

STATE PERSPECTIVES: PRIVACY PROCEEDINGS, BLOCKING
AND THE IMPACT OF THE PENNSYLVANIA COURT DECISION

BY

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INTRODUCTION

IN 1949, GEORGE ORWELL PUBLISHED "1984", A BOOK DEPICTING A FUTURISTIC SOCIETY WHICH WAS DOMINATED BY "BIG BROTHER" AND WHERE THE OFFICIAL LANGUAGE, "NEWSPEAK", KEPT THE POPULATION TOTALLY UNINFORMED. THIS BOOK GENERATED SUCH CONTROVERSY AND FEAR THAT THE ARRIVAL OF THE YEAR 1984 BECAME A TOPIC OF DEBATE AND APPREHENSION. WHEN THE YEAR FINALLY ARRIVED, FORTUNATELY, ORWELL'S PREDICTIONS REMAINED JUST THAT, PREDICTIONS. CALLER ID HAS BECOME THE ELECTRONIC BIG BROTHER OF THE NINETIES AND HOPEFULLY, BY THE TIME THIS SEMINAR IS COMPLETED, YOU WILL HAVE A CLEARER UNDERSTANDING OF THE ISSUES. I WILL BEGIN BY TELLING YOU WHAT THE DISTRICT OF COLUMBIA DID AND WHY. BECAUSE THE MATTER IS STILL PENDING, MY REMARKS WILL BE SOMEWHAT CIRCUMSCRIBED.^{1/} HOWEVER, I PROMISE NOT TO ENGAGE IN "NEWSPEAK".

^{1/} ON AUGUST 20, 1990, THE OFFICE OF THE PEOPLE'S COUNSEL (OPC) FILED AN APPLICATION FOR RECONSIDERATION OF ORDER NO. 9506 AS IT RELATED TO CALLER ID. OPC DID NOT CHALLENGE APPROVAL OF RETURN CALL. ON OCTOBER 12, 1990, THE COMMISSION ISSUED ORDER NO. 9562 WHICH DISMISSED THE APPLICATION ON THE BASIS THAT ORDER NO. 9506 IS NOT FINAL.

BACKGROUND

IN EARLY OCTOBER OF LAST YEAR, THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY (C&P) FILED A TARIFF APPLICATION WITH THE PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA (COMMISSION) REQUESTING, APPROVAL FOR SIX NEW SERVICES INCLUDING, AUTHORITY TO OFFER RETURN CALL^{2/} AND CALLER ID^{3/} WITHIN THE DISTRICT OF COLUMBIA. THE COMMISSION CONCLUDED THAT C&P'S REQUEST CONCERNING RETURN CALL AND CALLER ID RAISED SUCH SIGNIFICANT LEGAL AND POLICY ISSUES THAT IT SHOULD BE CONSIDERED AS A FORMAL CASE WHICH WAS SEPARATE AND APART FROM THE OTHER PROPOSED SERVICES.^{4/} THE SIGNIFICANT DIFFERENCE IS THAT TELEPHONE TARIFFS ARE NOT CONTESTED CASES AND ARE NOT ENTITLED TO HEARINGS.

^{2/} C&P DEFINED RETURN CALL AS "AN ARRANGEMENT WHICH PERMITS THE CUSTOMER TO RETURN AUTOMATICALLY THE MOST RECENT INCOMING CALL WHETHER IT IS ANSWERED OR NOT." C&P APPLICATION, PROPOSED SECTION 21 B.1, 4TH REVISED PAGE 3 OF GENERAL SERVICES TARIFF P.S.C.-D.C.-NO. 203. UNDER THE C&P PROPOSAL, IF THE LINE CALLED IS BUSY, RETURN CALL WOULD PERMIT A THIRTY MINUTE QUEUING PROCESS TO BEGIN, WHICH PERMITS PERIODIC NETWORK TESTING UNTIL THE TWO LINES ARE FOUND IDLE OR THE QUEUING PROCESS EXPIRES.

^{3/} CALLER ID WAS DEFINED BY C&P AS "AN ARRANGEMENT WHICH PERMITS A CUSTOMER WITH LOCAL EXCHANGE SERVICE OTHER THAN FOREIGN EXCHANGE, FOREIGN ZONE OR FOREIGN CENTRAL OFFICE SERVICE TO RECEIVE THE CALLING TELEPHONE NUMBER FOR CALLS PLACED TO THE CUSTOMER." C&P APPLICATION, PROPOSED SECTION 21 B.1, 8TH REVISED PAGE 1 OF GENERAL SERVICES TARIFF P.S.C.-D.C.-NO.203. C&P WOULD FORWARD THE CALLING NUMBER TO THE CUSTOMER SO LONG AS THE CUSTOMER HAD "COMPATIBLE CUSTOMER PROVIDED DISPLAY EQUIPMENT ASSOCIATED WITH A CUSTOMER'S LOCAL EXCHANGE SERVICE."

^{4/} THESE OTHER SERVICES WERE REPEAT CALL, PRIORITY CALL, SELECT FORWARD, CALL BLOCK AND CALL TRACE. ALL OF THESE SERVICES WERE APPROVED BY THE COMMISSION ON AUGUST 14, 1990 AND BECAME EFFECTIVE UPON PUBLICATION IN THE D.C. REGISTER ON AUGUST 24, 1990. SEE ORDER NO. 9525 IN TT90-1.

RATHER, THE COMMISSION HANDLES TELEPHONE TARIFFS THROUGH PAPER SUBMISSIONS.

BOTH CALLER ID AND RETURN CALL GENERATED A TREMENDOUS AMOUNT OF EXTREMELY VOCAL PUBLIC PARTICIPATION FROM THOSE WHO OPPOSED, AS WELL AS THOSE WHO FAVORED, C&P'S PROPOSAL. THE MOST HIGHLY DEBATED ISSUES DEALT WITH WHETHER THE SERVICES VIOLATED ANY LAW AND WHETHER THEY VIOLATED ANY EXPECTATION OF PRIVACY IN THE TELEPHONE NUMBER.

CALLER ID AND WIRETAP STATUTES

IT WAS ARGUED THAT CALLER ID VIOLATED FEDERAL WIRETAP STATUTES, FEDERAL PRIVACY GUARANTEES AND C&P'S TARIFFS FOR NON-LISTED^{5/} AND NON-PUBLISHED^{6/} TELEPHONE NUMBERS.

THE ARGUMENT WAS MADE THAT CALLER ID VIOLATED THE FEDERAL WIRETAP STATUTE BECAUSE IT IS A PROHIBITED "TRAP AND TRACE DEVICE".^{7/} THE STATUTE DEFINES "TRAP AND TRACE" AS A "DEVICE WHICH CAPTURES THE INCOMING ELECTRONIC OR OTHER IMPULSES WHICH IDENTIFY THE ORIGINATING NUMBER OF AN INSTRUMENT OR DEVICE FROM WHICH A WIRE OR ELECTRONIC COMMUNICATION WAS TRANSMITTED."^{8/}

THE COMMISSION DEEMED THE QUESTION OF WHETHER CALLER ID IS A TRAP AND TRACE DEVICE TO BE IRRELEVANT BECAUSE, EVEN IF IT IS,

^{5/} A NON-LISTED TELEPHONE NUMBER IS ONE WHICH IS NOT LISTED IN THE TELEPHONE DIRECTORY, BUT WHICH MAY BE OBTAINED FROM THE OPERATOR.

^{6/} A NON-PUBLISHED TELEPHONE NUMBER IS ONE WHICH IS NOT LISTED IN THE TELEPHONE DIRECTORY AND IS NOT AVAILABLE FROM THE OPERATOR.

^{7/} SEE THE ELECTRONIC COMMUNICATIONS PRIVACY ACT OF 1986, 18 U.S.C. § 3121 ET. SEQ.

^{8/} 18 U.S.C. § 3127(4).

IT FELL WITHIN ONE OR MORE OF THE EXCEPTIONS.^{9/}

ONE EXCEPTION STATES THAT A TRAP AND TRACE DEVICE MAY BE EMPLOYED TO PROTECT "A USER OF THAT SERVICE FROM FRAUDULENT, UNLAWFUL OR ABUSIVE USE OF SERVICE." ACCORDING TO C&P, THIS IS EXACTLY WHAT CALLER ID IS INTENDED TO DO. ANOTHER EXCEPTION STATES THAT A TRAP AND TRACE DEVICE MAY BE EMPLOYED "WHERE THE CONSENT OF THE USER OF THE SERVICE HAS BEEN OBTAINED."

IT WAS FURTHER ARGUED THAT "USER" MEANT THAT BOTH PARTIES TO THE CONVERSATION MUST CONSENT TO THE USE OF THE DEVICE. THE COMMISSION REVIEWED THE LEGISLATIVE HISTORY AND THE CASE LAW. IT'S REVIEW REVEALED THAT ONE OF THE REASONS CONGRESS ENACTED LAWS PERTAINING TO WIRE TAPS WAS TO SAFEGUARD THE PRIVACY OF INNOCENT PERSONS WHERE NONE OF THE PARTIES TO THE COMMUNICATION HAS CONSENTED TO THE INTERCEPTION.^{10/} FURTHER, IT WAS SPECIFICALLY STATED THAT A PARTY TO A TELEPHONE CALL CAN INTERCEPT THE COMMUNICATION OR CONSENT TO ITS INTERCEPTION. COURTS HAVE ALSO CONFIRMED A PERSON'S RIGHT TO CONSENT TO HAVING THEIR TELEPHONE LINE TAPPED AND SUCH CONSENT IS NOT AN ISSUE WHEN THE PERSON WHO INTERCEPTED THE CONVERSATION IS A PARTY TO THE CONVERSATION.^{11/}

BASED ON THIS INFORMATION, THE COMMISSION FOUND THAT FEDERAL WIRETAP STATUTES DO NOT PROHIBIT THE OFFERING OF CALLER ID IN D.C.

^{9/} SEE FORMAL CASE NO. 891, ORDER NO. 9506, JULY 20, 1990 AT 15.

^{10/} SEE § 801(D) OF ACT OF JUNE 19, 1968 (EMPHASIS ADDED).

^{11/} SEE E.G., U.S. V. TRUGLIO, 731 F.2d 1123 (4th Cir. 1984), CERT. DENIED, 469 U.S. 862 (1984); U.S. v. HOWELL, 664 F. 2d 101 (5th Cir. 1981), CERT. DENIED, 455 U.S. 1005 (1982); AND PATTERSON V. STATE, 267 Ark. 436 (1979), CERT. DENIED, 447 U.S. 923 (1980).

HOWEVER, THE COMMISSION ALSO FOUND THAT ASSUMING A WIRETAP WAS OCCURRING, THE REQUIREMENT OF PER-CALL BLOCKING EFFECTIVELY MOOTED ANY CONCERNS BECAUSE IT WOULD PREVENT THE TRANSMISSION OF THE TELEPHONE NUMBER AT THE DISCRETION OF THE CALLER.12/

AS FOR PRIVACY CONCERNS, THE COMMISSION HELD THAT THE IMPLEMENTATION OF PER-CALL BLOCKING MOOTED THIS ISSUE.13/

ALL OF THE PARTIES TO THE PROCEEDING, EXCEPT THE COMPANY, PROPOSED THAT BLOCKING BE IMPLEMENTED IN SOME FORM. WHEN THE COMMISSION HELD COMMUNITY HEARINGS, THE PUBLIC WAS QUITE VOCAL IN ITS CONCERN THAT THE LACK OF BLOCKING WOULD ENDANGER MENTAL HEALTH AND PUBLIC SAFETY OFFICIALS WHO OFTEN WORKED FROM THEIR HOMES AND UNBLOCKED CALLER ID WOULD DETER PERSONS WHO WISHED TO ANONYMOUSLY SEEK ASSISTANCE THROUGH HOTLINE SERVICES. C&P OPPOSED THE IMPLEMENTATION OF BLOCKING IN ANY FORM BECAUSE IT BELIEVED THAT BLOCKING WOULD RENDER THE SERVICE USELESS. INSTEAD, THE COMPANY PROPOSED THAT IT BE ALLOWED TO WORK OUT SOME VAGUE TYPE OF ACCOMMODATION FOR THOSE PERSONS WHO BELIEVED THAT THE SERVICE PLACED THEM AT RISK, BUT DID NOT SPECIFY HOW THESE PERSONS COULD BE ACCOMMODATED. THE COMMISSION FOUND C&P'S ASSERTION THAT BLOCKING WOULD RENDER CALLER ID USELESS TO BE AN EXAGGERATION. FOR EXAMPLE, IF A CALLER CHOSE TO BLOCK THE TRANSMISSION OF THE TELEPHONE NUMBER, THE CALLER ID DEVICE WOULD DISPLAY A "P". THIS "P" WOULD LET THE CALLED PARTY KNOW THAT THE CALLER DID NOT WANT

12/ SEE ORDER NO. 9506 AT 16.

13/ ID.

TO REVEAL HIS\HER TELEPHONE NUMBER. IF THE CALLED PARTY SUBSCRIBED TO CALLER ID IN ORDER TO AVOID HARASSING CALLS, THE "P" WOULD INDICATE THAT THIS COULD BE SUCH A CALL. IF THE CALLER ID SUBSCRIBER WAS USING THE SERVICE TO SCREEN CALLS, HE/SHE COULD EMPLOY AN ALTERNATE SERVICE SUCH AS AN ANSWERING MACHINE.

THE COMMISSION BELIEVED THAT AT THE HEART OF CALLER ID, WAS THE ISSUE OF WHO HAD CONTROL OF THE TELEPHONE NUMBER. SUPPORTERS OF CALLER ID ARGUED THAT CONTROL SHOULD REST WITH THE CALLED PARTY. THE OPPOSITION ARGUED THAT THE TELEPHONE NUMBER SHOULD BE CONTROLLED BY THE CALLING PARTY. WHILE THE COMMISSION KNEW THAT CALLER ID WITHOUT BLOCKING WOULD GIVE CONTROL OF THE TELEPHONE NUMBER TO THE CALLED PARTY, IT ALSO KNEW THAT TOTAL BLOCKING WOULD GIVE CONTROL OF THE NUMBER TO THE CALLING PARTY. THE COMMISSION THOUGHT THAT PER-CALL BLOCKING WOULD BALANCE THESE COMPETING CONCERNS. THEY APPROVED CALLER ID WITH THE REQUIREMENT OF PER-CALL BLOCKING. CALLER ID WAS NOT TO BE OFFERED UNTIL THE RATE, IF ANY, TERMS AND CONDITIONS FOR BLOCKING WERE APPROVED.14/

THE COMPANY FILED ITS BLOCKING PROPOSAL WHICH PROVIDED THAT BLOCKING BE OPERATOR-ASSISTED AND THAT THE PERSON REQUESTING BLOCKING PAY .45 CENTS EACH TIME HE/SHE WANTED TO BLOCK THEIR TELEPHONE NUMBER. THE WAY THE COMPANY ENVISIONED IT WAS THAT A PERSON WISHING TO BLOCK WOULD DIAL "0" AND THE TELEPHONE NUMBER. THE CALL WOULD BE INTERCEPTED BY AN OPERATOR AND THE NUMBER WOULD NOT BE FORWARDED. ALTHOUGH C&P PROPOSED A RATE OF .45 CENTS FOR

14/ SEE ORDER NO. 9506 AT 34-36.

THIS SERVICE, IT SUGGESTED THAT THE RATE COULD BE AS LOW AS .10 CENTS TO .25 CENTS PER CALL FOR A TRIAL PERIOD.

THE ARGUMENT WAS MADE THAT COMMON CHANNEL SIGNALLING SYSTEM NO. 7 (CCS7) WAS CAPABLE OF BLOCKING THE NUMBER AT THE SWITCH AND THAT AN OPERATOR WAS NOT NEEDED. THE COMPANY ACKNOWLEDGED THAT THE RECORD CONTEMPLATED THAT BLOCKING WOULD BE DONE AT THE SWITCH, BUT ARGUED THAT ITS OPERATOR-ASSISTED PROPOSAL ALSO HAD RECORD SUPPORT.

IN RESPONSE TO A COMMISSION'S ORDER, C&P FILED A DOCUMENT WHICH INDICATED THAT IT WAS "UNABLE TO SUBMIT A CO-BASED BLOCKING PROPOSAL THAT WILL SATISFY ALL OF THE CONCERNS IDENTIFIED BY THE COMMISSION IN ITS EARLIER ORDER APPROVING CALLER ID."15/ THEN, THE COMPANY STATED THAT A BUSINESS CUSTOMER WHO SUBSCRIBED TO RETURN CALL COULD OBTAIN A RESIDENTIAL CUSTOMER'S TELEPHONE NUMBER BY ALSO SUBSCRIBING TO STATION MESSAGE DETAIL RECORDING SERVICE AND THAT CO-BASED BLOCKING WOULD NOT PREVENT THIS.16/ THIS STATEMENT REALLY PIQUED THE COMMISSION'S CURIOSITY SINCE THE POSSIBILITY OF THIS OCCURRING WAS NEVER RAISED BY C&P PRIOR TO THE FILING OF THIS DOCUMENT. THE COMPANY'S OMISSION IS PARTICULARLY CURIOUS IN LIGHT OF THE EXPRESSED CONCERN THAT RETURN CALL WOULD LEAD TO THE DISCLOSURE OF THE CALLER'S TELEPHONE NUMBER.17/ WHEN THE COMMISSION APPROVED RETURN CALL, THEY FOUND THAT THE LIKELIHOOD OF SUCH A DISCLOSURE WAS QUESTIONABLE EXCEPT FOR LONG DISTANCE CALLS

15/ SEE SUBMISSION OF THE C&P TELEPHONE COMPANY IN RESPONSE TO ORDER NO. 9522, FILED AUGUST 24, 1990.

16/ ID. AT 2.

17/ SEE OPC POST HEARING BRIEF AT 48.

OVER WHICH IT HAS NO JURISDICTION.18/ THE COMMISSION IS REVIEWING THE MATTER TO DETERMINE WHAT IMPACT, IF ANY, THIS DEVELOPMENT WILL HAVE ON ITS APPROVAL OF CALLER ID AND RETURN CALL.

AS YOU ARE AWARE, AND JUST HEARD, AN APPELLATE COURT IN PENNSYLVANIA RULED THAT CALLER ID VIOLATED THE STATES WIRETAP STATUTE. THE PENNSYLVANIA COURT WAS INTERPRETING A STATE STATUTE WHOSE LEGISLATIVE HISTORY REVEALED A CLEAR INTENT THAT THE TERM "USER" BE APPLIED TO ALL PARTIES TO A TELEPHONE CONVERSATION.19/ THE COURT ALSO HELD THAT THE APPROVAL OF CALLER ID CONSTITUTED STATE ACTION AND THUS VIOLATED FEDERAL CONSTITUTIONAL PRIVACY PROTECTIONS FOR THREE REASONS. FIRST, THE COMMISSION, AS A REGULATORY AGENCY, WAS FACILITATING INTRUSION INTO PRIVACY RIGHTS. SECOND, CALLER ID COULD NOT BE OFFERED WITHOUT THE IMPRIMATUR OF THE COMMISSION. THIRD, PENNSYLVANIA CASE LAW HAS DETERMINED THAT A RIGHT TO PRIVACY EXISTS IN ONE'S TELEPHONE NUMBER.19/ THE PENNSYLVANIA COMMISSION HAS APPEALED THIS DECISION TO THE STATE SUPREME COURT WHERE IT IS PENDING.

OTHER STATES ARE APPROACHING THE ISSUES DIFFERENTLY. FOR INSTANCE, THE CALIFORNIA LEGISLATURE HAS PASSED A LAW WHICH WILL REQUIRE THAT FREE PER-CALL BLOCKING BE AVAILABLE IF CALLER ID SHOULD BE AUTHORIZED IN THE STATE.

IN NEVADA, CENTEL HAS FILED ITS CALLER ID PROPOSAL WITH A FREE PER CALL BLOCKING OPTION. WHILE THE BOC IS NOT CURRENTLY OFFERING

18/ SEE FORMAL CASE NO. 891, ORDER NO. 9506 AT 33.

19/ ID. AT 86-88.

CALLER ID, IT PLANS TO OFFER IT WITH CALL BLOCK BY LATE 1991 AND THEY SUPPORTED CENTELS PROPOSAL.

THE COMMISSION STAFF OPPOSED PER-CALL BLOCKING AS THE ONLY OPTION BECAUSE DIALING *67 OR 1167 WOULD BE BURDENSOME. INSTEAD, STAFF RECOMMENDED THAT CENTEL PROVIDE FREE AUTOMATIC PER-LINE BLOCKING TO ALL CUSTOMERS WITH UNPUBLISHED TELEPHONE NUMBERS. OTHER CUSTOMERS COULD OBTAIN PER-LINE BLOCKING UPON REQUEST. THIS PER-LINE BLOCKING WOULD HAVE AN OVERRIDE FEATURE TO ALLOW THE CUSTOMER TO TRANSMIT HIS NUMBER TO A CALLER ID DEVICE IF THE CUSTOMER SO DESIRED. THE CONSUMER ADVOCATE OPPOSED CALLER ID IN ANY FORM.

THE NEVADA COMMISSION APPROVED CALLER ID WITH FREE PER-CALL BLOCKING. THE COMMISSION ALSO DIRECTED THAT THE OPTION OF FREE PER-LINE BLOCKING BE OFFERED, BUT ONLY TO RESIDENTIAL CUSTOMERS BECAUSE THERE WAS NOTHING IN THE RECORD TO INDICATE THAT BUSINESSES NEEDED OR WANTED THE OPTION. CUSTOMERS WERE GIVEN SIXTY DAYS TO SUBSCRIBE TO PER-LINE BLOCKING WITHOUT PAYING AN INSTALLATION FEE. AFTER THE GRACE PERIOD, THERE WOULD BE AN INSTALLATION FEE, BUT NO MONTHLY FEE.

THE COMMISSION DID NOT ORDER THAT PER-LINE BLOCKING BE IMPLEMENTED WITH THE ABILITY TO UNBLOCK ON A PER-CALL BASIS AS STAFF HAD RECOMMENDED. ALTHOUGH CENTEL NOTED THAT NORTHERN TELECOM HAD BUILT THE CALLER ID SYSTEM WITH THE ABILITY TO UNBLOCK, THE CALLER WOULD USE *67 FOR BOTH BLOCKING AND UNBLOCKING. THIS WOULD CAUSE CONFUSION, SO THE COMMISSION DIRECTED CENTEL TO MONITOR THE AVAILABILITY OF PER-CALL UNBLOCKING USING A DIFFERENT CODE. IF IT

BECAME FEASIBLE, CENTEL SHOULD CONSIDER OFFERING AN UNBLOCKING OPTION.

AS FOR HOT LINES AND SHELTERS, THE COMMISSION DIRECTED THAT CENTEL OFFER SUCH FACILITIES A FREE RECORDED MESSAGE THAT WOULD INFORM A CALLER THAT THE FACILITY COULD NOT IDENTIFY THE ORIGIN OF THE CALL.

FINALLY, CENTEL WAS DIRECTED TO INVESTIGATE THE POSSIBILITY THAT A CALLER ID SUBSCRIBER COULD TREAT A BLOCKED CALL DIFFERENTLY THAN AN UNBLOCKED CALL. IT WAS SUGGESTED THAT BLOCKED CALLS COULD BE ANSWERED WITH A TAPED MESSAGE OR SENT TO A VOICE MAILBOX. THE TELCO IS TO REPORT ITS FINDINGS ON THIS ISSUE TO THE COMMISSION.

IN NORTH CAROLINA, THE ATTORNEY GENERAL ISSUED AN OPINION THAT CALLER ID VIOLATES FEDERAL AND STATE WIRETAP LAWS. SOUTHERN BELL ISSUED A RESPONSE STATING THAT NO LAW IS VIOLATED BECAUSE THE "CAPTURE" OF THE TELEPHONE NUMBER IS PERFORMED BY THE PROVIDER, NOT THE CUSTOMER. A RESOLUTION OF THE DISPUTE IS PENDING BEFORE THE COMMISSION. ALSO BEFORE THE COMMISSION WAS THE ATTORNEY GENERAL'S REQUEST TO INVESTIGATE AN ALLEGED LETTER WRITING CAMPAIGN IN WHICH SOUTHERN BELL SOUGHT TO SUBMIT FICTITIOUS LETTERS IN SUPPORT OF CALLER ID. THE COMMISSION DIRECTED THAT ALL UTILITIES UNDER ITS JURISDICTION MUST REFRAIN FROM LETTER WRITING CAMPAIGNS ON MATTERS PENDING BEFORE IT.

IN MARYLAND, LEGISLATION IS PENDING WHICH WOULD REQUIRE BLOCKING UPON REQUEST FROM HOLDERS OF NON-PUBLISHED TELEPHONE NUMBERS. CONTROVERSY BEGAN WHEN C&P TELEPHONE INITIATED A LETTER WRITING CAMPAIGN TO DEFEAT THE PROPOSED BILL.

C&P OF MARYLAND HAS REQUESTED PERMISSION TO OFFER ADDITIONAL LINES AT NO CHARGE INSTEAD OF IMPLEMENTING BLOCKING. SUCH LINES WOULD HAVE THEIR NUMBERS APPEAR ON CALLER ID DEVICES, BUT WOULD ACCESS RECORDED MESSAGES WHEN CALLED. THE MARYLAND DEPARTMENT OF HUMAN RESOURCES WOULD CERTIFY AGENCIES OR INDIVIDUALS IN NEED OF SUCH PROTECTION.

GTE TELEPHONE HAS FILED CALLER ID TARIFFS IN KENTUCKY AND INDIANA WHICH INCLUDE THE OPTION OF "PROTECTED NUMBER SERVICE" OR PNS. ACCORDING TO THE COMPANY, PNS WOULD ALLOW CUSTOMERS TO KEEP THEIR NUMBERS FROM APPEARING ON CALLER ID DISPLAY UNITS. PNS PROVIDES THE SUBSCRIBER WITH TWO TELEPHONE NUMBERS AND TWO RINGING PATTERNS. ONE NUMBER IS THE CUSTOMER'S CURRENT NUMBER AND WOULD NOT APPEAR ON A CALLER ID DEVICE. WHEN THAT NUMBER IS CALLED, IT GIVES A DISTINCTIVE RING, INDICATING A FRIENDLY CALL. THE SECOND NUMBER WOULD BE A NEW NON-PUBLISHED NUMBER THAT WOULD APPEAR ON CALLER ID SCREENS. THIS NUMBER WOULD RING NORMALLY AND THE CUSTOMER WOULD BE ALERTED THAT THE CALL MAY NOT BE WANTED.

THE ECONOMIC AND TECHNOLOGICAL TRIUMPHS OF THE PAST FEW YEARS HAVE NOT SOLVED AS MANY PROBLEMS AS WE THOUGHT THEY WOULD AND, IN FACT, HAVE BROUGHT US NEW PROBLEMS WE DID NOT FORESEE. HOWEVER, WE MUST NOT BE AFRAID OF TECHNOLOGICAL ADVANCES SIMPLY BECAUSE THEY MIGHT BE ABUSED. RATHER, WE SHOULD DO WHAT WE CAN TO ANTICIPATE AND PREVENT ABUSE. THIS IS A DIFFICULT PROPOSITION BECAUSE SO MANY THINGS MAY BE USED FOR A PURPOSE OTHER THAN THE ONE INTENDED BY THEIR ORIGINATORS. THE POTENTIAL FOR ABUSE OF CALLER ID IS REAL, BUT NOT BEYOND OUR CONTROL. THE IMPLEMENTATION OF BLOCKING IS ONE

METHOD OF CONTROL. FORMER COMMISSIONER ELI NOAM OF NEW YORK HAS SUGGESTED SEVERAL OTHERS.

MR. NOAM IN A PAPER ENTITLED "PRIVACY IN TELECOMMUNICATIONS SERVICES" HAS STATED THAT WHILE NETWORKS SHOULD NOT BE FORCED TO REDUCE THEIR INTELLIGENCE OR CAPABILITIES TO PROTECT PRIVACY, REGULATORS SHOULD ESTABLISH A SYSTEM OF SOFTWARE AND HARDWARE OPTIONS THAT WOULD ASSURE PRIVACY PROTECTION.20/ MR. NOAM VIEWED PRIVACY AS MULTI-LEVELLED.

THESE LEVELS COULD CONTAIN ONE OR MORE OF THE FOLLOWING PRIVACY PROTECTION DEVICES: PER-CALL BLOCKING, BLANKET BLOCKING, A "NO SOLICITATION" SIGNAL TO "WARN-OFF" TELEMARKETERS21/, USER-INITIATED BLOCKING OF CERTAIN PREFIXES ASSIGNED TO TELEMARKETERS AND THE ESTABLISHMENT OF A SYSTEM IN WHICH TELEMARKETERS COULD PAY YOU FOR LISTENING TO THEM, PERHAPS THROUGH A CREDIT ON YOUR TELEPHONE BILL.22/

I THINK THAT MR. NOAM'S IDEAS ARE AN EXCELLENT STARTING POINT FOR FORMULATING SOLUTIONS TO A PROBLEM WHICH IS JUST BEGINNING. THE THREAT TO PRIVACY THROUGH THE USE OF SERVICES MARKETED BY TELEPHONE COMPANIES IS IN ITS INFANCY. WE MUST CHOOSE WHETHER WE WILL GROW WITH IT OR BE OVERSHADOWED BY IT. IN CONCLUSION, I WOULD LIKE TO POINT OUT THAT ONE RARELY SEES SOMETHING GREAT WHICH IS NOT, AT THE SAME TIME, TERRIBLE IN SOME RESPECT. AFTER ALL, IT WAS

20/ NOAM, PRIVACY IN TELECOMMUNICATIONS SERVICES, NOVEMBER 29, 1989, AT 40-41.

21/ ID. AT 42.

22/ ID. AT 47.

THE GENIUS OF EINSTEIN WHICH LED TO THE HORROR OF HIROSHIMA.

THANK YOU.