generally.

Mr. HUGHES. Well, you know—Mr. Chairman, my time is up. But in balancing the constitutional rights of privacy, I believe that I have an overriding right to be secure in my home to protect myself.

Thank you, Mr. Chairman.

Mr. KASTENMEIER. I thank my colleague.

The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman.

Mr. Moore, I'm going to extend a little bit what the gentleman from New Jersey commented about. In your testimony you talked about the protection that Call Trace would provide to a consumer, but is it not true that generally, before law enforcement officials will become at least actively involved, would the complainant not be required to prove that a pattern or a common practice had occurred as opposed to an isolated event, and furthermore, in many instances, do now law enforcement officials require a complainant or a victim to agree to prosecute before they will pursue this effort?

Mr. MOORE. That certainly is the practice of many law enforcement agencies, and partly it is because of the nature of the difficulty of the traditional trap and trace, which required a set up of a line which would record everything single phone call and the period of time of all of those calls, a comparison of those would be made with a listing of phone calls that the customer would have to keep, which would identify which were the ones that were obscene. But prior to providing that kind of a service, there has certainly been a requirement that there be a serious problem.

I should point out, however, that with Caller ID, to the extent that one wants to involve law enforcement, you would have to contact them and say I read on my Caller ID box and this is the number. With the Call Trace, it's a business record in the computers of the phone company, admissible at trial. No one can contest the fact that you misread it, or no one can contest the fact that you're not too sure if that was the exact time of the call. It's there and it's usable.

So to the extent that one considers Caller ID as a mechanism to bring in law enforcement, Call Trace is even better than that.

Mr. COBLE. What procedure, Mr. Moore, is followed in law enforcement having privy to that information? Once it's locked in, once the trace has been effected and it's locked into the telephone records, then what must be done logistically next to bring law enforcement into that loop?

Mr. MOORE. When a customer activates Call Trace, they get a recording instructing them to next call either the phone company or the police department, generally the police department, and the police department would then contact the phone company and retrieve the number. Now, if it's not a serious matter, they may not take that step. But if it's serious enough, they certainly would.

I would guess it's going to be like any other matter. It's going to be a function of each individual police department, depending upon how busy they are. They will have different procedures.

Mr. COBLE. Let me ask you one more question, Mr. Moore, and this may be duplicative of what I just said, because I am still in this law enforcement side of the picture. You indicated, I believe, that law enforcement, especially those engaged in undercover operations, had expressed concerns about unrestricted Caller ID. Now, the Bell Atlantic testimony, I believe, will reveal the experience that indicates law enforcement officials in New Jersey have been supportive of unrestricted Caller ID.

Now, we may be back to what you said before. This may depend on what individual group may have to say about it. But I would like to hear from you on that.

Mr. MOORE. Certainly. Let me read to you from a document that was filed recently in the State of Florida by the Law Enforcement Committee on Caller ID. This is a group of State and Federal law enforcement officials, and let me read this statement to you.

"Investigation by this committee into Southern Bell's claims that no other law enforcement agencies and States with Caller ID are having difficulties with the service are simply not true. Cases have been documented in Maryland, where heroin traffickers have begun to set up their illicit drug delivery scenarios around the use of Caller ID. Arrests have been made and CND boxes seized. I was personally asked to discuss Caller ID with a group of tactical agents and major crime investigators in New Jersey. I received several comments on how Caller ID had already put numerous cases in jeopardy but fortunately had not yet caused any injuries. Some of these investigators said they were seeking legal assistance to have Caller ID outlawed in the State of New Jersey, the State that supposedly loves it. I did not hear one officer in an audience of over 16 investigators say anything positive about this service."

Now, this is a document filed by a group of law enforcement officers in the State of Florida talking about their fellow officers in New Jersey. Certainly some of the police chiefs, and I know the chief of the State police, have been in favor of the service, but when you get down to the line officers, those people are terrified of Caller ID. They see their lives in jeopardy.

Mr. COBLE. Thank you, Mr. Moore.

Do you all care to comment on my question that I put to Mr. Moore?

Mr. POAT. I think that answer responds perfectly.

Mr. COBLE. Thank you, folks.

Mr. KASTENMEIER. I thank my colleagues, and we thank both of you, Mr. Poat and Mr. Moore, for your contribution this morning.

Mr. KASTENMEIER. I now would like to introduce our second panel this morning, representing the telecommunications service providers. First we will hear from Mr. John Stangland, the assistant vice president of product development and management with Pacific Bell. Mr. Stangland has had a long plane flight from California and we certainly appreciate his being here. Second, we will hear from Mr. James Cullen, the president and chief executive officer with New Jersey Bell.

Mr. Stangland, would you like to proceed first, sir?

**STATEMENT OF JOHN STANGLAND, ASSISTANT VICE PRESIDENT
FOR PRODUCT DEVELOPMENT AND MANAGEMENT, PACIFIC
BELL**

Mr. STANGLAND. Thank you, Mr. Chairman, members of the committee. My name is John Stangland. I am the assistant vice president for product development and management for Pacific Bell.

It is a pleasure to be here this morning and present a one company, one State, perspective on the introduction of a very valuable set of new telecommunications services to the customers in California.

Pacific Bell does plan to offer a full set of seven new custom local area signaling services to California customers. Caller ID is an essential feature in this set. We also plan to include per call privacy at no charge. These services and their operational characteristics are spelled out in detail in an attachment to my written testimony.

As background for my comments, it is valuable to know that we have been formally working on deployment strategies and plans for these services since 1985, and plan initial implementation with regulatory approval in October 1991. The significant time interval is driven by both the magnitude of the task, of deploying both the CLASS features and the supporting network infrastructure, and our desire to provide ubiquity and connectivity for these services in those areas where it is introduced, San Francisco and Los Angeles initially.

Throughout the activity associated with the development of these new products, I would characterize our direction as being one of intense customer focus. For example, we work with the switch vendors to design and deploy upgrades to the software which make these features easier for the customers to understand and use. With early recognition of the privacy issue, we have been working with a wide variety of consumer and professional groups in both a learning and educational role, making sure that the services and both sides of the privacy issue are fully understood.

Also, we have conducted four distinct sets of primary market research. The last one in 1989 focused specifically on the privacy issue associated with Caller ID and the options for dealing with it. All of this input resulted in a series of analyses and a thorough consideration of several deployment options for Caller ID. These options are spelled out in detail in my written testimony.

For numerous reasons, ranging from relative value provided by the Caller ID feature to technical feasibility, the per call privacy option was selected. We strongly believe that per call privacy provides the optimum solution for California customers. It clearly balances the opposing views on privacy, calling party versus call ed; it maintains the value of the Caller ID feature and the related CLASS features; it is consistent with what our customers have told us in our market research efforts, research which also indicates that support for this position grows with understanding.

Our decision to include per call privacy in our tariff proposal with the California Public Utilities Commission left us in a unique position to assist Assemblyman Jerry Eaves when he drafted legislation to deal with caller identification products in California. Our position is in full compliance with this new law and we believe in compliance with all legal requirements.

All of this brings us to today. We are in the middle stages of what will be for us about an 8-year product deployment cycle. Regulatory industry and market forces are beginning to shape a full understanding of this product and its value to customers. We have selected an implementation option for Pacific Bell customers in California which we strongly believe will enable these new products to enhance the elements of choice, convenience and safety in the lives of our customers.

Thank you.

Mr. KASTENMEIER. Thank you very much, Mr. Stangland.
[The prepared statement of Mr. Stangland follows:]

STATEMENT OF JOHN STANGLAND, ASSISTANT VICE PRESIDENT
FOR PRODUCT DEVELOPMENT AND MANAGEMENT, PACIFIC BELL

INTRODUCTION

My name is John Stangland, and I am the Assistant Vice President for Product Development and Management at Pacific Bell' ("Pacific"). In this position, I have been part of the team that is actively developing Pacific's "Caller ID" product, as well as other Custom Local Area Signaling Services (see Attachment 1 for a description of these "CLASS" products).

First, allow me to thank you for this opportunity to discuss Caller ID. Pacific has targeted late 1991 for initial introduction of the Caller ID product. This exciting new service will allow telephone customers to see on a display screen the telephone number of the calling party before answering the phone.

We are moving forward with Caller ID and the other exciting CLASS features because they promise to add greater choice, convenience, and safety to our customers' lives. We at Pacific Bell believe that, given a thoughtful approach to customer privacy needs, virtually everyone in California could benefit from some application of this technology.

This hearing provides a unique forum to discuss Pacific Bell's approach to the privacy concerns associated with the offering of Caller ID. Pacific's solution -- Per Call Privacy -- gives all its California customers the capability of preventing their number from being displayed to the called party.

Caller ID: A New Service with Limited Deployment Nationwide

Because Caller ID has very limited deployment to date, both the industry and the states are only now beginning to deal with the inherent privacy issues. Pacific believes that it would be prudent for Congress to wait and see how initial offerings work out and to consider the regulatory experiences of various states before mandating national standards. We plan to work within the industry to ensure that the privacy concerns of our California customers are honored throughout the country as our networks interconnect with those of the other common carriers (please see Attachment 2 for some examples of Per Call Privacy calling scenarios).

1 Pacific Bell is a regulated telephone subsidiary of Pacific Telesis Group, a diversified worldwide telecommunications corporation based in San Francisco, California.

Per Call Privacy: The Best Solution for California

Pacific Bell will be offering Per Call Privacy in California because we believe that it is the most balanced alternative for our customers. Unlike the other options which I will discuss in some detail, this one allows the parties involved in the call to make decisions about their needs for privacy.

Pacific's position on Caller ID was borne out of extensive consumer research. That research, along with our knowledge of the California marketplace, tells us that Per Call Privacy or blocking is the most effective means of balancing the privacy concerns of all our customers. Further, our research shows that Per Call Privacy will not undermine the value of the product (though our research may differ from research in other regions). Our approach makes sense from a marketing, consumer, and public policy point of view for our customers.

Let me make clear that Pacific is not on a campaign to promote our approach as a national standard, nor are we passing judgment on the approach taken by others in other parts of the country.

CALLER ID IN CALIFORNIA

Let me begin by briefly describing some of the benefits of the Caller ID product as it will be offered in California.

Caller ID will be extremely helpful in medical or police emergencies, or in enabling you to identify an important call from a family member or a business client. Caller ID will help you decide if you wish to answer and, if so, how.

When you are busy, this service will allow you to answer important calls and make a note of calls to return. For example, imagine that you are home alone dealing with a sick child, waiting for the doctor to call, when the telephone rings. Rather than divert your attention for any length of time from the child, you can simply glance at the number flashing on your screen. If it is not the doctor, you may want to return the call at a more convenient time.

On the other hand, when you are the calling party, there may be instances when to retain your privacy you may not want your number displayed. For example, a caller has a right to privacy when calling from a battered woman's shelter; or someone may want to remain anonymous when gathering quotes on merchandise to avoid unwanted follow-up sales calls.

There also may be times when you want your number delivered as when you are calling someone who is waiting to hear from you on an urgent matter.

Automatic Number Identification (ANI)

You should also be aware that Caller ID is not the only technology that delivers your telephone number to the called party. Even when using Per Call Privacy, your telephone number may be delivered to an "800" or "900" number service subscriber.

This technology is known as Automatic Number Identification or "ANI." This information has traditionally been passed within the telephone network for billing and routing purposes only. However, today, some long distance carriers have started passing ANI information to the called party as part of their own service offerings. In this situation the calling party has no control over the forwarding of ANI.

However, a solution to this problem is on the horizon. With the deployment of Common Channel Signaling System 7¹, upon which the CLASS features are based, the network can forward routing and billing information separate from the information needed to provide customer services. This will allow for customer control of calling party identification.

CALLER ID: THE PUBLIC POLICY DEBATE

This new technical capability has caused a reassessment of the importance of privacy in telecommunications.

Some contend that Caller ID is appropriate because it increases the called party's privacy. Not only can the recipients screen their calls, they have some ability to hold callers accountable for their actions or statements on the telephone. Others object to Caller ID because, by losing their anonymity, they may be subjected to subsequent invasions of privacy by the receiving party.

The privacy issues are complex since the strong opposing views can be considered equally valid.

¹ Common channel signalling (CCS) utilizes a standard communication tool (protocol) called Signaling System 7. CCS is a concept that involves: (1) separating signalling messages from the voice/data transmission paths; (2) aggregating these signalling messages on a common high-speed data network dedicated to signalling; (3) using that signalling network to interconnect all the elements of the network, including the switching offices and centralized data bases; and (4) using that signalling as the means to interconnect different networks.

CCS will enable more efficient use of the National Network and provide a common platform for the delivery of information services (e.g., Credit Card Services).

PACIFIC BELL'S POSITION ON CALLER ID

As a public utility, franchised to provide service for everyone, Pacific Bell cannot ignore this polarized customer response in California. And we haven't. Pacific Bell began doing research on consumer reaction to CLASS products, including Caller ID, five years ago. The issue and its permutations are not new to us. We considered a variety of options to address the concerns of our California customers and have selected a solution, Per Call Privacy, which we believe best balances all of the concerns raised.

Pacific Bell will universally provide Per Call Privacy, without additional charge to the customer, regardless of whether they subscribe to any of the new features. By dialing *67 (or 1167 on a rotary phone) before dialing, the calling number will not be delivered; rather the message "Private Number" will appear on the called party's Caller ID display. The customers can then decide if he wants to answer an anonymous call. The called party who subscribes to Caller ID will receive one of three messages: the calling party's number; "Private Number;" or the words "Out of Area" when the call originates from another signaling system service area¹.

The key aspect of offering Per Call Privacy is that the "private number" indicator, when displayed, has message value. It says the person calling has chosen, on this call, to mask his telephone number. That knowledge provides the recipient with helpful information to make a choice as to whether to answer such a call (effectively where we are today).

Importantly, Per Call Privacy does not hamper the basic function of the other CLASS services. So, our customers will retain the ability to deal effectively with unwanted callers through Call Trace, Call Block and Call Return.

For the system to be effective it is necessary for all numbers, including those not listed in the telephone directory, to be treated the same. All callers, listed or unlisted, will have the same capability to prevent disclosure of their telephone number under Per Call Privacy.

Some argue that Per Call Privacy will undermine the financial integrity of the service because very few will want to subscribe to Caller ID when it won't deliver all of the calling numbers. Our research shows that activation of the Per Call Privacy feature does not significantly diminish the value of the product.

¹ The message signals for "Private Number" and "Out of Area" are delivered to the customer's telephone equipment (CPE) as the letters "P" and "O". The actual message displayed on the customer's set may vary according to the manufacturer's design.

In fact, we expect that the actual number of calls where Per Call Privacy will be used will diminish as people become more familiar with the service. Its use will likely become limited to a few key calls, such as to crisis hotlines and to some businesses.

Rochester Telephone Corporation Trial

Telephony [May 7, 1990] reports that the Per Call Privacy solution already is being tested by Rochester Telephone Corporation in its Caller ID trial in Perinton, New York. Although Rochester is still gathering data, its experience seems to support the contention that Per Call Privacy does not undermine the value of Caller ID. In fact, Per Call Privacy is having the desired effect of allowing both the caller and the called party to make a choice: for the calling party, whether to withhold a telephone number; and for the called party whether to take such a call.

Although our market in California may be somewhat different than New York, we are encouraged that the early results of Rochester's trial seem to support our research findings that Per Call Privacy will not undermine Caller ID.

HOW PACIFIC BELL CONCLUDED THAT PER CALL PRIVACY IS BEST FOR CALIFORNIA

We arrived at the conclusion that Per Call Privacy was the best solution for our California customers by working closely with consumer groups, conducting extensive market research, and considering a number of product options before finally settling on Per Call Privacy.

Let me briefly explain.

Pacific Bell Caller ID Timeline

Pacific Bell has been engaged in the study of CLASS products including Caller ID and its related privacy issues, since 1985. Our market research, which includes interactions in focus groups, consumer panels, and industry forums, and our experience with other service offerings in California, have given us insight into the attitudes of California consumers (including such constituencies as law enforcement, local government, community support organizations and small businesses). These experiences allowed us to make business decisions that are in the best interests of our customers and to assist our state legislators in understanding Caller ID (Please see Attachment 3 for a timeline of our activities).

Results of Market Research

The market research has highlighted the strong feelings that customers have about Caller ID.

As you might expect, some Californians expressed strong views that caller anonymity should be protected. Others stated that the person receiving the call has a greater right and that the addition of Caller ID is warranted. Often, we discovered, people held both views.

However, our research did reveal one undeniable result -- a result which played a large part in our final decision to offer Caller ID with Per Call Privacy. Offering callers the ability to restrict or block their numbers from being delivered had a significant favorable impact on customer acceptance.

Our research indicates that without offering any blocking options those strongly opposed to Caller ID are about equal to those strongly supporting the service. Adding Per Call Privacy significantly reduced opposition to the product.

Another important finding, which also helped us settle on Per Call Privacy, is that offering blocking on a "line" basis does not appear to significantly further reduce opposition (about 1% more than Per Call Privacy) to Caller ID. In other words, the only way to satisfy most of the people who still object to Caller ID, even with Per Call Privacy, is to not offer the service at all. The vast majority of customers grant the overall value of the service. They only argue how it should be provided.

While some claim that the rights of customers with unlisted numbers to privacy are violated by the number delivery service, research results indicate that in reality, these customers' views are not significantly different from the rest. In fact, this group reported a slightly higher interest in buying this service than those with published numbers.

Product Options Considered

Based on our extensive market research, we developed six alternative Caller ID product scenarios which we studied. It may be easier to understand our reasons for endorsing Per Call Privacy if I explain the options we considered (see Attachment 4 for a matrix of options considered).

Offer Number ID without any blocking

Caller ID without any blocking provides the person receiving the call with all of the control or privacy protection. If one believes that the telephone is like a door on a house, one can logically argue that the person who owns the door has a right to see who is "knocking" before answering.

* Line blocking occurs when all calls placed from that telephone number (line) would display the words "Private Number" on the called party's Caller ID screen regardless of whether the caller intended for his number to be withheld.

However, there are legitimate situations where the caller needs to retain their anonymity and the door analogy loses credibility. For example, the women calling home from a battered women's shelter needs to conceal her calling location for self protection. It is not an exaggeration to conclude that lives could be endangered if some form of blocking is not available.

Offer Number ID with Per Line Privacy when requested

A second option we considered was to offer per line blocking at the customer's request. This option significantly reduces service value and adds major confusion for callers when they call from various locations.

Line blocking would remove much of the service value of Caller ID because when the "private number" message appears on the Caller ID display, the called party is unable to reasonably determine if they should answer the call. Our research indicates that the primary value of Caller ID is that it allows people to better manage their calls. We question the value of offering a service which fails to completely satisfy the need for which it is designed.

Line blocking is site specific and few of us make all of our calls from the same phone. Therefore, if line blocking were available, we would have to know the "blocking status" of each phone we use. The resulting confusion is readily apparent.

Offer Caller ID but block specific groups or block all customers except those who want their number to be delivered

Another possibility was to offer Caller ID, but block specific groups or block all customers, except those who want their numbers to be delivered. Universally blocking all customers or major customer groups would almost completely diminish the value of the service for most customers. Further, if blocking is offered only to certain groups, such as unlisted customers, certain people will have a greater claim to privacy (anonymity) than others. Should privacy be based upon one's ability to have their name omitted from a directory or pay a fee?

Don't offer Caller ID but offer the other six CLASS features

Another possible solution was not to offer Caller ID at all, but still offer the other six CLASS features. Removing the Caller ID service altogether while offering the other six is not a viable option because it is not the only CLASS service which delivers the calling party's number. In attempting to make the service easier and more useful to customers, we have incorporated announcements that allow customers to know the number of their last call. This lets customers know the number before returning a call with Call Return (Automatic Callback) or indicates the number they just added to their Call Block (Selective Call Rejection) lists.

However, all of the features respect a blocking request and don't deliver the number, except for Call Trace. As stated before, a customer may trace a call and have the information delivered to the police even if the caller used blocking. With Call Return the caller may still return the last call, he just won't know the number.

Provide a "beep tone" to callers to let them know their number will be delivered

We also considered providing a "beep tone" to callers to let them know their number will be delivered. However, we believe that trying to alert callers that they are calling someone who subscribes to Caller ID is financially, technologically and practically unworkable. The process would slow down the completion of almost every call by as much as ten seconds, double the signalling load on the network, and cost millions of dollars. The option is just not viable.

In viewing any of these options, it should be realized that they only apply to services based on the new network signalling system 7. And as I mentioned earlier, other number delivery services such as multi-frequency based ANI, now used for 800 services, cannot technically be blocked by the customers.

After carefully considering the needs of our customers and reviewing the product options available, we determined that Per Call Privacy was the best solution for California.

Implementing Per Call Privacy In California

We recognize that for Per Call Privacy to be effective it requires a certain degree of consumer education and awareness. Everyone using a telephone needs to be aware of and understand the implications of number delivery and the blocking options.

In developing our plans to educate customers about Per Call Privacy, we have drawn from our experiences with advertising and "976" customer notification. We have decided that we are going to use all of the vehicles we normally use for advertising, including television, radio, and print media.

Our message will attempt to communicate two key points:

- starting on a specific date your telephone number may be delivered to the party you are calling and
- you have the ability to stop your number from being delivered on any call without additional charge.

Clearly there are additional points we want to communicate, such as which service areas will be impacted.

The other aspect of this effort will be to prepare our customer representatives for the anticipated calls and questions. We have already started educating our employees on the privacy issue. Every employee who deals directly with customers will be covered on the public policy issues around privacy, and will be given an overview of the product line. Before we begin the notification campaign we will train them to deal with customer calls, as well as give them an opportunity to test and learn about all of the new features.

All of our plans for customer notification will be submitted to the California Public Utilities Commission as part of our tariff proposal. Our notification effort will begin after we obtain tariff approval and before we begin selling the features.

California Law Mandates Per Call Privacy: AB 1446

Offering Per Call Privacy to our customers is now more than just a prudent business decision -- it is the law in California.

Last year, the California Legislature passed AB 1446 (see Attachment 5), introduced by Assemblyman Jerry Eaves, which required phone companies offering the service to include a feature allowing subscribers to prevent their numbers from being displayed, on a per call basis, at no charge to them.

As I have mentioned, since 1985, we have been attempting, in a thoughtful manner, to deal with some of the complicated privacy concerns that Caller ID has generated. Thus, we were in an ideal position to provide valuable assistance to Assemblyman Eaves and the California Legislature in the writing of AB 1446 which took effect on January 1, 1990.

The legislation made exemptions for:

- an identification service which is used within the same limited system, such as Centrex or private branch exchange (PBX);
- an identification service which is used in connection with a public agency's emergency telephone line or on the line which receives the primary emergency telephone number (911);
- any identification service provided in connection with legally sanctioned call tracing or tapping procedures;
- an "800" or "900" access code telephone service until the technical capability exists to comply with the legislation.

CONCLUSION

There is no one solution which will adequately address all of the concerns raised around the Caller ID service. Some argue that the recipient of the call has the right to hold the caller accountable for their actions. Others argue that the caller "owns" their telephone number and has the right to control the distribution of that number to protect their anonymity. Still others contend that this is not something that should be decided by the majority, because democratic rule should not apply to an individual's rights to privacy.

We are excited about this new product because we expect it to add choice, convenience, and safety to the lives of our customers. We at Pacific Bell believe that Per Call Privacy best balances the conflicting privacy concerns as they are perceived in California. We are confident that this approach gives the consumer the ability to personally manage their privacy concerns. The California Legislature agrees with this balanced approach and it will be the framework for our tariff filing with the California Public Utilities Commission.

ATTACHMENT 1

DESCRIPTION OF PACIFIC BELL'S CLASS/COMMSTAR SERVICES

REPEAT DIALING--If the number a subscriber dials is busy, the caller dials a two-digit code and this feature automatically checks the called number every 45 seconds for up to 30 minutes. When both numbers are clear, it rings the caller and then sets up the call. This alleviates the need to repeatedly dial a busy number.

CALL RETURN--Provides the subscriber the number of the last person to call along with the time and date, and allows him to automatically redial the number. If the number is busy, Call Return works like Repeat Dialing, checking the number automatically and alerting the caller when the number is free. This service is intended for those situations when you cannot answer the phone immediately, for example, if you are showering, bathing baby or just entering your home or office when the phone stops ringing.

CALLER I.D.--Displays the number of the calling party on a device that attaches to a standard telephone or is incorporated into a special telephone, permitting the subscriber to see the caller's number before answering the phone. As an example of this service's uses, if you are fixing dinner and the kitchen phone rings, or meeting with someone at your desk, you can be alert for important calls.

PRIORITY RINGING--Allows subscribers to program as many as 10 numbers into the telephone system and receive a unique ring whenever someone calls from one of those numbers. This service can alert the subscriber to important calls or can be used to determine who should answer the phone by programming, for example, the numbers from which a youngster frequently receives calls. Also works in conjunction with Call Waiting.

SELECT FORWARDING--Subscribers can select several telephone numbers to be automatically forwarded to another phone. This service can free a subscriber, who is expecting an important call, to visit a neighbor or to attend a meeting in another office. Select Forwarding and the related COMMSTAR feature, Call Forwarding, which forwards all calls to another number, can operate simultaneously.

CALL TRACE--Subscribers can automatically trace the originating telephone number of disturbing or threatening calls. To protect the rights of both parties, the information will be placed in a secure data base at Pacific Bell. Specially trained professionals will work with the customer and, if a police report is filed, provide the information to law enforcement authorities.

CALL BLOCK--A subscriber can program his service to reject calls from as many as 10 specified numbers. Callers will receive a recorded announcement, "We're sorry, the party you are calling is not accepting this call. Thank you." One of the most common uses expected for this services is handling annoyance calls.

To increase the user friendliness of the services, all of them have recorded prompts that aid customers in their operation.

ATTACHMENT 2

PER CALL PRIVACY CALLING SCENARIOS

Caller Dials Per Call Privacy (*67)	To: San Francisco, CA	To: CLASS Location Outside CA Offering Blocking	To: CLASS Location Outside CA Not Offering Blocking	To: Non CLASS Location Inside or Outside CA	To: 800 AM Customer
From: San Francisco, CA	"PRIVATE NUMBER"	"PRIVATE NUMBER"	"PRIVATE NUMBER"	N/A	"333-3333"
From: CLASS Location Outside CA Offering Blocking	"PRIVATE NUMBER"	"PRIVATE NUMBER"	"PRIVATE NUMBER"	N/A	"333-3333"
From: CLASS Location Outside CA Not Offering Blocking	"333-3333"	"333-3333"	"333-3333"	N/A	"333-3333"
From: Non CLASS Location Inside or Outside CA	"OUT OF AREA"	"OUT OF AREA"	"OUT OF AREA"	N/A	"333-3333"

* These scenarios assume that 1) there is SS7 interconnection between regions and 2) no modifications have been made to standardized design requirements for handling blocking indicators, i.e., a privacy request is honored and the caller's number is not delivered.

ATTACHMENT 3

PACIFIC BELL CLASS TIMELINE REVIEW
Summary of Privacy Policy Development Activities

1985	Pacific decides to deploy SS7 and Class throughout California
November 1985	Primary market research (qualitative) on Customer Views of features - Privacy concerns were among the key issues
1987	Six regional forums held with key community representatives
Pasadena	Minority Leaders
Los Angeles	Local Government and community support organizations
San Ramon	Small Businesses
Oakland	Non Profit and community agencies
San Diego	Law Enforcement Representative
June 1987	Primary Market Research (qualitative) on perceived benefits and uses - Privacy concerns were among the key issue
March 1988	Primary Market Research (Quantitative) to determine potential demand for each of the features - Privacy concerns were measured
August 1988	A privacy issues forum was held, bringing together various experts community leaders to discuss telecommunication privacy issues
October 1988	Decision made to further assess stakeholder response to per call privacy solution as well as develop effective customer education program
March 1989	Eaves introduces AB 1446 - proposes making number delivery illegal/Pacific reps. meet with Eaves
April 1989	Eaves amends AB 1446 to allow for Caller ID to be offered but requires per call blocking

- May 1989 Primary Market Research (Quantitative) focused specifically on Privacy issues is completed
- June 1989 Pacific publicly endorses Per Call Privacy as preferred solution to privacy concerns
- September 1989 AB 1446 passed by Legislature and signed by Governor
- May, August,
November 1989 Meeting with Consumer Product Panel to discuss privacy issues and alternatives

Assembly Bill No. 1446

CHAPTER 483

An act to add Section 2893 to the Public Utilities Code, relating to privacy.

[Approved by Governor September 15, 1969. Filed with Secretary of State September 18, 1969.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1446, Eaves. Telephone call identification service: privacy.

(1) Existing law does not require a telephone call identification service to allow a caller to withhold the caller's identity from the recipient of the telephone call.

This bill would, with specified exceptions, direct the Public Utilities Commission to require any call identification service offered by a telephone corporation, or by any other person or corporation that makes use of the facilities of a telephone corporation, to allow the caller, at no charge, to withhold, on an individual basis, the display of the caller's telephone number from the telephone instrument of the individual receiving the call. The bill would exempt "800" or "900" access code telephone service from this requirement until the commission determines the telephone corporation has the technical capability to comply.

Since, under existing law, a violation of any rule or order of the commission in this regard would be a misdemeanor, the bill would impose a state-mandated local program by creating a new crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Telephone subscribers have a right to privacy, and the protection of this right to privacy is of paramount state concern.

(b) To exercise their right of privacy, telephone subscribers must be able to limit the dissemination of their telephone number to persons of their choosing.

SEC. 2. Section 2893 is added to the Public Utilities Code, to read:

2893. (a) The commission shall, by rule or order, require that every telephone call identification service offered in this state by a telephone corporation, or by any other person or corporation that

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makes use of the facilities of a telephone corporation, shall allow a caller to withhold display of the caller's telephone number, on an individual basis, from the telephone instrument of the individual receiving the telephone call placed by the caller.

(b) There shall be no charge to the caller who requests that his or her telephone number be withheld from the recipient of any call placed by the caller.

(c) The commission shall direct every telephone corporation to notify its subscribers that their calls may be identified to a called party either:

(1) Thirty or more days before the telephone corporation commences to participate in the offering of a call identification service.

(2) By March 1, 1990, if the telephone corporation is participating in a call identification service prior to January 1, 1990.

(d) This section does not apply to any of the following:

(1) An identification service which is used within the same limited system, including, but not limited to, a Centrex or private branch exchange (PBX) system, as the recipient telephone.

(2) An identification service which is used on a public agency's emergency telephone line or on the line which receives the primary emergency telephone number (911).

(3) Any identification service provided in connection with legally sanctioned call tracing or tapping procedures.

(4) Any identification service provided in connection with any "800" or "900" access code telephone service until the telephone corporation develops the technical capability to comply with subdivision (a), as determined by the commission.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction. Notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

Mr. KASTENMEIER. Mr. Stangland, we will reserve questions for you following Mr. Cullen's report to us. Mr. Cullen.

**STATEMENT OF JAMES G. CULLEN, PRESIDENT AND CHIEF
EXECUTIVE OFFICER, NEW JERSEY BELL**

Mr. CULLEN. Thank you, sir.

Mr. Chairman, members of the subcommittee, Bell Atlantic opposes national Caller ID legislation because it would preempt debate on these issues at a State level, where the debate actually belongs. State public utility commissions today throughout the country are actively engaged in exploring the ways in which Caller ID should be offered in their respective jurisdictions. We believe that each State should be free to adopt the regulatory policy which it believes is best for the needs of its residents. This is particularly true at this point in time because, to date, the only full-scale offering of Caller ID has been without blocking. The proposed legislation would result in the implementation of Caller ID in a form that has not been implemented anywhere except in a few scattered trials. Moreover, customer experience with Caller ID in the real world demonstrates that the hypothetical problems with this service simply do not exist.

Bell Atlantic has almost 3 years of very successful experience with Caller ID service. That is success measured in terms of meeting the needs of 132,000 Caller ID customers and addressing the wide-ranging problems caused by anonymous calls. These are serious problems—false fire alarms, bomb threats to schools, obscene calls, threatening calls, harassing calls. In New Jersey, for example, a 7-year-old Passaic girl was so terrorized by obscene calls directed at her that she was afraid to go to school. Caller ID solved this problem. A New Jersey State legislator from Hamilton Township was repeatedly harassed by anonymous calls before he subscribed to Caller ID. Again, Caller ID solved this problem.

In Teaneck, NJ, when witnesses to an alleged racial shooting began receiving intimidating phone calls, the New Jersey attorney general ordered Caller ID for the witnesses and widely publicized that fact.

Our essential concern with blocking is that it would allow a cloak of anonymity to be given back to malicious callers, to obscene callers, and again would lead many of our customers unprotected.

Some of us have suggested—and we've heard those suggestions this morning—that Call Trace might be just as effective as Caller ID in dealing with these serious abuses. A recent Bell Atlantic survey of New Jersey Bell Caller ID customers shows otherwise. Of those customers who have used both services, the vast majority found Caller ID more helpful because it allows them to screen their own calls and deal with the problems without getting anyone else involved. When a customer uses Call Trace, the number is provided only to the police. Police departments have expressed serious concerns about their ability to handle the present volume of Call Trace requests. Frankly, with the growth of drug-related crimes, most police departments today have much higher priorities than obscene and harassing phone calls.

In fact, Senator Kohl's statement earlier, that if you punch 2 or 3 digits within seconds the police will be on the phone with an obscene caller, is simply untrue. For them to even get involved, most departments require victims of harassing calls to document at least 3 calls, and in some jurisdictions require the victim to receive as many as 10 calls. In addition, they require the victim to prosecute the caller if he is caught. This process can be lengthy, it can be frustrating, and is often disconcerting for the victim, because the victim does not really want to prosecute a caller. The victim does not want to have to endure multiple instances of abuse, but simply wants the calls to stop.

Bell Atlantic is also committed to accommodate the unique needs of agencies that help victims of domestic violence and sexual assault. We have met with these groups to gain an understanding of their special needs in a Caller ID environment. We have so far been successful in providing solutions which meet their unique needs.

We have also worked successfully with State, Federal and local law enforcement agencies to meet their unique needs in a Caller ID environment. In fact, over the past 3 years, just in New Jersey, we have met with over 2,000 law enforcement officers to explain Caller ID.

Mr. Chairman, the problem with mandating blocking is that it will immediately put obscene and malicious callers right back in business. We have the technology on hand to address the widespread and serious problem of abusive telephone calls. The demonstrated effectiveness of that technology over the past 3 years should not be destroyed by federally mandated blocking. Instead, each State should continue to be free to decide how to best balance the interests of its own citizens. Bell Atlantic favors unrestricted Caller ID because it restores full accountability when using the public telephone network. We believe that it is the right thing to do.

Thank you.

Mr. KASTENMEIER. Thank you, Mr. Cullen.

[The prepared statement of Mr. Cullen follows:]

PREPARED STATEMENT OF JAMES G. CULLEN, PRESIDENT AND CHIEF EXECUTIVE
OFFICER, NEW JERSEY BELL

My name is James Cullen, and I represent Bell Atlantic. I am the president of New Jersey Bell, one of the seven Bell Atlantic telephone companies and the first telephone company in the country to offer Caller ID. Caller ID is also offered in three other Bell Atlantic states -- Maryland, Virginia and West Virginia.

Bell Atlantic has over 132,000 Caller ID subscribers. Many of these customers subscribed to Caller ID as a result of a problem with abusive telephone calls. Bell Atlantic's experience demonstrates that unrestricted Caller ID is an effective deterrent to abusive calls. Moreover, with unrestricted Caller ID, all customers, including those who do not subscribe to the service, benefit from its deterrent effect on harassing calls because callers do not know who does or does not subscribe to the service. By contrast, none of the hypothetical problems with Caller ID have materialized in those states where Caller ID without blocking has been implemented.

Caller ID has many undeniable benefits. Once widely deployed and offered on an unrestricted basis, it holds the promise of forever eliminating anonymous obscene and harassing calls. Moreover, in a time when public agencies are reducing budgets and straining resources to address critical issues such as drug enforcement and health care, Caller ID can reduce the strain on those resources

by reducing false fire alarms, deterring telephone bomb threats, improving emergency response, and solving burglaries. In addition, it saves lives.

The purpose of my testimony is twofold. First, to suggest that there is no need for national Caller ID legislation. Second, to explain why the proposed blocking requirement in House Bill H.R. 4340 would drastically reduce the benefits and erode the value of Caller ID. In the course of explaining why any form of blocking is not appropriate, I will also share the more than two and one-half years of successful experience that Bell Atlantic has had with Caller ID *without* any restrictions.

We believe that it is premature to consider national legislation. State public utility commissions throughout the country are actively engaged in exploring the way in which Caller ID should be offered. As a result, different regulatory policies have developed. For example, last month, the Nevada Public Service Commission authorized the introduction of Caller ID, but only with per call and per line blocking. Although we disagree with that policy decision, we believe that each state should be free to adopt the regulatory policy which it believes is best suited to the needs of its residents. This is particularly true at this point in time because there is no actual experience with any form of blocking of Caller ID. To date, the only full-scale implementation of Caller ID has been on an unrestricted basis, and none of the hypothetical problems has actually materialized. Therefore, we believe that federal legislation would clearly be premature.

In order to understand why blocking is not in the best interests of the public, it is important to understand the magnitude and nature of the harassing call problem. According to one estimate, an obscene or harassing call is reported in the United States on average every five seconds. Our own research indicates that this large number of reported cases is only the tip of the iceberg. Many people fail to report the harassing calls they receive because of embarrassment, fear of reprisal, or reluctance to prosecute. In New Jersey alone, we estimate that one million customers receive obscene, threatening, harassing or annoying calls yearly.

Abusive calls range from graphically obscene calls directed at women and children to threatening calls designed to intimidate or evoke fear in the recipient. In addition, anonymous callers often seek to disrupt schools and the work place through telephoned bomb threats, incite unrest through anonymous hate calls, or intimidate witnesses. The experience in Bell Atlantic clearly demonstrates that unrestricted Caller ID is an effective deterrent to these calls:

- A seven year old child in Passaic, New Jersey was so alarmed by the threats of an obscene caller that she had to be accompanied to and from elementary school each day. When Caller ID became available in her area, her mother subscribed to the service and obtained the number of the caller. She called him and threatened to go to the police if the calls did not stop. The calls stopped.
- A Maryland customer plagued by a "breather" for more than two years was able to identify the source of the calls the first day Caller ID was used. The customer immediately called back and confronted the caller. Again, the calls stopped.
- A Virginia Beach woman, whose husband frequently travels, received a number of obscene calls. Using Caller ID, the woman was able to get the caller's phone number and called him back. They have not received any more calls from that caller.
- A New Jersey state legislator and his wife regularly received harassing calls before they subscribed to Caller ID. The legislator, who now subscribes to Caller ID to screen all of his incoming calls, advised the anonymous caller that he had the caller's number. The calls stopped.

These cases are just a few of the many anecdotes continually reported to Bell Atlantic. In each of these cases, the malicious callers could have used blocking, if that alternative had been available, to continue their harassment. Because no such option was available, the victims were able to end the telephone abuse immediately and decisively -- without the protracted involvement of either the telephone company or the police. Our Caller ID customers tell us that what they like best about the service is the fact that they are able to resolve the problem themselves by informing the "anonymous" caller that they have his number. Blocking takes away the customer's ability to resolve such problems immediately.

Proponents of blocking generally seek one of two types of blocking – per line blocking, where the calling party's number is never passed unless it is affirmatively unblocked for a particular call, or per call blocking, where the calling party elects whether to affirmatively block the passage of his number each time he makes a call. With another version of per line blocking, which may be implemented in Nevada as a result of the recent decision by the Nevada Public Service Commission, the calling party's telephone number is permanently blocked from appearing on a Caller ID device. Based on Bell Atlantic's experience with Caller ID, neither per line nor per call blocking should be permitted for both public safety and policy reasons.

Since permanent blocking does not permit the passing of the calling party's number under any circumstances, Caller ID's life-saving benefits would be forever lost. In Bayonne, New Jersey, for example, a child started choking on a piece of food. Distraught, his mother called the main police number, even though 9-1-1 was available. Before the mother could give the police her address, she dropped the telephone to return to help her child. The police, with the aid of Caller ID, quickly identified the caller and dispatched an ambulance, which arrived in time to save the child's life. If the mother had permanent blocking, her number would not have passed, and the police would not have been able to quickly dispatch the assistance necessary to save her son.

Per line blocking with the capability to unblock on a per call basis is likewise inadequate under emergency conditions. For example, last month in Hillsdale, New Jersey, a four-year old boy used the programmed button on his parents' phone to call police. He had just awakened from his afternoon nap and found he was alone. "My mommy's not here," he sobbed. He could not provide his address, but with the aid of Caller ID, the police arrived within minutes and found the boy's mother visiting a next door neighbor. Although in this instance the story had a happy ending, it illustrates the public safety deficiencies of per line blocking, even with the capability for per call unblocking. If his parents had per line blocking, it is unlikely that the child in this example could have dialed the code necessary to pass his number to the police and the police would not have been able to quickly come to his assistance.

For public policy reasons, any form of blocking would also be a mistake, since it would permit callers to make anonymous calls with little accountability. For example, a malicious caller whose anonymity is guaranteed will still be able to call randomly and harass unsuspecting victims with little fear of being caught, since experience indicates customers are unlikely to report a single incident of harassment. Restoring a malicious caller's ability to make anonymous calls when we now have the capability to prevent it is just not right.

Moreover, blocking effectively makes those who do not subscribe to Caller ID the target of malicious callers. Only those customers who subscribe to Caller ID would know that the calling party is trying to conceal his telephone number and could choose not to answer.

With unrestricted Caller ID, all customers, including those who do not subscribe to the service, benefit from its deterrent effect on obscene and harassing calls. This deterrent effect was confirmed by our experience in Hudson County, New Jersey, where the number of traps and formal tracing investigations by our annoyance call bureau, two methods of collecting telephone call data for prosecution, substantially decreased after the introduction of Caller ID. This substantial reduction took place even though at the time only 3% of our Hudson County customers subscribed to Caller ID. It is clear that malicious callers are thinking twice before making these calls in Bell Atlantic territory as the following anecdotes illustrate:

- An elderly Newark, New Jersey, woman wrote the Board of Public Utilities to praise Caller ID service. This woman had been plagued for years by obscene and harassing calls -- as many as ten per month. She reported that the calls virtually ceased as soon as Caller ID service became available in her area. Yet, she does not have Caller ID herself.
- A man who made a harassing call to the Union County, New Jersey police turned himself in, fearing that the police had obtained his telephone number via Caller ID. The Union County police, however, did not yet have Caller ID.

Some proponents of blocking argue that blocking, in conjunction with Call Trace and Return Call, could provide an acceptable alternative to Caller ID. Our Caller ID customers disagree.

First, Call Trace was designed to obtain documenting evidence for prosecution. It is not a fully automated process and was not designed to give customers immediate access to the calling number. When a customer uses Call Trace, any number obtained as the result of that trace is only given to law enforcement officials. Unless the call involves a life threatening situation, law enforcement officials will not get immediately involved.

Even in an emergency, the victim is dependent on the availability of the police, who are burdened with other criminal activity, in order to resolve the problem. In fact, many police departments have expressed serious concerns about their ability to handle the present volume of Call Trace requests. If Call Trace were the only way customers could handle problems with harassing calls, the police would be swamped. To even get involved, most officials now require victims of harassing calls to document at least three calls and some jurisdictions require the victim to receive ten calls. In addition, most police departments require that the victim agree to prosecute the caller if he is caught. This process can be a long, frustrating one for the victim who does not want to prosecute a caller but simply wants the calls to stop.

Second, Return Call is not as effective as Caller ID in stopping harassing calls. Return Call is a service which permits a customer to call back the last person who called him. This call is placed automatically by our central office computers and the customer does not get the number of the calling party. If you receive another incoming call before you use Return Call, you lose the ability to call back the harassing caller. Because Return Call does not give you the number of the calling party and only works on the last incoming call, it is ineffective in situations where you may want to call back a child's parent later.

Our customers tell us that what really stops the calls is *telling the harassing caller that you have his telephone number*. When there is no doubt that the harassing caller's anonymity has been shattered, the calls stop. Where

both services are offered in Bell Atlantic, it is Caller ID, and not Return Call, that is the most popular feature.

Third, Caller ID displays the number of the calling party before you answer the telephone. Call Trace and Return Call only work after you hang up the telephone. Call Trace and Return Call, therefore, are not effective in those cases, such as calls from suicidal persons or requests for emergency medical assistance, where it is important to keep the caller on the line.

Proponents of blocking also speculate that Caller ID will reduce the effectiveness of some public and private agencies, such as law enforcement agencies, hotlines, rape crisis centers, and battered women's shelters. Bell Atlantic's experience with Caller ID is not based upon conjecture or "what ifs." That experience clearly demonstrates Caller ID can be offered without blocking and still satisfy the concerns of such agencies.

Unrestricted Caller ID does not jeopardize the activity of law enforcement officers. (See, testimony of Colonel Clinton L. Pagano on Senate Bill S. 2030, filed with the Subcommittee on Technology and the Law of the Senate Committee on the Judiciary, annexed hereto as Attachment 1. Also see, Resolution of the New Jersey State Association of Chiefs of Police, dated June 29, 1990, annexed hereto as Attachment 2.) As has been recently reported in the Washington Post, organized crime is now a very sophisticated business. Criminals use beepers, cellular phones, and fax machines to facilitate their illegal activity. Law enforcement agencies have found the need, therefore, to adapt their procedures to respond to these new technologies.

Bell Atlantic has met with over 3,000 law enforcement officials and conducted over a hundred seminars on the impact of unrestricted Caller ID on their operations. When apprised of how Caller ID can enhance their enforcement activities, the overwhelming response is that the benefits of Caller ID far outweigh the changes in operating procedure which it requires. For example, during an investigation concerning an alleged racially motivated shooting in Teaneck, New Jersey, witnesses began receiving intimidating calls. The New

Jersey Attorney General ordered Caller ID service for the witnesses and widely publicized that fact.

We have worked successfully with the Federal Bureau of Investigation, the Drug Enforcement Agency, and other law enforcement strike forces to meet their unique needs in a Caller ID environment. One solution we have discussed involves the use of specific telephones, called "Safe" phones, to make undercover calls. This solution passes a telephone number that would not compromise undercover operations.

Blocking, on the other hand, would not adequately safeguard undercover officers because the privacy indicator which blocking would send instead of a telephone number might arouse suspicions of the called party. According to the law enforcement groups with whom we talked, it is important that their undercover operations appear as normal as possible--blocking would defeat that purpose. Consequently, experienced undercover officers who have worked for more than two years in a Caller ID environment tell us that if a state requires blocking, law enforcement will still have to utilize the same undercover safeguards employed today in Bell Atlantic where Caller ID is available.

With respect to hotlines, there has been no reported decrease in the number of calls as a result of the introduction of Caller ID. Moreover, some hotlines, particularly crime stopper or "tip" lines, specifically advertise that they do not use Caller ID.

Without the use of blocking, we have addressed the unique needs of agencies that help victims of domestic violence or sexual assault. For example, we have worked with a rape crisis center to develop a program which uses a second line to make outgoing calls only. This second line cannot accept incoming calls and thus effectively meets the needs of rape victim counselors. This solution sends the number of the calling party, yet protects that party from unwanted call backs. By passing a number, there is accountability if the telephone is misused.

In addition to meeting the unique needs of certain groups like battered women's shelters or rape crisis centers, we offer other services to any customer

particularly concerned that the passage of his or her number will lead to unwarranted return calls. For example, we can arrange a customer's service so that any calls he receives on his telephone line can be forwarded to another number. Thus, doctors in Bell Atlantic do not have to worry about receiving unwanted callbacks when they call patients from their homes. If a patient with Caller ID tries to call them back, the call could be forwarded to the doctors' answering service or office.

Bell Atlantic favors unrestricted Caller ID because it restores full accountability when using the telephone network. Nonetheless, the District of Columbia Public Service Commission recently approved Caller ID with per call blocking. In response to this decision, Bell Atlantic has proposed to implement per call blocking through the use of an operator to complete the call. If the operator proposal is approved, we hope that callers within the District of Columbia will be discouraged from making abusive calls because of the involvement of an operator and the existence of a record of each call.

In sum, the problems and abuses which Caller ID addresses are local problems and states should continue to have the ability to adopt regulatory policies which they believe are best suited to the needs of their residents. The problem with blocking is that it affords some customers the opportunity to make anonymous calls in an attempt to address the concerns of those who do not want their telephone number passed. Bell Atlantic believes that the interests of society in eliminating unwanted, harassing, and malicious calls can be obtained with unrestricted Caller ID without any adverse consequences for anyone else.

Attachment 1

TESTIMONY OF COLONEL CLINTON L. PAGANO
FILED WITH THE SUBCOMMITTEE ON
TECHNOLOGY AND THE LAW OF THE UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

My name is Clinton L. Pagano. I am the immediate past Superintendent of the New Jersey State Police, a position I held for fifteen years through January 1990. As a result of 38 years of law enforcement experience, and particularly my experience with Caller ID in New Jersey since late 1987, I am authorized by the governor and Attorney General of the State of New Jersey to present testimony on Senate Bill S.2030. Currently, I am the Director of the Division of Motor Vehicles of the State of New Jersey, a position I assumed in February 1990. My career with the state police began in 1962.

I have been a proponent of Caller ID without blocking (as the service is currently offered in New Jersey) since the beginning of public discussion on the subject. Following New Jersey Bell's initial trial of the service, I appeared before the New Jersey Board of Public Utilities in my then official capacity as State Police Superintendent urging approval of Caller ID on a statewide basis.

The purpose of my testimony is to share with this Subcommittee the reasons why I believe that Caller ID is a valuable service which directly benefits law enforcement as well as the citizens who suffer various forms of harassment and abuse over the telephone. I also want to explain why a blocking requirement, as proposed in Senate Bill S.2030, would limit the effectiveness of Caller ID for both law enforcement and the general public. Finally, I hope to diffuse the apparent belief by some, both within and outside of the law enforcement community, that Caller ID without blocking might jeopardize undercover police activities.

My comments concerning undercover work are based upon personal experience in all phases of undercover activity including, for example, investigations of drug trafficking, organized crime, and domestic terrorist organizations. Moreover, these observations result from actual law enforcement experience in a Caller ID environment in New Jersey. Law enforcement agencies in New Jersey (where Caller ID has been used since late 1987) at the state, federal and local level have successfully adapted to Caller ID technology, just as they have adapted to other technology changes in the past, and as they will continue to adapt in the future.

Caller ID provides the public with added security in their homes and places of business from those who would otherwise seek to use the telephone to annoy, harass, threaten or intimidate. Telephone threats of violence and other threats of intimidation against our citizens unfortunately are not uncommon. The crank, annoying, harassing, and obscene telephone calls that citizens must endure at odd hours and on a continuing basis are becoming much more common. With the widespread availability of Caller ID, not only will those rogues be discouraged from making such veiled telephone calls, but the victims will now be able to successfully address the problem themselves by advising the offensive caller that his telephone number has been identified.

Personal safety is one of those intangible factors which cannot be measured or quantified. The elderly, particularly those living alone in high crime areas, now feel insecure in their own homes and Caller ID may provide the needed peace of mind to this segment of society.

The police simply cannot be as effective as Caller ID in addressing the day in and day out burden of harassing calls endured by our citizens. I am convinced that Caller ID without blocking constitutes an effective deterrent to these calls. In many instances, victims of telephone harassment are not interested in spending time dealing with the telephone company and the police, they just want the calls to stop. Caller ID offers the solution. Yet, if blocking were available, the harassing or obscene caller would certainly take advantage of the ability to prevent his telephone number from passing to the called party and a significant public benefit of Caller ID would be diminished.

Every police and fire department, large or small, receives numerous emergency reports which include life threatening telephone calls requiring immediate action by the respective department. However, because of the traumatic nature and psychological impact of an emergency and the fact that the public is generally not trained to react in crisis situations, the caller may hang up without giving the dispatcher enough information to ensure a speedy response. In other situations due to the severity of an injury or an ongoing attack or confrontation, a victim's call is not completed. In New Jersey, Caller ID has been responsible for identifying locations in first aid and fire emergencies, for successful apprehension of individuals calling in false alarms, and for saving lives.

In situations involving telephone bomb threats to schools and businesses, false alarms, kidnappings, residential burglaries, and random poisonings, Caller ID serves as an invaluable tool in the investigative process because it provides information instantly. Caller ID dramatically increases the ability of

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

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

Law enforcement agencies need to keep pace with and adapt to technological development. Caller ID is just another example of a technology with which law enforcement must coexist. The point here is that law enforcement is faced on a daily basis with sophisticated technology being used against it by criminal enterprises. To raise an objection that a new technology like Caller ID is exposing undercover people is an objection that should have been abandoned ten years ago.

The following example illustrates my point. When we found the first safehouse used by members of a domestic terrorist group convicted of murdering a New Jersey State trooper in 1981, we found the equipment necessary to wiretap state police facilities, along with pictures of the facilities. More sophisticated technologies are available to criminals today.

Reality is, and has been, that you have to protect your undercover people with the thought in mind that they are being monitored every minute

Consequently, some law enforcement agencies have used "safe" phones for undercover activities long before the introduction of Caller ID. This practice will continue in a Caller ID environment. In addition to the use of "safe" phones, the law enforcement community in New Jersey has received assistance from the telephone company for other arrangements to satisfy law enforcement requirements. As a result, state, local and federal law enforcement agencies in New Jersey have successfully adapted to Caller ID without blocking. Significantly, this has not been difficult.

In summary, I believe that a blocking requirement would limit the effectiveness of Caller ID for both law enforcement agencies and the general public. In addition, blocking is not the answer to safeguard undercover police operations.

I would be happy to answer any questions of this Subcommittee.

Attachment 2

RESOLUTION

THE NEW JERSEY STATE ASSOCIATION OF CHIEFS OF POLICE

TITLE: The New Jersey State Association of Chiefs of Police support of Caller ID service of New Jersey Bell Telephone Company.

WHEREAS, The New Jersey State Association of Chiefs of Police recognize a serious problem in the state involving obscene, harassing, threatening, intimidating, and otherwise abusive telephone calls. Our citizens are subjected to abuse over the telephone at all hours of the day and night, and;

WHEREAS, False fire alarm calls received by Police and Fire departments across New Jersey result in a waste of municipal resources, and;

WHEREAS, Bomb threats called to schools and businesses result in disruption of the workplace and institutions which educate our young people, and;

WHEREAS, Caller ID service has enabled the citizens of our state to successfully address abusive telephone calls. The police cannot be as effective as Caller ID in addressing the day in and day out burden of harassing calls endured by our citizens. Caller ID service is a deterrent to abusive telephone calls.

WHEREAS, Caller ID has proven valuable for emergency service providers in assisting our citizens. Caller ID has been responsible for identifying locations in first aid and fire emergencies and for saving lives, and;

WHEREAS, Caller ID has assisted law enforcement agencies throughout the state in quickly initiating criminal investigations, thereby increasing the chances of a successful conclusion. The service had led to the apprehension of individuals who called in false fire alarms. Caller ID will assist in a variety of investigations including, for example, bomb threats to schools and businesses, kidnappings and residential burglaries, and;

WHEREAS, New Jersey Bell Telephone Company has worked closely with law enforcement agencies in New Jersey in explaining Caller ID Technology and our agencies have successfully adapted to Caller ID.

RESOLVED, That the New Jersey State Association of Chiefs of Police enthusiastically supports Caller ID service as offered by New Jersey Bell Telephone Company and recognizes the substantial positive effect that the service has for law enforcement agencies, other public safety agencies, and our citizens generally.

**BE IT
FURTHER**


RESOLVED, That a copy of this resolution be mailed to the New Jersey Board of Public Utilities.

This Resolution adopted at the Seventy-Eighth Annual Conference of the New Jersey State Association of Chiefs of Police this 29th day of June, in the Year of Our Lord, One Thousand, Nine Hundred and Ninety.

SIGNED:


CLIFFORD J. LAROSA
President

ATTEST:


LORRAINE KULICK
Executive Director

Mr. KASTENMEIER. I would like to yield to my colleagues first, though I do have a few questions. First, the gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman.

Gentlemen, it's good to have you here. You have answered most of the questions I had prepared in your testimony. Let me revisit just a moment a question I put to Mr. Moore. I want to hear from you all on this. I asked him what procedure would be required of law enforcement in coming into possession of a phone number that had been identified through Call Trace. Perhaps I did not make my question clear to him.

What I'm looking for, do you go the subpoena route, or what does law enforcement activate in order to get that phone number through Call Trace?

Mr. CULLEN. Sir, I could tell you very specifically what virtually every law enforcement organization requires, whether it's in Fairfax County, VA, suburban Maryland, downtown Washington, or New Jersey.

They require that you get a minimum of three documented obscene calls. Some departments require five. In certain locations in New Jersey, they require that you get a minimum of 10 documented obscene calls. You must be victimized 10 times, remember the code, punch it in, get confirmation of the trace, get it to the police department. That again is not an automatic process, as was suggested earlier this morning.

After that is done, the police department will require that you sign a statement indicating a willingness to prosecute. Thirty percent of our customers who use Call Trace end up doing nothing because they don't want to sign a statement indicating a willingness to prosecute. By the way, contrary to what Mr. Moore asserted, Call Trace is a very popular service and it meets the needs of customers who do not have Caller ID. In fact, in New Jersey, we get 30,000 activations a month of Call Trace, so it is effective, it is widely used, it is publicized. But as was determined here in Washington, it is not a substitute for Caller ID.

When you get to that point, you have accumulated the calls, you've been victimized, you've signed a paper and a willingness to testify and prosecute. If the police find there's enough evidence, you are then called to court.

I recently received letters from people who have undergone that experience months after the calls have been made, and the experience is, as described by a professor at William Patterson College who recently did a study of this, the experience is terrorizing, it is degrading, and the letters I have received from customers have complained that when they get to court their concerns and their obscene calls, as documented as they are, are just not taken seriously.

So the effective answer to the question you posed to Mr. Moore subsequent to that is that with Caller ID, the easiest, quickest, most effective way to deal with an obscene caller is while they're on the line and you've got their number. You say I have your number and this is it, and if you call again, I will prosecute. In every instance I'm aware of, that has put an end to the obscene call, to the threatening call.

Mr. COBLE. I'm still in limbo here. Once the documentation has been perfected, the 10 times and all this business, I assume the telephone company does not voluntarily say to the police department OK, here's the number. I presume then some sort of document, a subpoena, search warrant, something must be forthcoming.

Mr. CULLEN. From the police department.

Mr. COBLE. Right.

Mr. CULLEN. To be very frank, I don't know what piece of paper that is from the police department. I do know we will surrender it only to the police department, not the customer, with proper documentation.

Mr. COBLE. That's what I meant. I'm not being critical of Mr. Moore. I never did get that laid out clearly.

As we have conducted this hearing today, Mr. Chairman, I must confess I have nostalgically reverted 25 years ago to the gold old days when the telephone rings, you go answer the phone with a simple hello and you don't worry about all of this. But I guess this is all progress, so I'm going to have to adjust to it.

I believe you both responded to this, but I want to be sure I have it clearly understood in my mind. Let me just put the question to you. Is the Caller ID issue one that should be addressed by the Congress of the United States, or is this an issue best left to the States to be determined? I think you've answered it, but I want to hear it from you again.

Mr. STANGLAND. I believe Mr. Cullen answered it more clearly than I could. I sit in a State that's in the beginning edges of the patchwork that the chairman described earlier, and we do have some legislation.

I believe I would say our official position is, it's really one of timing and of legislating technology that's really in a stage of infancy. We wouldn't want to see, as the new services that were described earlier by the previous witnesses and others evolve, see them restricted and put legislation in a position that ECPA is now that very shortly you have to come back with new technology and adjust it. That's about where we are.

Mr. CULLEN. Sir, my response is to affirm what has been said here by Mr. Stangland. The issue today of Caller ID is a local issue. It is a State issue. In fact, obscene calls and threatening calls are, in the vast, vast majority of cases, local and State issues. There is no problem, even 2 years from now, when the technology is available and is implemented, to pass this information across State lines by long distance companies. There is no problem in the technology. There is no need for an absolutely uniform system. In the fact of no action whatsoever, what would happen is that the rules established in each jurisdiction would convey to other jurisdictions as the call passes. So in California, for example, if that originating number is blocked, it will now show on a phone in New Jersey. In New Jersey, if the originating number is sent for full accountability, it will show on a Caller ID unit in California. So our view is clearly there is no need for Federal legislation.

Mr. COBLE. Thank you, gentlemen.

Mr. STANGLAND. That is our concern also. That was expressed by me earlier in the Senate hearing, that the privacy flag needs to be

honored universally, and we believe as interconnection occurs, the industry will sort that out.

Mr. COBLE. Thank you, Mr. Chairman.

Mr. KASTENMEIER. The gentleman from New Jersey.

Mr. HUGHES. I thank the gentleman.

I'm not concerned about the gentleman from North Carolina adjusting. If he can adjust to the fallout from Gramm-Rudman-Hollings, he'll be able to adjust to anything.

I'm interested in knowing why it is Bell Atlantic feels that it's appropriate for the calling party's number to be given to the receiver.

Mr. CULLEN. Yes, sir. We feel that it is very appropriate because we firmly believe, in a simple, clear and straightforward policy, that in fact brings us back to what the gentleman from North Carolina suggested, and that is accountability when making a telephone call. Customers had always provided that accountability up until the 1960's, when party lines disappeared and central operators disappeared. In fact, it was not until 1965 that the problem of obscene calls was first mentioned by AT&T in their annual report. Up to that point, through party lines and through operators, there was no issue.

Our policy now is that full accountability benefits everyone, that it harms no one, and that in the few instances where there are legitimate concerns—domestic violence organizations, police organizations—we have spent 4 years working with those organizations to ensure that they understand the technology, they understand how to adapt to it. I will tell you that the police organizations in New Jersey, from the FBI on down to every local law enforcement officer, understands how it works, has adapted to it very successfully, and I will tell you they are using it to their advantage.

The reference, by the way, from Florida was the reference from one individual named John Tutor, who attended a meeting in New Jersey, and during the recess attempted to talk with law enforcement officers about their experience. It is inaccurate. I have met with many of the law enforcement officers myself.

So our policy is clear. I think it benefits everyone. I think it is in the best interest particularly of victims of obscene calls who are women, senior citizens and children.

Mr. HUGHES. I find it interesting. I've never heard anything but positive things from law enforcement in my area. I've never heard the complaint until today that some law enforcement agencies in New Jersey are complaining that it in some way compromises criminal investigations. That would give me great concern. I am very much involved in law enforcement initiatives here in the Congress, and I have never heard anything from any law enforcement agency in New Jersey in my capacity as Crime Subcommittee chairman hearing that in some way their investigations are compromised.

On the contrary, I know from practical experience that law enforcement agencies relegate nuisance calls, obscene calls, to a fairly low priority, unless it's a very egregious type of case. As a practical matter, I'm not sure that Call Trace is effective because we're just overwhelmed today. We can't find the resources to pursue criminal investigations that we need to pursue.

Let me ask you a more basic question that's been troubling me. I alluded to it with the previous panel. The privacy issues involved I have thought about to a great extent. I have thought that in placing a call there is a basically inherent assumption that you're going to identify yourself. That's part of it, and identify yourself properly. The caller is the one who initiates the call. He or she doesn't have to initiate the call. You don't really have very much choice, as the receiver of a telephone call. If you say, "Well, I'm not going to answer the telephone," you basically have deprived yourself of some very valuable rights.

So in weighing the right to be secure in your home or have privacy in your home against the right of somebody to be secure and have the right to privacy in identifying themselves, who should come out ahead in that weighing process? It seems to me that the person who has the right to be secure in his home, who is not the initiator of the call, is the one that we should attempt to accommodate and protect, as opposed to somebody who is initiating the call where it's presumed they're going to identify themselves properly anyway.

Mr. STANGLAND. I would like to respond to that. I guess without the reality of all of the stories that Mr. Cullen has about Caller ID, that scenario you just described we see as a debate that every individual has the right to make within his or her own jurisdiction. What we found in doing research specifically addressed at privacy in the State of California is that people in significant numbers go to both sides for their own private reasons. As we weighed those two decisions, we believed that you have to strike a position in the middle, that we don't sit in a position of judgment on everyone's person value for privacy, that we have to offer the service in a way that accommodates both of those views and comes out with respect to a position of value for the features.

With respect to per call privacy, which is the position we arrived at back in 1988, we decided that did, in fact, accommodate both views and it forced the calling party to think about does he or she want to identify themselves, and if so, take an overt act, punch three digits, star 67, and say for this call I do not want to be identified, I don't want my number identified. Then the recipient receiving the privacy indicator knows that, in fact, that person made that value judgment and took an overt act and punched star 67. Then that puts the decision right back in your jurisdiction.

Mr. HUGHES. I understand, and what you both have said, in essence, is that given the emerging technology, it is far better to let the States, who have their own regulatory mechanisms, to decide what is in the public interest in those States. I gather both of you—

Mr. CULLEN. Yes, sir, absolutely. In fact, that has been our position from the beginning. That position was recently reaffirmed in New Jersey by the board of public utilities with respect to the United Telephone Co. application for Caller ID service, where in August they were allowed to provide that service. So that was the perspective 3 years ago and that is the perspective recently reaffirmed in New Jersey. We do have 80,000 customers. Our experience has been very, very effective and beneficial in balancing the privacy rights of everyone.

Mr. HUGHES. Thank you, Mr. Chairman.

Mr. KASTENMEIER. The gentleman from California.

Mr. BERMAN. Thank you, Mr. Chairman.

My first question is to Mr. Cullen. If this were a bill in the New Jersey State Legislature, what position would New Jersey Bell take on it?

Mr. CULLEN. Our position would be precisely the same, sir, that based on our experience, we have a very successful experience—

Mr. BERMAN. You would be opposed to this bill?

Mr. CULLEN. We would be opposed.

Mr. BERMAN. So let's get past for a moment the issue of this should be State versus Federal. Your objection to this is substantive on the merits of it, and you're adding to your arguments, since you're in Congress, "leave it to the States to do."

Mr. CULLEN. Yes, sir.

Mr. BERMAN. Let's say you had a Congressman from California and he was getting calls from different constituents and they were leaving their office number but, because of the time difference, he couldn't reach all of them and wanted to make some of the calls from his home. He has chosen—and the phone company seems to have no problem with allowing people to have unlisted phone numbers. He now wants to return those calls, but doesn't particularly, maybe as to that one particular constituent, want that constituent to have his home phone number.

In California, under the system that has been described by Mr. Stangland, he can deal with that. He can have that system. Why do you not want to allow an individual to have that? I guess in the bill it's referred to as a telephone call originator to block receipt of the identifying information in a fashion which might let the receiver know that's what he was doing, and if he didn't want to take the call, because of that reason he could make that choice.

Mr. CULLEN. Sir, when it came to a Member of Congress, I would have absolutely no hesitation about allowing you to do that.

Mr. BERMAN. Ah, well. But once you say that, you're acknowledging there is a legitimate privacy issue for the originator of the call as well as for the recipient of the phone call.

Mr. CULLEN. And I would suggest, sir, that the solutions we have provided in New Jersey have addressed this issue squarely.

Mr. BERMAN. Tell me what they are.

Mr. CULLEN. They pertain to not only Members of Congress but they pertain to physicians, psychiatrists and others who wish to make calls from home. The answer is very simple—

Mr. BERMAN. I could not, with a straight face, justify voting for something that puts me in a class that—Well, I certainly think it's a hard position to defend, that by virtue of occupation you're going to now be recognized as having a privacy right.

Mr. CULLEN. I'm not suggesting that. What I'm suggesting is if you feel, for whatever reason, without documenting it or telling anyone what the reason is, that you have that need, my suggestion is a second line, outgoing only calls, in your home. It would work very effectively. You could make outgoing calls to your heart's content and none would come back to you.

This is precisely the sort of solution that we have used in domestic violence organizations, where women want to be able to make a

call back to the home and they don't want to be identified or have calls come back to them. Indeed, in domestic violence organizations, they have used Caller ID so they know who's calling into the shelter.

Mr. KASTENMEIER. The Chair will have to interrupt at this point. We only have 4 minutes left on the vote.

Mr. BERMAN. Oh, I'm sorry.

Mr. KASTENMEIER. If our two witnesses could stay a bit longer—

Mr. BERMAN. Unfortunately, I'm not going to be able to come back.

Mr. KASTENMEIER. The committee will be in recess for 10 minutes.

[Recess.]

Mr. KASTENMEIER. The committee will come to order.

When we recessed, Mr. Berman I think had concluded his questioning of both Mr. Cullen and Mr. Stangland. I just have a very few questions. But I was interested in the last line of questions that Mr. Berman was asking. Apparently New Jersey Bell offers blocking devices to some people, is that correct?

Mr. CULLEN. No, sir, that's not true, and I apologize if that was misstated.

What I suggested to Mr. Berman is, if he has the need to make calls from home—and frequently teachers and people in other occupations other than physicians have that need—there is a clear response that I think every phone company has available, and that is a second line in your home that has the capacity to make outgoing calls only.

When a caller calls into that number, should they get it on a Caller ID box, a variety of options are available, a recording saying the person is not taking calls, or a recording saying this number is not in service or whatever. But the point is, the technology is available for people who from a residence who must make calls to, for example, patients or constituents or students, and don't want to receive annoying calls back, can use a one-way outgoing line, call only.

As I suggested, in at least one location in New Jersey, this is the very solution that's been adopted by a domestic violence organization, where they are concerned about their clients making calls and revealing their location. So in this domestic violence organization we have indeed installed outgoing only lines. In fact, we have installed Caller ID devices on their other lines so that they will know who's calling into the center and whether that person represents a threat to any of their clients.

Mr. KASTENMEIER. Would that not be more expensive, though? How expensive is another telephone in the house?

Mr. CULLEN. In New Jersey, it's probably \$7 or \$8 a month.

Mr. KASTENMEIER. How will that compare in California with a blocking device? What would that be sold for?

Mr. STANGLAND. Well, the blocking device we're proposing is, of course, per call privacy, and it is at no charge. It's in the software in the switch. It works automatically.

Mr. KASTENMEIER. With respect to New Jersey, do all seven Atlantic Bell companies have the same policy?

Mr. CULLEN. Yes, sir, all seven advocate the same policy. However, in Delaware the commission there is currently in the process of hearings to determine how service should be offered. In Pennsylvania there is a court case that was referred to previously, and here in Washington the Commission is in the final stages of rendering a decision. So only four of our seven jurisdictions have, in fact, implemented Caller ID.

Mr. KASTENMEIER. There is a likelihood that the service will be different in these various jurisdictions, one from the other, with respect to whether Caller ID is authorized or whether Caller ID has a blocking component. It might be different in any of these particular State jurisdictions, of the seven that are within the Bell Atlantic system?

Mr. CULLEN. It appears at this stage that Washington will be different from the other six, yes, sir. But I will say very quickly that that does not pose a problem, and while that is not the decision that we advocated, that is the decision that we have indicated over and over we are quite willing to implement on a pilot and trial basis. It will make no difference whatsoever to the other jurisdictions in terms of the system fitting together and the technology working. So it is very possible and not a problem in any way to have each individual jurisdiction determine how Caller ID should be offered in that jurisdiction based not on what the telephone company wants to do but based on what the public service commissions decide is in the best interest of their ratepayers.

Mr. KASTENMEIER. Mr. Stangland, do you contemplate that there eventually will be one national system here, or will there be this patchwork system of each State for itself in terms of services offered?

Mr. STANGLAND. Well, our formal position, as I stated earlier, right now is for each jurisdiction to resolve it in the best interests of their consumers. Our entire position is based on research and meetings and understanding of what the consumers in California expect and will demand out of this service.

Per call privacy, as far as we're concerned, is an essential element. I would not be allowed to tariff this product in California if I didn't provide this kind of balance.

Mr. CULLEN. I might add, Mr. Chairman, that the benefits of Caller ID do, indeed, spill over the boundaries of individual towns, because in New Jersey we've been implementing it as we have developed the technology in specific jurisdictions. The benefits of Caller ID we have discovered in many instances, to our pleasant surprise, spill over to customers who do not even subscribe to the service, particularly to senior citizens who benefit from an obscene or threatening caller not really knowing whether they have the service or not.

So the suggestion made earlier that an obscene caller in a Caller ID environment might want to inquire about whether a person has Caller ID, as silly as that is, seems actually to suggest that the benefits do go beyond just those people that subscribe to the service.

As Senator Kohl suggested, if you subscribe to the service and someone blocks a call, you can decide whether or not to take that call. I think, frankly, it would work to our benefit if, as Mr. Moore suggested, it's just a matter of money, because we would probably

sell more Caller ID devices with per call blocking. You would have to take our Caller ID service in order to know who was blocking their message. So from a marketing perspective, probably we would make more money.

Mr. KASTENMEIER. With blocking devices?

Mr. CULLEN. With the blocking device. At least it's been suggested that that's possible. I would leave it there. We don't know because we think that unrestricted is the right thing to do.

Mr. KASTENMEIER. We heard one witness suggest that the future might bring a service which shows a name rather than a number. The name presumably would be that of the subscriber of the telephone, like C. Jones. In other words, the listing of the number is to C. Jones, let's say. That name is disclosed, irrespective of who is making the call.

Is that something you're contemplating in the future?

Mr. CULLEN. That is something that the research organization of the seven regional Bell operating companies is trialing and evaluating right now, along with another wrinkle, which would be an announcement service. The call coming in could provide not only the name and number on a Caller ID device, but an announcement. So if you're at the kitchen table and the phone rings, you really don't have to get up and go check your device to see who's calling. That really raises what I think is an important issue, Mr. Chairman, and that is the technology is evolving very, very rapidly here. It makes it difficult to find a one dimensional blanket solution to address a variety of concerns.

Mr. KASTENMEIER. I concede that point. I have a piece of legislation here for the purposes of debate, but I can understand that. On the other hand, that mere point might suggest to you that the privacy concerns of the caller are enhanced because, if you're going to disclose more than the number, it may be a little more sensitive in terms of whether that individual has a right to block that or not.

Mr. CULLEN. I would just add, sir, that we are not anywhere near having that capability today. We are not contemplating that offering today. If we did get to the point where our customer said that would be a valuable service, we would go about it in exactly the same way that we did initially with Caller ID—through hearings, through testimony, and through the public service commissions in each jurisdiction.

Mr. KASTENMEIER. We are informed that the Federal Communications Commission is looking into this. I don't know what conclusion they will reach. They might reach a conclusion that there are some national interests to be served here; that is, for purposes of uniformity. Does that at this point concern either of you?

Mr. CULLEN. The Federal Communications Commission in 1988, sir, rendered a decision with respect to long distance carriers and a technical capability called ANI, automatic number identification, that allows them to, in effect, provide that service, which I might add is a very beneficial service for their meeting the needs of their customers, because it brings up for the customers of the firm using it information they need to provide a service.

They currently have an open docket looking at precisely what you suggested, the issues that have been raised here. It does not concern me. I believe the issues raised are primarily local issues.

But as the FCC looks at this, we will certainly participate in that debate.

Mr. KASTENMEIER. Very good.

Mr. STANGLAND. I would add to that, that it would not concern us, and it would actually enhance our position on interconnection and honoring of the privacy flag.

Mr. KASTENMEIER. I appreciate that.

Thank you both, Mr. Cullen and Mr. Stangland. You both have been very helpful this afternoon. You've really stayed a long time as well.

Mr. KASTENMEIER. I would like to call on our last witness today, who is Ms. Janlori Goldman, legislative counsel, American Civil Liberties Union. She is a frequent and valued witness on privacy issues before this committee.

Ms. Goldman, welcome. Please proceed.

**STATEMENT OF JANLORI GOLDMAN, LEGISLATIVE COUNSEL,
AMERICAN CIVIL LIBERTIES UNION**

Ms. GOLDMAN. Thank you, Mr. Chairman. Thank you for inviting the ACLU to testify today on the issue of Caller ID and the possible amendment to the Electronic Communications Privacy Act. We do support the legislation. We strongly support it. We also supported ECPA back in 1985 and 1986 when we worked with this committee in drafting it. We think the bill you have introduced is very appropriate in regulating the use of Caller ID around the country.

I would like to summarize my written testimony and ask that it be entered into the record in full.

Mr. KASTENMEIER. Without objection, your entire statement, which is 26 pages, will be received as part of the record. You may summarize.

Ms. GOLDMAN. I would like to address some of the concerns that were raised this morning, particularly those about law enforcement and domestic violence victims.

First let me say at the outset that the ACLU is not opposed to Caller ID. We share the position that many of the other witnesses voiced here today, that Caller ID can be a very useful tool for people, particularly in protecting privacy rights in the home. In fact, in looking at the issue of Caller ID and developing our own policy, we found, as Representative Hughes said, that people in their own homes do have a strong privacy interest in protecting information and gaining more information as calls come into the home. So we support the use of Caller ID.

Our position is that you've got to balance the privacy interests on both sides. There are privacy interests held by both callers and receivers of phone calls. The best way to balance these interests is to give people on the calling end the ability to block the display of their number.

Now, what we see—and I don't think this is a big surprise—is that this has been a very emotional issue for people, the issue of Caller ID and whether blocking should or shouldn't be provided. I think that is because most people use the telephone. Anyone who uses the telephone is going to be affected by the use of Caller ID. It

will change the way they use the telephone, it will change their relationships with other people, who they decide to call and when.

When you ask people, "How would you like a device that automatically reveals the telephone number that you're calling from every single time you make a phone call?" they seem taken aback, because they can imagine instances where they would want to block their number. Not to hide or maintain some kind of anonymity or confidentiality, but because they don't want their phone number displayed on the receiving end. Maybe they have an unlisted number; maybe they are a social worker or a doctor. Maybe they are calling, as Representative Berman said, one of their Representatives in Congress and they just don't want their number revealed. There are many reasons why people want to keep their number confidential. It is not to be secretive, not to do something wrong, but just because they should have the right to control that information.

On the other hand, of course, on the receiving end, people should be able to get information about calls coming into their home. The Caller ID device will give them that opportunity, and we think it should be provided. The problem is that there's a misperception about what blocking will do in this arena. We believe, and we think most people who look at this issue carefully also believe, that blocking will provide people with more information on the receiving end. It will give them more information than if Caller ID is offered unrestricted.

For instance, if I'm in my home and I have Caller ID—which I don't yet have—and I see that the number from which the person is calling me has been blocked, I can make a decision not to answer that call. If, as New Jersey Bell says, Caller ID with blocking will become a tool to be used by people who make harassing and abusive phone calls, all the better. The use of blocking by harassing and abusive people will keep me from ever going to answer that call. The phone call will never even occur. I don't even have to pick up the phone, have the abusive call happen, or say "I have your number; I'm going to prosecute the next time you call."

What happened to the old adage that the phone company has used to counsel people for years and years and years: "If you get an abusive phone call, you get a harassing phone call, you get a threatening phone call, just hang up." Getting an abuser's number could be dangerous; the person on the other end has your phone number, and may retaliate if a threat is made. The line that we hear often in promoting the Caller ID service, that it's going to protect women, protect children, protect those who are vulnerable, really is not accurate. In fact, it will provide greater safety risks to people, because they will think that somehow they have this weapon in the form of Caller ID. Blocking, again, will give them an additional piece of information, so they don't even have to answer the phone.

What you have also heard a little bit about today is that there are other forms of technology which can be very useful to people in addition to Caller ID with blocking—Call Trace, Call Block. One of the things we found interesting in terms of protecting privacy is that if you have all the technology that's available, if you give people the full range of choices that are available, what you will

find is that some people may decide to program their phone so they don't even receive calls from people who block. That is possible to do. Or you might find that people who receive calls from blocked numbers might send those calls to an answering machine so that they don't have to speak directly to the person. Or they may just decide not to answer the phone. But blocking will actually give people a fuller range of choices.

The ACLU is not alone in this position. For instance, the White House Office of Consumer Affairs supports blocking as a policy matter, as does the National Association of Regulatory Utility Commissioners, Computer Professionals for Social Responsibility, and a number of law enforcement officials.

On the law enforcement point that was raised here earlier, law enforcement in Ohio, Florida, Illinois, have taken the position that Caller ID without blocking poses life-threatening consequences. People will be reluctant to call in as informers, undercover officers lives will be jeopardized if they are not able to block the display of their number. Domestic abuse centers around the country adamantly oppose Caller ID without blocking. Because even if they get a second line, as Mr. Cullen suggests, in the domestic violence center, what if a woman has left her home and gone to stay with a friend or a relative? What if that person doesn't have this second line in his or her home? What if you can't always anticipate way in advance that you may want to block the display of your number from time to time, so you don't have that second number. Those are serious considerations that I think will have life-threatening consequences. When you balance the privacy interests, a simple blocking device would be very important in this area.

It is important to point out at this stage that Caller ID is really only the tip of the iceberg. It raises an important privacy issue in the development of telecommunications policy. It points out there are new technologies that are being developed by the telephone company, that new telecommunications issues are arising under ECPA. Not only Caller ID, but the entire use of personal information over the telecommunications network is a big and emerging issue. Caller ID crystallizes the larger issues for the American public. People understand the issue because they use the telephone. It has a very direct impact on them. But I would hope that this committee would continue to look at the larger issues as well, and we would hope to work closely with you on that.

Again, we do support passage of the Telephone Privacy Act of 1990. We think, as you said earlier, Mr. Chairman, the patchwork of laws is very damaging. The issue of leaving it up to the States is in someways rather old fashioned. The telecommunications network, the telephone network, is a national system. Most people make calls long distance across State lines. The technology is emerging to the point where leaving it up to the States does not make any sense. We need uniform, national policy in the area of telecommunications, very similar to what we did with ECPA, and that is why your bill appropriately amends that Federal law.

I would be happy to answer any questions that you may have of me.

Mr. KASTENMEIER. Thank you, Ms. Goldman.

[The prepared statement of Ms. Goldman follows:]

PREPARED STATEMENT OF JANLORI GOLDMAN, LEGISLATIVE COUNSEL, AMERICAN CIVIL
LIBERTIES UNION



WASHINGTON OFFICE

SUMMARY OF STATEMENT OF THE AMERICAN CIVIL LIBERTIES UNION

ON H.R. 4340, THE TELEPHONE PRIVACY ACT OF 1990

The ACLU believes that Caller ID, if offered unrestricted, raises significant constitutional privacy issues and may be illegal under the current federal Electronic Communications Privacy Act (ECPA). We support the legislation introduced by Chairman Kastenmeier (D-WI), and co sponsored by Representatives Synar (D-OK) and Edwards (D-CA), that amends the federal law to authorize Caller ID only where callers are provided the capability to block the display of their numbers on the receiving end. If passed, H.R. 4340 will strike a fair balance between the competing privacy interests of makers and receivers of phone calls, providing both parties to a phone call the ability to receive and control information. In fact, blocking provides people with an additional piece of information that will act as a safeguard to abusive and harassing phone calls.

Federal legislation is needed to resolve ambiguities in the scope of ECPA and to establish uniform, national privacy policy in this area. In the absence of federal legislation, phone companies around the country will continue to market Caller ID in a variety of conflicting ways that will only create inconsistency and chaos in the development of public policy in the area of privacy and telecommunications. Currently, Pacific Telesis, U.S. West, Southwestern Bell, NYNEX and Centel plan to offer Caller ID with blocking. Bell Atlantic, Bell South and Ameritech do not plan to offer the blocking option.

In addition to the ACLU, organizations that advocate authorizing Caller ID with blocking include: the National Association of Regulatory Utility Commissioners, the National Association of State Utility Consumer Advocates, Computer Professionals for Social Responsibility, and the Direct Marketing Association. In addition, many law enforcement officials, domestic violence coalitions, doctors, social workers, and others oppose unrestricted caller ID as a threat to their physical safety.

The limits of current law provide a safeguard for people against policy-making by the private sector that disregards individual privacy. It is in this congressional forum that the policy implications of new technologies such as Caller ID can be considered and balanced to give both parties to a phone call privacy protection. The ACLU strongly supports H.R. 4340 to authorize Caller ID with blocking.

Mr. Chairman and Members of the Subcommittee:

I greatly appreciate the opportunity to testify before you today on behalf of the American Civil Liberties Union (ACLU) in support of H.R. 4340, the Telephone Privacy Act of 1990, and on the legal and policy issues surrounding Caller ID. The ACLU is a private, non-profit organization of over 275,000 members dedicated to the protection of civil rights and civil liberties.

The ACLU believes that Caller ID, if offered unrestricted, raises significant constitutional privacy issues and may be illegal under the current federal Electronic Communications Privacy Act (ECPA). We support the legislation introduced by Chairman Kastenmeier (D-WI), and co sponsored by Representatives Synar (D-OK) and Edwards (D-CA), that amends the federal law to authorize Caller ID only where callers are provided the capability to block the display of their numbers on the receiving end.¹ On introducing the bill, Chairman Kastenmeier noted that "the Congress must consider the importance of a uniform communications policy, the significant privacy concerns [posed by Caller ID], and the implications of a change in the status quo

¹ Similar legislation has been introduced by Senator Herb Kohl (D-WI), S. 2030, to bring Caller ID within the purview of federal law. As Senator Kohl stated in introducing S. 2030: "At bottom, we are talking about choice. Who decides whether the caller will reveal his or her number? I think the decision must rest with the caller." A hearing on S. 2030 was held by the Senate Judiciary Subcommittee on Technology and the Law on August 1, 1990.

such as ANI would cause." If passed, H.R. 4340 will strike a fair balance between the competing privacy interests of makers and receivers of phone calls, providing both parties to a phone call the ability to receive and control information.

I. INTRODUCTION

New telephone technologies promise to enhance privacy and give individuals greater control over their lives, but also threaten to undermine these very same rights. One such device is Caller ID, or Automatic Number Identification (ANI), which displays the telephone number of an incoming call as the phone is ringing. The introduction of Caller ID has sparked an emotional and divisive debate that affects everyone who uses the telephone. Federal legislation is needed to resolve ambiguities in the scope of ECPA and to establish uniform, national privacy policy in this area. In the absence of federal legislation, phone companies around the country will continue to market Caller ID in a variety of conflicting ways that will only create inconsistency and chaos in the development of public policy in the area of privacy and telecommunications.²

² As of the date of this hearing, Southwestern Bell, U.S. West, NYNEX and Centel plan to offer Caller ID with blocking. Pacific Teleis also plans to offer Caller ID with blocking, as required by a state law passed last year. Bell Atlantic plans to continue offering Caller ID without blocking. Bell South and Ameritech also plan to offer Caller ID without blocking. In the current environment, what will happen when a California caller blocks his or her number to a recipient in New Jersey, where blocking is not available? Will the block be honored? Further, what are the implications when, as in Pennsylvania, Caller ID is outlawed under certain state laws.

II. PRIVACY AND THE RIGHT TO CONTROL PERSONAL INFORMATION

New communication technologies are changing the ways we deal with each other. Few social and commercial relationships remain unaffected by the introduction of new technologies such as cellular and cordless phones, electronic mail, bulletin boards, and pagers. Traditional barriers of distance, time, and location are disappearing as our society comes to take these advanced forms of communication for granted. As new technologies become available, a tension is often created between existing societal values and expectations, and the commercial opportunities posed by these advances.

However, peoples' expectations of privacy should not be measured against what is technically possible. New technologies pose new risks to traditional civil liberties. Today's hearing provides us with the opportunity to examine a technological advance in light of widely shared expectations of privacy to avoid the erosion of essential liberties.

People care deeply about their privacy, and cherish the ability to control personal information. Even if they have done nothing wrong, or have nothing to hide, most people are offended if they are denied the ability to keep certain personal information confidential. Crucial to one's sense of self is the right to maintain some decision-making power over what information to divulge, to whom, and for what purpose. The uses of new technologies are always threatening to overtake current law, leaving society without a new set of laws and social mores

to limit and define the extent to which new devices can be used to know all we can about each other, often without regard to each other's wish to keep information private.

National polls document a growing public demand for privacy protection. A Trends and Forecasts survey released in May, 1989 found that 7 out of 10 consumers feel that personal privacy is very important to them, with many expressing the fear that their privacy is in jeopardy. Half of the people believe new laws are needed to protect their privacy.

A June, 1990 survey by Louis Harris & Associates, Consumers in the Information Age, found a growing public demand for privacy legislation, documenting that an overwhelming majority of people believe that their right to privacy is in jeopardy. The survey also found that 79% of the American public stated that if the Declaration of Independence were rewritten today, they would add privacy to the list of "life, liberty and the pursuit of happiness" as a fundamental right. In an analysis of an earlier survey, Harris concluded:

Particularly striking is the pervasiveness of support for tough new ground rules governing computers and other information technology. Americans are not willing to endure abuse or misuse of information, and they overwhelmingly support action to do something about it.³

Further, the Bush Administration, through its Special Advisor for Consumer Affairs, Dr. Bonnie Guiton, has made the

³ Louis Harris, The Road After 1984: A Nationwide Survey of the Public and its Leaders on the New Technology and its Consequences for American Life, December, 1983.

protection of consumer privacy, particularly in the area of telecommunications, a priority issue.

The new technology at issue in today's hearing is Caller ID, or Automatic Number Identification (ANI)⁴, a small device that can be attached to a telephone that allows people on the receiving end of a call to see the number of an incoming call as the phone is ringing. Traditionally, without Caller ID, people have no way of learning a caller's phone number unless it is voluntarily given. As callers, people assume that the phone number from which they are calling will remain confidential unless they choose to reveal it. Unrestricted Caller ID reverses this status quo. However, a blocking feature currently available in a number of areas provides callers with a mechanism to block the display of their number when they want to maintain confidentiality.

Before discussing the significant privacy issues posed by Caller ID, it is important to review the constitutional and statutory foundation for privacy protections.

⁴ Caller ID is the term used to describe the use of the technology by local subscribers. Automatic Number Identification (ANI) is the service provided to commercial subscribers of 800 and 900 services.

a. The Constitutional Right to Privacy

The right to privacy -- as imbedded in the U.S. Constitution and numerous federal and state statutes -- is the central principle that limits, as well as fosters, the use of new technologies. The right to privacy encompasses fundamental values of liberty and autonomy, including both "the right to be let alone,"⁵ as Justice Louis Brandeis defined it, and the right to control the dissemination of personal information.⁶

Although the word "privacy" does not appear in the U.S. Constitution, the U.S. Supreme Court has interpreted the Constitution to grant individuals a right of privacy, based on the First Amendment freedom of association and expression, the Fifth Amendment privilege against self-incrimination, the Fourteenth Amendment's guarantee of "ordered liberty," the unenumerated rights guaranteed by the Ninth Amendment, and most principally, in the Fourth Amendment protection of persons, places, papers, and effects against unreasonable searches and seizures.

The scope of the Fourth Amendment once hinged on property-based notions of liberty that linked peoples' privacy rights to their relationship to certain places. However, in 1967, in United

⁵ Olmstead v. United States, 277 U.S. 438, 478 (1928) (J. Brandeis dissenting).

⁶ Whalen v. Roe, 429 U.S. 589 (1977). In Privacy and Freedom (1970), Alan Westin stated that "privacy is the claim of individuals, groups or institutions to determine for themselves when, how, and to what extent information about them is communicated to others."

States v. Katz⁷, the Supreme Court expanded its interpretation by ruling that the Fourth Amendment protects people, not places. In Katz, the Court held that warrantless wiretapping is unconstitutional, and created a standard for determining constitutionally protected "zones of privacy" based on whether an individual has a "reasonable expectation of privacy" in the conduct or information disclosed. Central to the Katz formulation is whether the individual takes certain measures to preserve his or her privacy.⁸

In practice, the Katz "reasonable expectation of privacy" standard has often been used to weaken privacy protections. The objective "expectation" model can only reflect, not prevent, deterioration in societal respect for privacy. Applying Katz, the Court in later cases determined that an individual's privacy has not been violated by certain intrusions because society's "expectation of privacy" has been persistently lowered by the circumstances of modern existence.⁹ The Court's rulings are not

⁷ 389 U.S. 347 (1967).

⁸ "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected." Katz, at 351.

⁹ Nowhere is the fallibility of the Katz standard more blatant than in U.S. v. Miller, 425 U.S. 345 (1976), where the Court found that people do not have a constitutionally protected privacy interest in their personal financial records held by a bank. The Court reasoned that since Miller had relinquished possession of his documents, he no longer had a "reasonable" expectation that the bank would not disclose his records. As Justice Brennan noted in his dissent in Miller, people do have an expectation that their bank records will only be used for

surprising since many people can no longer claim to "reasonably" expect privacy even in the most intimate activities of their lives.¹⁰

In one of those Fourth Amendment cases, Smith v. Maryland¹¹, the Court ruled that law enforcement officials do not need a search warrant to install a pen register, a device that records the numbers dialed from a telephone. Applying the Katz standard, the Court found that people have no reasonable expectation of privacy in the numbers that they dial. Congress later rejected this approach in a section of the Electronic Communications Act of 1986.

b. Congressional Response

In response to the Supreme Court's rigid interpretation of the Constitutional right to information privacy, Congress has enacted legislation that gives people expectations of privacy in

internal banking purposes. In addition, he observed that "judicial interpretations of the constitutional protection of individual privacy must keep pace with the perils created" by the development of sophisticated information technology that have accelerated intrusion into areas a person has chosen to keep confidential. In response to Miller, Congress enacted the Right to Financial Privacy Act in 1978 to create a protectible privacy interest in personal records held by banks. 12 U.S.C. 3401.

¹⁰ In 1986, the Supreme Court in Bowers v. Hardwick, 478 U.S. 186 (1986), upheld Georgia's sodomy statute, finding that one does not have a constitutional right to engage in private, consensual sexual conduct.

¹¹ 442 U.S. 735 (1979).

certain information held by others, including credit¹², education¹³, financial¹⁴, cable¹⁵ and video records.¹⁶

In the area of communications, following Katz, Congress passed the Wiretap Act of 1968, which limits severely the government's ability to intercept and record communications.¹⁷ And, in 1986, Congress passed the Electronic Communications Privacy Act (ECPA) to update the Wiretap Act to cover the interception of new forms of electronic, non-aural communication.¹⁸ In addition, in ECPA Congress rejected the Supreme Court's conclusion in Smith v. Maryland that telephone toll records are not entitled to privacy protection.

ECPA provides that "no person may install or use a pen register or trap and trace device¹⁹ without first obtaining a

¹² Fair Credit Reporting Act, § 15 U.S.C. 1681 (1970).

¹³ Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (1974).

¹⁴ Right to Financial Privacy Act, 12 U.S.C. § 3401 (1978).

¹⁵ Cable Communications Policy Act, 47 U.S.C. § 551 (1984).

¹⁶ Video Privacy Protection Act, 18 U.S.C. § 2710 (1988).

¹⁷ The Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. 2510 et seq.

¹⁸ As Senator Leahy stressed in introducing ECPA, the 1968 Wiretap Act "is hopelessly out of date. . . [In 1968], Congress could not envision the dramatic changes in the telephone industry which we have witnessed in the last few years."

¹⁹ A trap a trace device is defined as a "device which captures the originating electronic or other impulses which identify the originating number of an instrument or device from which a wire or electronic communication was transmitted." 18 U.S.C. 3127(4).

court order" that certifies "that information likely to be obtained is relevant to an ongoing criminal investigation being conducted" by a particular law enforcement agency.²⁰ This general prohibition does not apply if used by a provider of: electronic or wire communication service--

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

(2) to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing services towards completion of the wire communication, or a user of that service, from fraudulent, unlawful, or abusive use of service; or

(3) where the consent of the user of that service has been obtained.²¹

Although Congress did not consider specifically Caller ID in the drafting of ECPA, the use of Caller ID as a trap and trace device is clearly covered by the law.

III. CALLER ID AND CURRENT LAW

A serious question exists as to whether Caller ID, as a trap and trace device, is legal under current federal law. As drafted, ECPA contemplates the use of trap and trace devices by only two parties -- law enforcement, which must first obtain a court order, and telephone service providers, which must meet one of three exceptions. All other uses are prohibited.

²⁰ 18 U.S.C. 3121(a), 3122(b).

²¹ 18 U.S.C. 3121(b).

Caller ID devices squarely fit the law's definition of a trap and device as one that "captures" and identifies "the originating number... from which a wire or electronic communication was transmitted."²² ECPA prohibits the use of a trap and trace device without a court order unless one of three exceptions are met. The three exceptions only apply to "providers" of telephone services. Thus, it appears that the use of a trap and trace device by a telephone subscriber is prohibited. The Congressional Research Service (CRS) arrived at the same conclusion. In an opinion issued last fall, CRS interpreted the exceptions to the general prohibition to apply only to the use of trap and trace devices by providers of communication services, and not users of the services.²³ The language of ECPA and its legislative history are clear that the intent is to allow providers to use trap and trace devices primarily to verify billing, and to detect illegal activity. In addition, other sections of the law refer explicitly to both providers and customers.²⁴

²² 18 U.S.C. 3127(4).

²³ CRS, October 18, 1989, memo to House Judiciary Committee.

²⁴ See 18 U.S.C. 3127(3) which authorizes both provider and customer use of a pen register for billing purposes. As originally introduced ECPA did not contain language on the use of trap and trace devices. However, earlier bills did include the proscriptions on the use of pen registers intended as a response to the Supreme Court's decision in Smith v. Maryland. The trap and trace language, added without altering substantially the pen register section, first appears in the Senate bill on September 27, 1986, less than one month before the Act's passage. The legislative history is silent on the intended impact of the change.

Even if it is determined that "providers" may provide Caller ID to telephone subscribers, none of the three exceptions apply to authorize its general, unrestricted use. The first exception applies to the use of a trap and trace device in the "operation, maintenance, and testing" of the service, or to "protect the rights or property of the provider" or to protect the users of that service from unlawful or abusive use of the service. The legislative history is clear that this first exception was intended to cover only use of a pen register by the phone company.²⁵

The second exception authorizes a provider to use a trap and trace device to protect providers and users from fraudulent, unlawful or abusive use of service. Again, the second exception is inapplicable to the everyday use of Caller ID by telephone subscribers. In addressing the first two exceptions, CRS concluded:

Any suggestion that either of these exceptions authorizes a user's employment of a trap and trace device to identify all incoming calls in order to avoid answering those from sources likely to be obscene or harassing overlooks the fact that permissible use is limited to providers.²⁶

The third exception authorizes providers to use trap and trace devices "where the consent of the user of that service has

²⁵ The trap and trace language had not yet been added to the bill.

²⁶ CRS memo, p.6 (October 18, 1989).

been obtained." At best, the scope of this exception is ambiguous. First, is the user the caller or the receiver of a phone call? Or is it the subscriber? Logically, since it is the caller who takes the active step to initiate a phone call, and it is his or her number that is being revealed, it follows that it is the caller's consent that should be obtained prior to the provider using a trap and trace device.

Even assuming that "the user" is found to be either party to a phone call, in its analysis CRS interprets the third exception to be:

restricted to consent to use a trap and trace in connection with a particular call where there is only a single user who may consent, as opposed to continuous use of a trap and trace device in connection with a particular line which might over the course of time have many users... The consent exception therefore cannot embody consent of a telephone subscriber to include a continuously operating trap and trace device as a feature of his or her telephone service.²⁷

We do know, though, that in 1986 the development of Caller ID technology was in its infancy, and was not considered explicitly by either the Congress or the various groups that supported passage of ECPA. Nevertheless, Congress did intend ECPA's scope to be elastic enough to cover the development of new communications technologies. As the Chairman of this Subcommittee and chief author of the House-passed version of ECPA stated:

The first principle [upon which ECPA is based] is that legislation which protects electronic communications from interception by either private parties or the Government should

²⁷ CRS found it important that exception (3) refers to the user, whereas other sections of the law refer more generally to a user.

be comprehensive, and not limited to particular types or techniques of communication . . . Any attempt to write a law which tries to protect only those technologies which exist in the marketplace today . . . is destined to be outmoded within a few years.²⁸

One of the primary achievements of ECPA was to ensure that communications privacy would not be diminished by the advent of new technologies. In this context, the law's general prohibition on the use of trap and trace devices must be read broadly. Caller ID, as a trap and device, may not be used unless an explicit statutory exception applies.

No federal court has yet interpreted ECPA's trap and trace law as applied to Caller ID. However, on May 30, 1990, the Commonwealth Court of Pennsylvania ruled that the use of Caller ID is illegal and unconstitutional under its state law, which is modeled on and virtually identical to the federal law.²⁹ In its decision, the court relied heavily on the State's trap and trace law to conclude that Caller ID, with or without a blocking mechanism, violates individuals' privacy and due process rights. In addition, in July, 1990 the Public Service Commission of the District of Columbia determined that Caller ID must be offered

²⁸ 132 Cong. Rec. 14886 (remarks of Representative Kastenmeier accompanying H.R. Rep No. 647 (1986)).

²⁹ David M. Barasch, Consumer Advocate v. Pennsylvania Public Utility Commission, N. 2270 C.D. 1989 (May 30, 1990). Named plaintiffs also included the ACLU of Pennsylvania, the Pennsylvania Coalition Against Domestic Violence, and the Consumer Education and Protective Association.

with blocking to avoid any question of violating ECPA.³⁰ The rulings in Pennsylvania and the District of Columbia lend support to our position that Caller ID is prohibited under current law.³¹

IV. POLICY CONSIDERATIONS AND LEGISLATIVE PROPOSALS: THE FUTURE OF CALLER ID

The ACLU supports the legislative solution proposed by H.R. 4340, the Telephone Privacy Act of 1990, to amend the trap and trace section of ECPA to authorize Caller ID if offered with a mechanism that allows people to block the display of their number on the receiving end. If passed, the bill will most fairly balance the competing privacy interests of both parties to a phone call.

The ACLU believes that while Caller ID holds the prospect of enhancing peoples' privacy, it also threatens to severely undermine cherished expectations of confidentiality. If not properly restricted, Caller ID will automatically reveal a

³⁰ In The Matter of the Application of the C&P Telephone Company to Offer Return Call and Caller ID with the District of Columbia, Order No. 9506 (July, 20, 1990), p. 16.

³¹ Although the court in Pennsylvania relied on the state's trap and trace law in its ruling that Caller ID is illegal with or without blocking, the court buttressed its argument with reference to the state's Wiretap Act, which requires the prior consent of all parties to a communication before it can be taped or intercepted. See Barasch v. PUC, No. 2270 C.D. 1989, pp. 6-7.

In addition to Pennsylvania, approximately 14 states with Wiretap Acts have "all party consent" or "two-party consent" laws, including Maryland, Michigan, California, Florida, Hawaii, Louisiana, Montana, Washington, Alaska, Georgia, New Hampshire, New Mexico, Wisconsin, Massachusetts, and Puerto Rico.

caller's number, and possibly identity and location. Without a mechanism that allows callers to selectively block the display of their numbers on the receiving end, people will no longer control when and to whom to give their numbers.

The controversy generated over Caller ID is unique in that the competing privacy interests are most often held by the same people -- those who make and receive phone calls. In fact, when they see themselves as receivers of phone calls, most people are eager for Caller ID. But, as makers of phone calls, most people want the power to block the display of their numbers. The most recent Harris survey -- Consumers in the Information Age -- documented the public's views on Caller ID. Nearly half of the American people (48%) believe Caller ID should be permitted only if blocking is available, and over a quarter (27%) feel Caller ID should be prohibited by law. Significantly, only 23% of those polled say Caller ID should be available without any limitations.

The common thread running through the Caller ID debate is that each party, at different times and for different reasons, has an interest in receiving phone numbers and in limiting dissemination of their numbers. (Admittedly, Caller ID has a limited utility for consumers, since people will not instantly recognize most phone numbers. Most people want to know who is calling.)

What is actually at stake here?

Interest in receiving numbers

1. Consumers can see the number from which a call is being placed to decide whether or not to answer the phone. The familiarity or unfamiliarity of a number will provide them with more information to make decisions about calls coming into their home.

2. Businesses want to use the technology to gather information about people who call them. Some businesses claim that the devices make it more efficient to automatically bring up files, and allows for the creation and linkage of databases for marketing purposes.

3. Law enforcement officials and emergency service providers want the technology to locate people in danger or people using the phone to make obscene or harassing calls; or to identify other illegal use.

Interest in Limiting Disclosure

1. The automatic display of one's phone number can create life threatening situations, including: calls to or from battered women's shelters; calls made by a woman to a batterer; and calls by social workers, doctors, and others who protect their safety by keeping their phone numbers unlisted. In addition, law enforcement officials in a number of states, including Illinois, Pennsylvania and Florida, are concerned that Caller ID will hamper undercover operations, and may discourage informants from calling police departments.

2. Automatic number identification will be used by businesses, including phone companies, to create and enhance databases of consumer information to be used for marketing purposes.

An individual's dual interest in receiving information and in limiting disclosure are important here. The technology exists to take into account and balance both of these interests by providing blocking as part of the Caller ID service. In fact, blocking actually provides people with more information -- that the person calling does not want to reveal their number, identity or location. A call from someone who has blocked may discourage the person on the receiving end from picking up the phone.

Some phone companies claim they want to offer Caller ID without blocking primarily to give women who receive obscene or harassing phone calls the ability to get the number of the person calling them. Clearly, obscene and harassing phone calls are a very serious problem. However, there is another service currently available in many areas, known as Call Trace, that is rarely advertised and much more effective than Caller ID for combatting harassing phone callers. With Call Trace, a person who receives such a call can instantly send a signal to the phone company and the police that records the phone number of the caller and alerts law enforcement officials that the call was just received. Most importantly, Call Trace is still effective even if the caller blocks.

It is untenable for a phone company to suggest that Caller ID without blocking will protect women from harassing phone calls, particularly in light of the advice phone company representatives have given for years to women who receive these phone calls -- "just hang up and report the call." Caller ID may deter some harassing callers, thereby decreasing the number of complaints received by phone companies each year. And, those who persist in making harassing calls may block the display of their number. But, if people are reluctant to answer blocked calls, the harassing call never happens. In the event that an harassing caller does not block, what do phone company representatives suggest women do with the caller's number? Call back? Threaten the caller? Such a vigilante approach is dangerous.³² It is irresponsible for a phone company to use Caller ID technology to wash its hands of this serious problem.³³

There is a lack of hard data on how per-call blocking would actually affect the use of Caller ID. The phone companies that are currently offering the device without blocking failed to test a per-call blocking option. However, the New York Public Utility Commission mandated that the phone company in Rochester offer both per-call and per-line (permanent) blocking in its

³² Recent industry advertisements and statements refer to Caller ID as a weapon, and suggest that women use it to fight back against obscene callers.

³³ Again, Call Trace reports the number to police and cannot be blocked.

preliminary trial of Caller ID.³⁴ Early results from that trial confirm what many have been saying all along. A very small percentage of phone numbers are actually blocked.³⁵ In addition, U.S. West is also offering Caller ID with blocking in its trials of the service.

A number of reasons exist as to why few calls are blocked. One, people are reluctant to answer blocked calls. Second, blocking requires an affirmative act on the part of the caller. A caller must want to keep his or her number confidential, at least before the phone is answered, and must take steps (punching in a code) to block the display of the number. It is important to recognize that there is a burden associated with requiring people to "do something" to protect their privacy. Most likely, there will be many instances when people who want to safeguard the confidentiality of their phone numbers will forget to block.

V. THE COMMERCIAL USE OF AUTOMATIC NUMBER IDENTIFICATION (ANI)

The use of Caller ID by businesses to collect phone numbers for commercial purposes poses significant privacy concerns, in particular, that people are increasingly losing control over personal information in exchange for receiving goods and

³⁴ New York Public Service Commissioner Eli Noam stated that the marketing of unrestricted Caller ID represents a "technocratic disregard for privacy."

³⁵ "New Caller ID Data Emerges in Trial," Telephony, May 7, 1990.

services, often without the individual's knowledge and consent.³⁶ The commercial use of Caller ID is especially troubling since most businesses can not claim to have a privacy interest in receiving phone numbers before calls are answered. In fact, many businesses welcome calls from consumers, and aren't likely to be reluctant to answer a blocked call. On the other hand, a person's phone number has become a very valuable piece of information.

A phone number is much like a social security number in that it is perceived as a unique identifier. A person's phone number may easily be used as a key to "unlock" databases containing personal information, allowing for a variety of information to be compiled, exchanged, manipulated, and sold for commercial purposes. The commercial use of Caller ID allows businesses to capture phone numbers and match them with names, addresses, buying habits, credit history and other information to build valuable consumer profile databases for marketing.

³⁶ These activities violate the central principle of privacy law -- information collected for one purpose should not be used for another purpose without an individual's consent. In other words, a person should not have to give up his or her phone number as a condition for using the telephone. American Express learned that it is bad business to let consumers know it uses Caller ID technology. As the phone was ringing, the company would match the incoming phone number to the appropriate customer file, and answer the phone by greeting the customer by name. American Express stopped greeting customers by name after people objected to the practice, but they continue to use the technology to call up customer files.

The phone number itself reveals personal information.³⁷ For instance, it may be significant that a person placed a call from a particular number. Or, the number may be otherwise unavailable because it is unlisted. Many businesses are becoming more anxious to receive unlisted numbers since between 30-55% percent of telephone subscribers, depending on the area, currently pay to keep their numbers unlisted.³⁸

The phone number as a hot, new commodity has been well documented by the media. As the Christian Science Monitor reported last month: "Bell Atlantic, Bell South and Ameritech plan to efficiently link this transmission system [Caller ID] with every car dealer, insurance salesman and telemarketer. The Bell companies will be selling a database of your home phone number, telephone records, and buying patterns for a massive, automated telephone assault."³⁹

³⁷ As Justice Stewart stated in his dissent in Smith v. Maryland: "The numbers dialed from a private telephone -- although certainly more prosaic than the conversation itself, are not without 'content.' Most private telephone subscribers...[would not] be happy to have broadcast to the world a list of the local or long distance numbers they have called. This is not because such a list might be incriminating, but because it easily could reveal the identities of the persons and the places called, and thus reveal the most intimate details of a person's life."

³⁸ Last year, the Washington Utilities and Transportation Commission recognized an enforceable privacy interest in unlisted phone numbers. The Commission ordered Pacific Northwest Bell not to disclose unlisted numbers to anyone, for any purpose, except in cases of a life-threatening emergency or pursuant to a court order.

³⁹ Christian Science Monitor, May 1, 1990.

A Wall Street Journal article from last fall entitled "Making a Phone Call Might Mean Telling the World About You: Number Identification Service is a Dream for Marketers But a Threat to Privacy," posed the question: "Does a public utility -- the phone company-- have the right to release phone numbers, particularly unlisted ones, to individuals and institutions willing to pay a fee for the information?"⁴⁰

Telephone companies plan to use ANI technology to profit from the collection and use of peoples' phone numbers, and other personal information generated by use of the phone. This bundle of information passing through phone company systems on its way somewhere else is known as Telephone Transaction Generated Information (TTGI). TTGI encompasses information generated by phone usage, and transactions relating to the service. One commentator notes the growing demand for TTGI by non-telephone companies that value it for marketing purposes in:

characterizing, identifying, and locating their constituencies ... TTGI may be even more telling than census and other data in defining the characteristics of individuals... [Citing Justice Brennan]: The transactions of an individual give a fairly accurate account of his religion, ideology, opinions and interests."⁴¹

⁴⁰ WSJ, 11/28/89. "So a company with this new technology-- and some good data banks-- could match a person's phone number with the story of his life..."

⁴¹ T. McManus, TTGI: Rights and Restrictions, Harvard, 1989. As Marc Rotenberg of CPFR noted in testimony before the Public Service Commission of the District of Columbia, telemarketing services currently provide "such personal information as length of residence, marital status, education level, homeowner or renter, even how much money the person makes and how many credit cards the person holds, from just the phone number." In the

Against this back drop, Caller ID should not be authorized unless callers are given the ability to block the transmission of their phone numbers.

VI. PUBLIC RESPONSE

In addition to the ACLU, many groups have taken the position that, if authorized, Caller ID should only be made available with a mechanism that allows callers to block the display of their numbers on the receiving end. Further, the overwhelming majority of people confronted with this issue, and the views on all sides, come to the same conclusion. Most notably, the Special Advisor to the President for Consumer Affairs and Director of the White House Office of Consumer Affairs, Dr. Bonnie Guiton, advocates offering Caller ID with blocking to protect consumer privacy interests.⁴²

Matter of Application of the Chesapeake and Potomac Telephone Company to Offer Return Call and Caller ID within the District of Columbia, Formal Case No. 891, February 9, 1990, at 15.

⁴² "Caller ID is just the first trickle in a floodwater of communications technologies that threaten to reduce, or at least redefine, consumer privacy in America," according to Dr. Guiton. See "Concerns Over Telecommunications Privacy Multiplying," 1/29/90, Office of Consumer Affairs. As Dr. Guiton notes, "Caller ID reveals the number of every local incoming call, even unlisted numbers, without regard for callers' specific need to protect their privacy, or their ability to go out and call from another phone so the number can't be traced to their address. And Caller ID doesn't give callers any warning that their number will be revealed." See, "Should Your Phone Number Be Private?" 3/26/90, Office of Consumer Affairs)

Organizations that advocate authorizing Caller ID with blocking include: the National Association of Regulatory Utility Commissioners⁴³, the National Association of State Utility Consumer Advocates⁴⁴, Computer Professionals for Social Responsibility⁴⁵, and the Direct Marketing Association.⁴⁶ In addition, many law enforcement officials, domestic violence coalitions, doctors, social workers, and others oppose unrestricted caller ID as a threat to their physical safety.

VII. CONCLUSION

The limits of current law provide a safeguard for people against policy-making by the private sector that disregards individual privacy. It is in this Congressional forum that the policy implications of new technologies such as Caller ID can be considered and balanced to give both parties to a phone call privacy protection. The ACLU strongly supports H.R. 4340 to authorize Caller ID with blocking.

⁴³ NARUC favors blocking as part of its position for "universal consumer choice" as the ethic to follow in making policy decisions regarding new technology.

⁴⁴ NASUC believes that blocking will give consumers "total privacy" as both callers and receivers.

⁴⁵ CPSR supports a "consent alternative" to the use of Caller ID which would allow people to use the technology to affirmatively display their numbers.

⁴⁶ DMA adopted a position last month in support of legislative efforts to require that blocking be provided where Caller ID, or Automatic Number Identification is provided.

Mr. KASTENMEIER. How important is a uniform national policy? If a uniform national policy were to exclude blocking devices but permit Caller ID, would that be preferable to a patchwork in which some jurisdictions would have Caller ID with blocking and others without?

Ms. GOLDMAN. Well, if our main goal was to have uniform Federal policy, regardless of what that policy was, it probably would be preferable. What we do seek is to have Caller ID authorized, which we don't think it is now. We agree with the CRS opinion that it is currently illegal under Federal law. We think it should be authorized, but only if blocking is provided.

We are in a slightly fortunate situation these days in that the majority of phone companies around the country have decided to offer Caller ID with blocking, but a number of telephone companies have still taken the position not to offer blocking. The Federal law does need to address that issue, and we urge it. We would oppose any bill that would authorize Caller ID if blocking were not required.

So our main goal is not necessarily to have uniform policy, regardless of what it is, but to have good uniform policy that respects the privacy interests of both sides to a phone call. Of course, these competing interests are held by the same people, since most people are, at one time or another, makers and receivers of phone calls.

Mr. KASTENMEIER. Your position also is that Federal legislation is necessary even if it wouldn't go to the point of designating which system should be used. Your point is it's necessary because Caller ID may be illegal. That is to say, you happen to agree with the Congressional Research Service that suggested it's illegal. Therefore, if that is true, we do have to legislate one way or the other.

Ms. GOLDMAN. That is exactly our position, Mr. Chairman. We think, as a threshold matter, if Caller ID is going to be authorized at all under any circumstances, that Federal legislation is necessary to amend the Electronic Communications Privacy Act. The decision in Pennsylvania echoes this as well. The court found Caller ID, with or without blocking, illegal under the State law.

Because Caller ID needs to be authorized, we then reach the second question, which is, if Caller ID is available at all, under what circumstances should it be offered. We think it should only be offered with blocking to most fairly balance the privacy interests.

Mr. KASTENMEIER. How do you answer those who say we may need national policy on this, but we haven't reached the point where we know how the technology will evolve well enough to make a judgment at this point in time? Judgments as to precisely what we're permitting or what we're dealing with, whether additional information can be communicated to the caller, for example, names and other information, and whether the marketing arrangements may produce additional considerations? Perhaps we should wait to see how this technology evolves before attempting to legislate. What would you say about that argument?

Ms. GOLDMAN. It would be an unusual circumstance if the telephone companies came forward today and said: "We embrace Federal legislation, we think this is the time we need to be regulated and we support your bill." Though that would be very unusual, we would certainly be thrilled if that happened, but we wouldn't

expect it. It's not likely the industry would come forward in this kind of a circumstance and say "now is the time for legislation."

The truth is that over the past few years what you've seen throughout the country are efforts on the part of a number of phone companies to offer Caller ID, that it is currently available in a number of areas, that it is having a direct impact on people's lives today, and that people are very aware of the issue and care deeply about it.

However, we have seen that there's been some industry response that has been very conscientious and encouraging. For example, Nynex recently joined Pac Tel, Southwestern Bell, and U.S. West in deciding to offer Caller ID with blocking. The Direct Marketing Association has taken a position in favor of the bill here today and in favor of per call blocking, mainly out of an understanding that it is not just the consumer-to-consumer use of Caller ID that can be troubling, but it is also the commercial use of the technology that is going to have some very substantial privacy implications in the future.

If I can just take this moment and read from an article in the Wall Street Journal last year about how a number of businesses are moving toward using Caller ID to gather personal information. In an article entitled "Making a phone call might mean telling the world about you—number identification services, a dream for marketers but a threat to privacy," they pose the question: "Does a public utility—the phone company—have the right to release phone numbers, particularly unlisted ones, to individuals and institutions willing to pay a fee for the information?" What they found is that there is going to be the creation of databases around the country that will be used to capture phone numbers and match them with names, addresses, buying habits, credit history and other information that is valuable to build consumer profile data bases.

That is why we strongly applaud the efforts of the Direct Marketing Association in taking their position. If people don't want to give up their phone numbers, they shouldn't. If a company wants the phone number, they can ask on the telephone, "May we please have your phone number." That's out of a very basic respect for the privacy rights of consumers.

Mr. KASTENMEIER. Do we know enough about these new marketing strategies and technology to incorporate them in any legislative recommendation that comes out at this time?

Ms. GOLDMAN. Well, I think there aren't that many secrets at this point. I think it would be very important for Congress to take the initiative here and to say this is the policy that we want to set; this is how we want the industry to develop in looking at privacy interests. It's not so much about whether technology should be available or not available. As we have said earlier, we support the Caller ID technology and think it should be available. We do not want to be in a position of hampering or hindering the development of any new technology.

But, in fact, what we have seen is that there are certain companies and certain kinds of technologies that are developed that disregard privacy interests. If Congress takes the initiative and sets the tone and sets the policy, technologies can be developed in a

way that most closely regards and best respects the privacy interests of both sides.

Mr. KASTENMEIER. You have also heard reference to the fact that the FCC is scheduled to take another look at the subject. What is your reaction to that announcement?

Ms. GOLDMAN. Well, we think it's fully appropriate for the FCC to look at this issue, as they would look at any other telecommunications issue. But we also believe that consistent with ECPA it is necessary for Federal legislation to look at the issue of Caller ID, whether it's to authorize it with some restriction, or to not authorize it at all. Again, we do support that it be authorized, with some restriction. But those are complementary roles that the FCC and Congress can play at this stage.

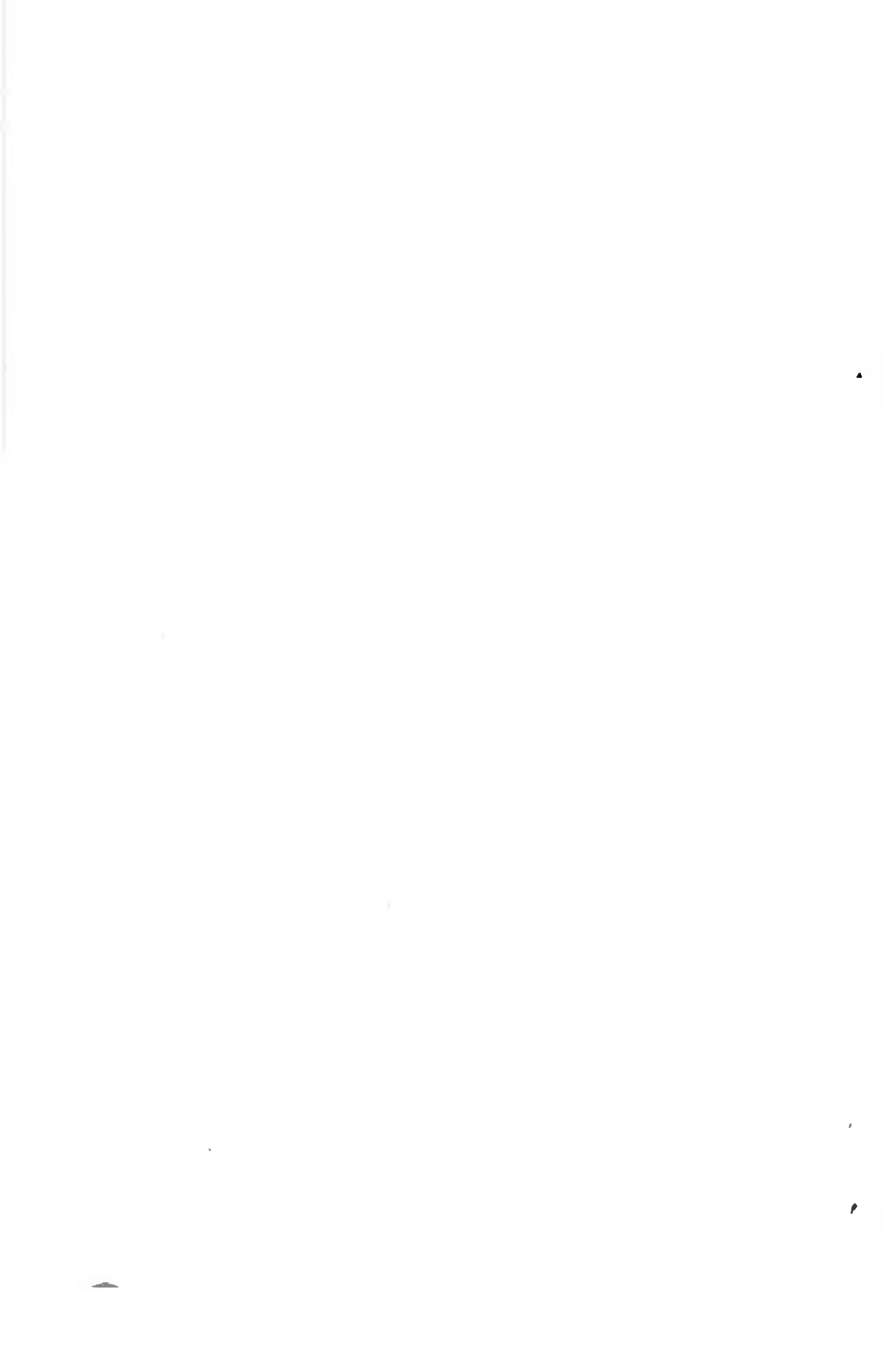
Mr. KASTENMEIER. I thank you very much for your testimony today, and your response to questions on this subject. I think your challenge to the committee is a valid one. There is Federal policy at issue here and the Congress will have to confront this issue.

At this moment I am not necessarily convinced that the legislation I cosponsored answers all the questions, but I think we must be prepared to do so in the near future. In the waning days of this Congress we doubtless will not be able to do that, but we will have an opportunity very early next year to return to this question, in both the Senate and House. We hopefully will have the benefit of even more information available and more opinions and more recommendations. We are delighted to have yours as a very important part of this.

I want to thank you and the other witnesses today. This concludes the hearings this morning and this afternoon on the question of Caller ID, a question we will be returning to in the near future.

The committee stands adjourned.

[Whereupon, at 12:50 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]



APPENDIXES

ADDITIONAL LETTER AND STATEMENTS

PREPARED STATEMENT OF RICHARD A. BARTON, SENIOR VICE PRESIDENT, GOVERNMENT AFFAIRS, DIRECT MARKETING ASSOCIATION

My name is Richard Barton and I am Senior Vice-President of the Direct Marketing Association. I am very pleased to submit a statement on Caller ID Technology. I am even more pleased to state that the DMA supports legislative efforts including H.R. 4340, that requires suppliers of ANI and similar services to offer consumers the option of blocking the receipt of the ANI signal by commercial users.

I appeared before this subcommittee just two years ago to support this subcommittee's efforts to pass consumer privacy legislation in the context of the "Video Privacy Protection Act of 1988." That effort was successful with passage of a statute that very same year. We hope that our current efforts result in similarly positive action.

This past May, the Board of Directors of DMA adopted a position on ANI and blocking. I would like to review that policy paragraph by paragraph. First, DMA's position states as follows:

The Direct Marketing Association (DMA) recognizes that the proper use of technology such as automatic number identification (ANI) benefits consumers. DMA also acknowledges the privacy concerns that may arise with the use of such technology.

ANI technology and Caller ID services provide significant technological advancements for direct marketers and the consumers that they serve. When a consumer calls a marketer the primary interest of the consumer is to communicate as accurately as possible and get off as quickly as possible. For the service provider speed and accuracy are also both important. ANI, by providing a means to link incoming calls with existing files, goes a great way to further the goals of speed and accuracy. The current application of ANI technologies allows an operator to see customer account information when she or he first says "hello". Once it is verified that the person calling is in fact the person identified by ANI, the operator can verify information which already appears in the caller's file rather than having to re-enter it for every call. Also, in some cases, particularly for on-line services like home banking, ANI will be very helpful in making sure that the person calling is in fact the authorized consumer. All of this will allow for faster, more accurate and more secure transactions.

ANI technology will also provide the marketer with the opportunity to retain the number of the party making the call. DMA guidelines require, however, that the marketer inform the consumer if information obtained as the result of a telephone contact is to be collected and made part of a mailing list rented sold or exchanged with others, and provide the consumer

with an opportunity to have his or her name stricken from that list.

ANI in concept is not new. DMA members for many years have received on a periodic basis from their long distance carriers the telephone numbers of people who have called their 800 and 900 numbers. Since the marketer is paying for these services it is appropriate that the marketer be informed of who made the call for billing purposes. Today, most marketers use either 800 or 900 numbers. Very little national marketing is done on the "regular" local or long distance network. ANI in the past has come in the form of paper printouts or computer tape.

What is new is the instantaneous delivery of the ANI number to the marketer at the time the call is received. What is also new is that this type of service can now be economically used by most marketers and not just the very large ones. The DMA believes that this is an important and essentially pro-consumer technology and that it should be able to develop with a minimum of regulation.

DMA also acknowledges that privacy concerns may arise with the use of this technology. These concerns relate to consumer knowledge. If a consumer has an unpublished number than he or she reasonably expects that such numbers will not be given to anyone else. Moreover, ANI technology should not be a basis for creating marketing lists unless the consumer has been so informed.

Primarily, the privacy concerns raised in this context relate to the more locally based Caller ID services which generally are not used by the marketing industry. While we believe that there is no threat to privacy by our industry's use of ANI services, we do recognize that there may be some positive steps that can be taken to avoid even perceived problems.

The DMA policy goes on to state:

In view of the direct marketing industry's long history of supporting the opportunity of consumers to limit the unwanted dissemination of information about themselves, the Direct Marketing Association intends to support those legislative or regulatory efforts that require suppliers of ANI and similar services to offer consumers the option of blocking the receipt of the ANI signal by commercial users.

DMA has long supported the practice of informing consumers of how information about them is to be used and to give them the opportunity to limit the dissemination of information about themselves. DMA's Mail Preference Service ("MPS") name removal file was established in 1971 in response to consumer requests to control their mail volume. A companion service, the Telephone Preference Service ("TPS") was established in January, 1985, as an answer to increased consumer inquiries regarding telephone marketing.

In 1977, the U.S. Privacy Protection Study Commission recognized MPS as an alternative to legislation regarding mailing list usage. The Commission also encouraged individual

direct marketers to give people on lists an opportunity to indicate they do not wish their names made available to outside sources for marketing purposes. DMA supported this effort in its "Freedom To Mail" campaign and sought to expand the existence of in-house mail preference or "opt out" programs.

As a result, many direct marketers established their own in-house mail preference services, or, as they're known in the industry, "suppression files" so that consumers could enjoy the convenience of shopping by mail, while at the same time controlling their mail volume. Telephone marketers are also encouraged to use in-house suppression as a means of ensuring that solicitation calls are only targeted to those who are most receptive. Traditionally, only a small minority of direct response shoppers have taken advantage of such in-house services, thereby supporting the industry's contention that targeted direct marketing is seen by millions of consumers as a convenience.

The in-house suppression programs consist of a policy of notification and ability to opt-out. Typically, a catalog company or credit grantor will inform its customers that it may make its mailing list available to others. Industry acceptance of the service shows a commitment to improve consumer acceptance of direct marketing. MPS and TPS are also seen as a means to save valuable marketing resources by not having people on marketing lists who do not want to be there.

The DMA believes that it is consistent public policy to inform consumers of ANI and related services and give them an opportunity to limit the dissemination of information about them. Per call blocking is the best way to do that. Blocking allows the consumer to control the release of the information in the first place upon making a call. This will provide the consumer a vehicle for privacy protection without undo burden. Subscription blocking would not be as good an idea because it will automatically deny the consumer of the value of ANI when it is wanted and needed.

Finally, DMA policy states:

DMA acknowledges that there are questions as to the current technical capability to block all ANI signals, and the potential cost implications for commercial providers and users. In those situations where blocking is not technically feasible, the DMA Guidelines for Marketing By Telephone require that telephone marketers who receive or collect consumer data as a result of a telephone marketing contact, and who intend to rent, sell or exchange those data for direct marketing purposes should notify the consumer of that fact. Consumer requests regarding restrictions on the collection, rental, sale, or exchange of data relating to them should be honored.

The blocking of Caller ID services made available as a result of Signalling System Seven is by and large a readily available technology. The blocking of ANI signals for 800 and 900 services is more difficult and is not currently available. The delivery of the ANI signal is critical to the billing of

long distance callers and there is no public interest in blocking the delivery of billing information.

The phone companies should be encouraged, however, to develop means to communicate the desires of consumers for blocking of their phone numbers for non-billing purposes. We believe it is important that the telephone companies provide a means so that those consumer concerns can be addressed. If someone does not want his or her name or telephone number on a marketing list, our industry believes that they should not be on one.

Thank you again for the opportunity to testify and we look forward to working with your committee to resolve these important issues.

POSITION STATEMENT OF
CENTRAL TELEPHONE COMPANY
ON PRIVACY ISSUES RELATED TO CALLER
IDENTIFICATION SERVICE

I. Summary

Central Telephone Company, a subsidiary of Centel Corporation, serves 1.6 million customer lines in Florida, Illinois, Iowa, Minnesota, Nevada, North Carolina, Ohio, Texas and Virginia. Centel is a customer- and community-oriented company, committed to providing the most modern telephone service available.

Centel is an industry leader in deploying new technology to improve customer service, keep our rates as low as possible and bring the benefits of new services to all our customers. For example, more than 95 percent of our customer lines are digitally switched supporting a wide range of modern services, including Calling Number ID. But foremost to Centel is serving our customers.

Centel's philosophy is to be customer-responsive -- to offer the customer as wide range of choice as possible in selecting among communications products and services. Centel firmly believes that the customer, not the serving telephone company, should decide what services the customer will use -- including the disclosure of customer telephone numbers.

Furthermore, the company believes that offering Calling Number ID Block on a per-call basis, available to all customers, strikes an appropriate balance by offering the many benefits of Calling Number ID service while preserving customer privacy interests.

II. Benefits of Calling Number ID

Calling Number ID service supports the delivery of very valuable capabilities to a wide variety of users.

Calling Number ID permits individuals to screen calls allowing them the option of answering or not answering. Calling Number ID also keeps a record of calls received for future reference or action when persons do not or cannot answer their telephone, such as when they are busy, running errands or on vacation. Moreover, the new technology deters and more easily identifies obscene and harassing callers.

Businesses and their customers derive benefits from businesses receiving the telephone numbers of customers and potential customers who call. Through quick identification of the caller, businesses can offer more personalized and responsive service. The cost savings to businesses and improved efficiency mean lower prices and higher quality to consumers.

Communities that have Enhanced 911 service have seen the benefits of giving certain emergency services immediate information regarding the location of a caller. Calling Number ID would give communities that do not have Enhanced 911 the capability of identifying the location of an emergency caller through Calling Number ID and cross reference of data banks and directories.

These are just a few examples of the many benefits of Calling Number ID. Centel wants its customers to have these benefits available to them.

III. Concerns About Calling Number ID

Centel realizes -- and is very sensitive to -- its customers' concerns about privacy. Some customers for certain calls will want not to have their number identified.

In developing our position on Calling Number ID, we conducted focus groups and sought the opinions of various audiences ranging from law enforcement agencies to hotline services and consumer groups.

It readily became very clear that there are situations in which customers do not want their telephone numbers to be revealed. Examples of these include:

- Individuals conducting business from their homes, such as psychiatrists, doctors or lawyers, may not want their home numbers disclosed.
- An individual in a battered person's shelter who may want to call home without revealing the location to an abusive spouse.
- Police or drug agency informants and individuals calling various hotlines may want to remain anonymous.

Centel wants to be responsive to those customers who wish not to have their number identified on certain calls.

IV. Optional Blocking Is Essential to the Balancing of Interests

There is a conflict between making the benefits of Calling Number ID available and the need for some form of blocking the display of calling numbers. Centel believes offering optional Calling Number ID Block on a per-call basis to all customers resolves this conflict: blocking would be available to everyone without greatly diluting the benefits of Calling Number ID.

Per-call blocking requires callers to select that option each time they wish to block. Therefore, Calling Number ID would not be blocked indiscriminately. But undercover policemen, hotline callers or abused spouse could block the delivery of their telephone numbers. They would not have to find a pay phone as no-blocking proponents would require.

Customers do have various reasons for wanting to keep their telephone numbers private for certain calls. Centel's approach gives them this choice.

Nor does optional call blocking cloak the originating number of obscene or harassing calls. Customers with Return Call service have the option of returning an immediately preceding Incoming call even if Calling Number ID Block had been used by the caller. Furthermore, the related Call Trace feature enables all customers, regardless of whether they subscribe to Calling Number ID and whether the caller used Calling Number ID Block, to Immediately Initiate a trace of obscene or harassing calls. Results of such a trace would be stored in the telephone company's switching office and would be released only to appropriate law enforcement authorities. Return Call and Call Trace can be effective deterrents to obscene and harassing callers even while optional call blocking preserves the privacy of other users.

V. Support of State Approaches to Calling Number ID

Local service issues have traditionally been regulated at the state level, with the states often differing in their legislative and regulatory approaches. Because of this framework, Centel believes that Calling Number ID and related services also should be considered on a state-by-state basis. Moreover, valuable experience with the new technologies would be gained by permitting a variety of regulatory approaches across states.

VI. Conclusion

In conclusion, Centel's approach would bring to customers the benefits of Calling Number ID while preserving the customer's right to choose whether to disclose his or her telephone number. The customer will have the choice -- of the new services and of number disclosure.



United States Telephone Association

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September 18, 1990

The Honorable Robert W. Kaatenmeier
2328 Rayburn House Office Building
Washington, D.C. 20515-4902

Dear Chairman Kaatenmeier:

The Board of Directors of the United States Telephone Association, the national association of the local exchange industry, on September 11, 1990 unanimously adopted the following position on the issue of "Caller*ID":

"Caller*ID should not be the subject of federal regulatory or legislative action at this time. The individual states and their commissions are the proper government agencies to determine how to implement Caller*ID and should be given the necessary time to establish such policies."

As you proceed with your hearings and deliberations on these issues, we hope that you will be guided by this philosophy. The individual states and commissions have a rich history of encouraging technological development while protecting the rights of consumers. Caller*ID service has been deployed in a number of states, and the experience of the consumers in those states will provide important evidence as to the best way to maximize Caller*ID's benefits.

We hope that you will allow the states the opportunity to fully study this issue and apply their expertise.

Respectfully yours,

JOHN SODOLSKI
President

cc: Michael Remington
Virginia Sloan

PREPARED STATEMENT OF CAROL KNAUFF, DIRECTOR, INTELLIGENT NETWORK SERVICES,
AMERICAN TELEPHONE & TELEGRAPH CO.

My name is Carol Kneuff. I am the Director of Intelligent Network Services for AT&T. My organization is responsible for the development and marketing of enhanced network services for AT&T's business customers.

Thank you for the opportunity to submit testimony on H.R. 4340. AT&T recognizes that calling party identification services involve important public policy implications, and we welcome this chance to share our views on the subject.

As calling party identification (CPID) services have become increasingly available to the American public, they have also been increasingly in the spotlight of public policy debate. These services, in which the caller's telephone number is displayed to the party receiving the call, are being provided to both business customers and consumers depending upon the deployment of the enabling technology. The display of the calling number, as the services have become more widespread, has raised some concerns about the privacy interests of both the party placing the call and the party receiving it.

AT&T's involvement in privacy issues is not new. As a leader in the telecommunications industry, we have a firm policy to protect the privacy of the content of any information -- voice or data -- that is transmitted over our facilities. We remain

committed to that policy in the future.

We were also a leader of the coalition that helped to pass the Electronic Communications Privacy Act of 1986. That coalition included the Bell operating companies, other industry participants, law enforcement agencies and the American Civil Liberties Union. We have also worked to educate and inform all interested parties about the technology under discussion today.

The bill now before the Committee, The Telephone Privacy Act of 1990, would require that a telephone company that offers customers a calling party identification service must provide the calling party with the option of restricting the presentation of their phone numbers. This is sometimes called "blocking" the display of the calling number.

AT&T believes that mandating nationwide blocking capability at this time would be premature and unwise. These services are still at the early stages of development, and there is simply not enough information available about them to permit the Congress to reasonably conclude that blocking is appropriate. Indeed, the available evidence points the other way. Where they have been introduced, the services have already demonstrated their value in enabling customers to offer new and more responsible services to their consumers, in sharply reducing the levels of anonymous obscene and harassing calls, and in the provision of 911 and

other emergency community services. By providing customers with the ability to screen unwanted calls, these services have finally offered them choice and control over the use of the telephones in their own homes. Sometimes called an "electronic peephole", CPID services actually enhance the privacy of the party who is being called.

AT&T therefore urges the Committee to do three things as part of its review of this proposal.

First, we ask that you do not enact legislation that unnecessarily or prematurely impedes the development, deployment and uses of these new technologies. AT&T supports the widest availability of telecommunications products and services to give customers control of their communications services. This includes services such as Caller ID, which utilize calling party identification technology. Only with growing use will these services provide their full benefits to our society.

Second, we recommend allowing the states to continue to perform their traditional role as laboratories of public policy development before enacting a federal law. It is important, we believe, to allow some time to evaluate the results in the various states where Caller ID has been introduced. Those results will assist the Congress in determining consumers' needs and desires in concluding which, if any, particular national

policy is appropriate or required.

And third, in the event this Committee determines that restricting display of the calling number is required now, we urge you to exempt certain long distance business services from this requirement. In addition, because CPID capabilities are critical to the evolving information industry, AT&T would strongly object to any "per line" blocking requirement, i.e., blocking all forwarding of identifying digits from a phone line.

I would like to examine each of these three points in slightly more detail.

On the first point, I urge the Committee not to adopt legislation that would preclude the unencumbered development of these innovative technologies. Nationwide federal restrictions on these services could significantly retard their development and use, and would clearly reduce their value to customers. Intelligent network services are the foundation of the Information Age, and the unrestricted flow of information about the calling number is essential to evolving products and services.

Because these new technologies will act as the catalyst for a wide array of new services and efficiencies that will benefit the public, AT&T believes that premature limitations on these

services would be inappropriate. Public policy should not discourage the development of new technology and, consequently, deny customers the benefits of new services and products.

On my second point, I encourage the Committee to allow sufficient time to evaluate the many state and industry trials now being conducted on CPID deployment before rushing to judgment with a national policy. Among the states there is now a full range of options being offered, ranging from no restrictions on calling number identification to mandating a per-call blocking capability free of charge.

Several states have approved calling party identification without restriction. New Jersey, for example, was one of the first states to approve Caller ID, and it has done so without requiring a blocking option. The service, in existence since 1988, has proven to be extremely well received by the consumers in that state.

At the other end of the spectrum, California has enacted legislation that would require capability for per-call restriction of the number display at no charge when the service is introduced. Since no calling party identification services have yet been offered in California, the effect of this restriction is unknown. Meanwhile, the Pennsylvania courts have held that the entire concept of Caller ID is illegal under state

law. The matter is expected to remain in litigation for the next several months.

Other states, like Florida, have taken a middle-ground approach, requiring blocking capability only in certain circumstances. In Canada, a different approach is being tried by the telecommunications commission. There, per call blocking will be available on a paid operator-assisted basis. In addition, at least a dozen states are now conducting generic investigations or hearings on specific tariff filings, and industry trials are underway in New York and Nevada.

The varied state and industry approaches to deploying this new technology are, in effect, creating a national laboratory in which new services are being offered under a wide variety of policies, terms and conditions. We suggest that these various offerings, still at their early stages, will provide valuable experience that will inform the development of an appropriate national policy. We are confident that the best solutions will emerge from the various approaches now being employed.

My final point relates specifically to business services. We recognize that the Committee may find it appropriate to move ahead now with some form of restriction on the presentation of the calling number on a national basis. In that event, AT&T strongly urges you to exempt certain interstate business services

from this blocking requirement. To elaborate on why AT&T makes this recommendation, I would like to describe briefly some of our current service offerings.

AT&T offers a variety of specialized long distance services to our business customers. Of particular interest in this discussion are our 700, 800 and 900 services.

Our 700 service is a conference call service, enabling people in multiple locations to participate in a single call. Our 800 service is used by businesses to accept toll-free calls from their customers. And 900 service is an interactive service that permits callers to leave or receive a message. A television network, for example, may use 900 service to poll viewers on their opinions on current events. Or a provider such as a travel services firm may use a 900 service to provide callers with access to up-to-date weather reports in any part of the world for a reasonable charge.

AT&T also provides a service feature we call INFO-2 to our 800 and 900 customers. These are typically businesses with nationwide customer bases, such as medical insurance providers, hotel or motel chains, airlines, or credit card companies. With INFO-2 service, the business customer can see the number of the calling party displayed as the call takes place. Companies with this service can establish a file of regular customers, which

they can link to the calling number. In this way, when a customer calls the company can respond almost immediately. Productivity is enhanced, and the calling customer eliminates idle waiting time while the business retrieves the proper file.

There are three primary reasons why we recommend that these business services should not be included in any mandate to restrict the presentation of the calling number.

First, our customers are depending upon these services to provide their own customers with the fast, efficient and accurate service that their own customers demand and expect. These services, in short, are an increasingly important productivity and service improvement tool for businesses of all kinds.

A major financial services firm, for example, speeds and enhances customer service -- and improves its competitive position -- by using the calling number identification service. When a customer calls the firm's toll-free number, the calling number is automatically matched up with the appropriate customer file. The employee taking the call gets access to the customer file at the same time the call is received. Wasted time, for both the employee and the customer, is eliminated.

A major automobile company also uses these services to provide its customers with a single nationwide number for

roadside assistance. If a car has a problem, no matter where it occurs, the driver calls an 800 number. Based on the number from which the call is made, he or she is put in contact with the nearest dealer or service agency for immediate emergency repairs.

A leading motel chain provides another example. It has found that these services enable travelers to make their reservations 20 percent more quickly than with older technology.

Similar applications are used by many customers in the insurance and banking industries and in other consumer service organizations. The common denominator is better, faster and more responsive service to consumers.

Occasionally, the payoff is even more significant. A major consumer products company received a call on its toll-free 800 number -- not to ask for information, but to report that the anonymous caller had just tampered with one of the company's food products. Because of the automatic identification of the calling number, authorities were able to arrest the caller within 30 minutes. The speedy response headed off any potential that an unwary consumer would become sick or die from eating the tampered food.

We currently offer CPID services to more than 70 customers, virtually all of whom report improved service and significant

productivity gains. We would certainly like to continue to provide these value-added features in accordance with our current tariffs and contracts. If blocking of the calling number is required, it will clearly diminish productivity improvements and the value of these services to our customers, and to theirs.

The second reason that AT&T would urge the committee to exempt these business services from requirements to restrict calling number presentation is simply that calls to these services are, by their very nature, discretionary business calls. Calls to 700 services are conference calls. Calls to 900 numbers are for the purpose of exchanging information. And calls to 800 numbers are not only business calls, but are paid for by the recipient, not the calling party. A business which establishes a toll-free 800 number for the benefit of its customers should have a right to know what calls are being billed.

These business calls, we suggest, are not subject to the privacy concerns raised by calling party identification services in the residential market. A call to a credit card company, for example, is solely for the purpose of transacting business -- and an essential part of transacting business is to identify oneself. Concerns about personal safety in the residential marketplace, such as possibly revealing the location of a battered spouse, simply do not apply here.

The final reason to exempt these business calls from any mandated blocking requirement is that it is not technologically possible today to restrict presentation of the calling number on calls to 700, 800 or 900 services on a selective basis. The technology which carries the signalling information -- in effect, the command to display or to block display of a calling number -- is what we call Signalling System Number 7, or SS7. This technology includes the capability of passing this signal from a local exchange company to an interexchange carrier and then onto another local company.

If the caller is not in a territory served by SS7 technology, there is no way, technically, to receive a signal to block display of the calling number. It is this current lack of technological capability that prompted the State of California to exempt calls to 700, 800 and 900 services from its requirement to offer a blocking option until the required technology is deployed.

The SS7 interconnect between the local exchange companies and the interexchange companies, while not yet available, is expected to be deployed beginning in 1992.

To summarize, AT&T welcomes this opportunity to present our views on emerging new technology and the public policy concerns raised by that technology.

At this time, we urge the Committee to exercise caution before mandating any nationwide restrictions on the presentation of calling numbers. We believe that such restrictions would be premature, that they would deny the public the benefits of new services by impeding the development and use of intelligent network applications, and that they would retard current efforts by the states to evaluate a variety of public policy options.

Finally, if the Committee does propose a requirement to restrict calling number presentation, we recommend that this requirement not include certain business services and, in no event, should "per line" blocking be required.

Thank you very much for the opportunity to present AT&T's views on this important issue. I assure you that we will provide our full support and cooperation as the Committee's work proceeds.

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Statement of Southwestern Bell Corporation
Regarding Proposed Legislation
on the Caller-ID Service

Southwestern Bell welcomes this opportunity to articulate its views regarding the privacy issues which this committee is now addressing. We commend the committee for its foresight in identifying and addressing the potential conflict -- seen by some -- between the provision of Caller-ID and the Electronic Communications Privacy Act.

Southwestern Bell anticipates that it will begin offering "Caller-ID" within the very near future -- perhaps as soon as first quarter, 1991. An integral element of our Caller-ID service offering, to be submitted to state regulatory commissions for approval, will be the provision, at no cost or charge to the customer, of a per-call blocking capability. This per-call blocking capability will provide each customer the ability to select which calls that customer desires to remain unidentified to the called party.

We believe offering Caller-ID in this manner provides a proper balance. First, this approach recognizes the value of Caller-ID to the called party in better managing the flow of communications into the home and business. Furthermore, this approach recognizes and respects the deeply-felt concerns of some of our customers who say they want a choice about whether their assigned telephone numbers are transmitted in readable form to persons they call. Such concerns are more obviously compelling for customers engaged in law enforcement duties, as well as service organizations such as "shelter" homes for battered women and children. We recognize also that other customers desire to maintain this element of their privacy less for social policy reasons than for preservation of the more traditional view of privacy, i.e., the "right to be left alone."

Southwestern Bell believes that its policy regarding Caller-ID protects the concerns of the various segments of its customer body who are concerned about number delivery services. At the same time, however, the policy does not intrude either on those customers who affirmatively desire to transmit their telephone number with each new call they place, or on those customers who are truly indifferent to the issue one way or the other. Southwestern Bell anticipates that number delivery will still occur on a high percentage of calls, thereby accommodating the desire on the part of many of our customers to be able to identify the calling party.

One aspect of our policy that warrants particular mention to this Committee is the fact that it was adopted by Southwestern Bell voluntarily, without the aid, direction or

compulsion of legislative or regulatory pressure or mandate. This is, we believe, the better course.

However, Caller-ID is but one type of number delivery service. Other number delivery services and/or name information services have been proposed by various providers in different parts of the country. To the extent that any oversight dealing with specific number delivery services is viewed as necessary or desirable, it may be appropriate for such terms or conditions to be imposed at the state level. However, the terms, conditions, and charges for provision of specific intrastate service offerings, such as Caller-ID, appear to be more properly matters of regulatory, rather than legislative concern. Such matters have traditionally been the purview of state commissions and there appears no need for preemptive legislative action as it relates to Caller-ID.

Should the Committee determine that the provision of number delivery services causes unintended conflict with the Electronic Communication Privacy Act, the Committee should act to prevent such a result. Southwestern Bell will be pleased to work with the Committee to assure that any possible conflict such as this is resolved so that the provision of number delivery services cannot be interpreted to constitute the provision of -- or engagement in -- trap and trace or pen register activity as those terms are defined in the Electronic Communications Privacy Act.

Trap and Trace or Pen Register devices and activity have been subject to legislative regulation for a considerable period of time and were recognized as legitimate subjects of national legislation. Southwestern Bell views number delivery services to be of an entirely different nature. Their regulation, as noted earlier, should be at the state level, reflecting values and concerns unique, perhaps, to a given state.

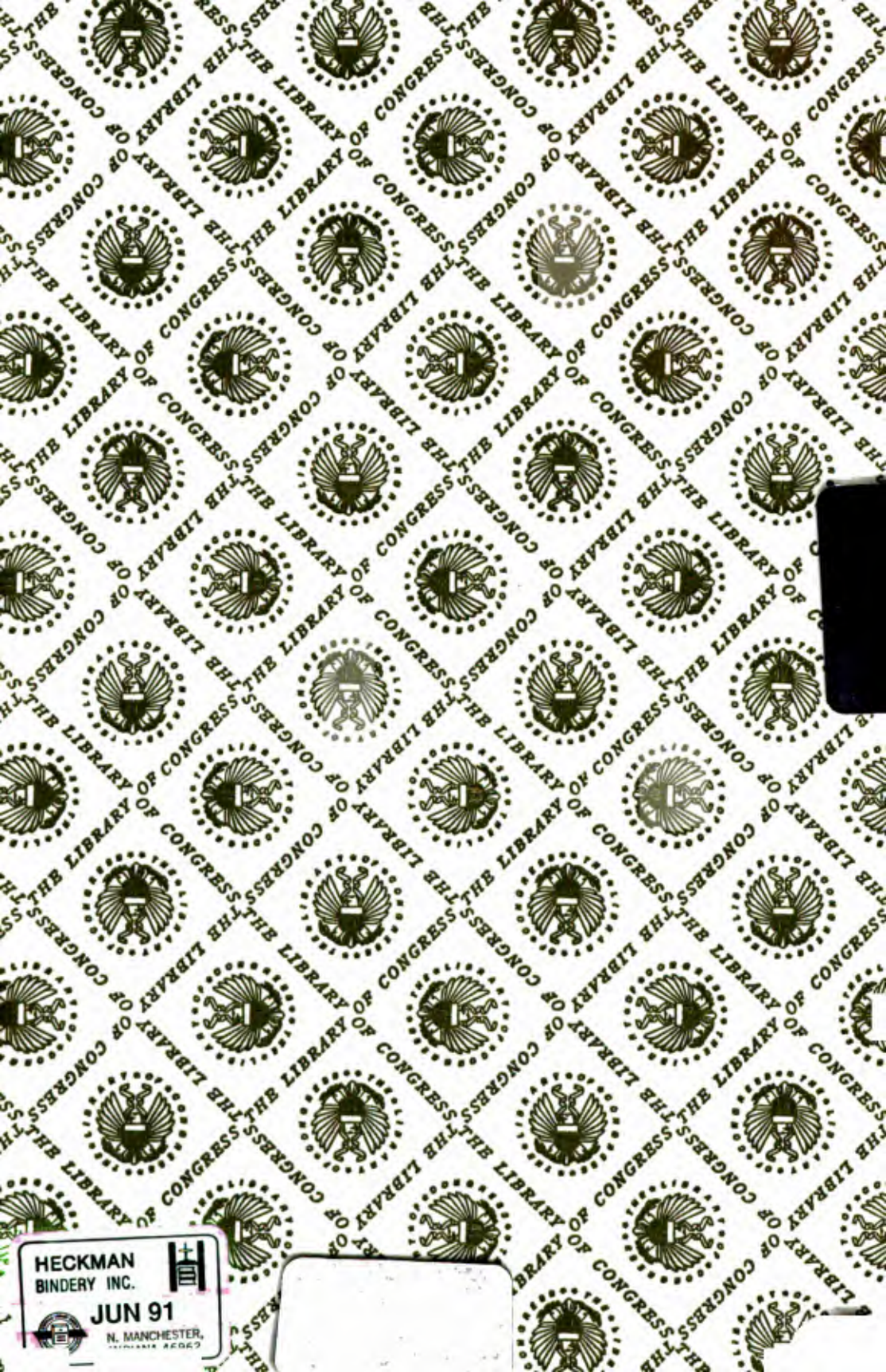
Again, Southwestern Bell appreciates the opportunity to present its views to this Committee. We will be happy to assist the Committee in its consideration of this issue.











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