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Decision 92-11-062 November 23, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Bell (U 1001 C), a corporation, for approval of COMMSTAR Features.	Application 90-11-011 (Filed November 9, 1990)
In the Matter of the Application of Contel of California, Inc. (U 1003 C), a corporation, for approval of Custom Calling Plus Features.	Application 90-12-065 (Filed December 28, 1990)
In the Matter of the Application of GTE California Incorporated (U 1002 C), a corporation, for authority to provide SmartCall Services.	Application 91-01-039 (Filed January 31, 1991)

ORDER MODIFYING DECISION 92-06-065 AND GRANTING LIMITED REHEARING

Pacific Bell (Pacific) and Toward Utility Rate Normalization (TURN) have filed applications for rehearing of Decision (D.) 92-06-065. Responses were filed by GTE California Incorporated (GTE), Contel of California, Inc. (Contel), AT&T Communications of California, Inc. (AT&T), California Bankers Clearing House Association (CBCHA), the Division of Ratepayer Advocates (DRA), Pacific, TURN, and Consumer Action.[1]

In D.92-06-065, we authorized Pacific, GTE, and Contel to provide a number of new services for a trial period of two years. Those services are generically referred to as

1. Consumer Action filed its response on August 4, 1992, one day after responses were due, along with a motion to allow late filing. No party has objected to the late filing. Therefore, we will grant Consumer Action's motion.

Custom Local Area Signaling Services (CLASS) and include Call Block, Call Return, Call Trace, Caller ID, Priority Ringing, Repeat Dialing, and Select Call Forwarding. In D.92-06-065, we established consumer safeguards for those services which implicate privacy rights.

In particular, we approved Caller ID on the condition that subscribers have a choice of methods by which they can block disclosure of their telephone numbers. Those options are per-call blocking, per-line blocking, and per-line blocking with per-call enabling For those subscribers who fail to choose an option, the telephone company must provide a default option. We adopted per-line blocking with per-call enabling as a default for those subscribers with unlisted or nonpublished telephone numbers and for emergency service organizations, and per-call blocking as a default for all other subscribers. In addition, we established a comprehensive customer notification and education program (CNEP) to ensure that the display of any calling party's number will be the result of informed consent.

Pacific and TURN allege numerous errors of fact and law. We have considered all the allegations of error in the applications, as well as the responses to the applications. We have decided to grant a limited rehearing to inquire into the development of a separate code for per-call enabling. We are of the opinion that except for a limited rehearing on this issue, good cause for rehearing has not been shown. However, we believe the decision should be modified as set forth in this order.

Pacific's Application for Rehearing

Pacific's application first contends that the decision does not comply with Public Utilities Code section 2893, which provides that every telephone corporation that offers a caller identification service "shall allow a caller to withhold display of the caller's telephone number, on an individual basis," from the telephone of the called party. Pacific asserts that the

intent of the statute is to require per-call blocking. We do not agree. If the Legislature had intended the statute to require a particular blocking mechanism, it could have plainly stated this. Instead, the language of the statute does not specify any particular blocking options. We are therefore not precluded from requiring more restrictive blocking options than per-call blocking.

Moreover, in enacting section 2893, the Legislature stated that telephone subscribers have a right to privacy, and that the protection of this right is "of paramount state concern." (Stats 1989, ch. 483, § 1.) We believe that offering subscribers a per-line blocking option, as well as a per-call blocking option, furthers the express purpose of the statute. We will modify the decision to clarify our interpretation of the statute.

Pacific also argues that the decision is contrary to Public Utilities Code section 709(b), which declares the policy of encouraging the development and deployment of new telecommunications technologies. According to Pacific, it is not technologically or economically feasible to offer Caller ID with three blocking options. A related issue raised by Pacific is whether the record supports the requirement that there must be a different code for per-line blocking with per-call enabling than that used for per-call blocking.

Public Utilities Code section 709(b) cannot be viewed to require that any new telecommunications technology must be approved without determining whether it is in the public interest. Section 709(b) explicitly states that the provision of telecommunications services must be "equitable" and must "efficiently" meet consumer need. In addition, any new technology must meet constitutional standards. In the case of Caller ID, we have balanced the need for the service with the right to privacy of telephone subscribers and have concluded that the service can only be offered with line blocking options (per-line blocking with per-call enabling and absolute per-line

blocking), and a line-blocking default for those customers with unlisted or nonpublished telephone numbers who fail to choose an option.

We adhere to our view that in order to ensure that disclosure of a calling party's telephone number is the result of informed consent, we must maximize the ease and freedom with which a caller may choose not to disclose his or her telephone number. (D.92-06-054, mimeo at pp. 37-38.) We consider the provision of per-line blocking with per call enabling option to be of paramount importance in protecting the right to privacy of California citizens. In addition, this option will further the goals of Public Utilities Code section 709(b) by encouraging the the provision of Caller ID in a manner that best meets consumers' needs. For these reasons, we will require that this option be offered to California consumers. However, although the record indicates that a separate code for per-call enabling is technologically feasible, it is not clear whether a separate code is presently available. We will therefore order a limited rehearing on this issue.

The focus of the rehearing will be to determine when a separate code will be available, as well as to investigate whether other technologies are or will soon be available, such as a tone or voice message indicating whether a line is blocked or unblocked, which would minimize customer confusion and allow the use of the same code for per-call blocking and per-call enabling. The rehearing shall only address the technological feasibility of offering per-call enabling, and will not revisit the economic issues related to offering this option. A prehearing conference will be held before an Administrative Law Judge to be assigned for the purpose of setting testimony due dates and hearing dates. At the completion of the rehearing, an appropriate order will be issued which sets forth the manner in which per-call enabling will be offered, and if possible, a timetable for implementing this option. We would like to see this issue resolved as soon as

possible so that customers may have the choice of the per-call enabling option.

In the meantime, Caller ID may be offered on an interim basis with the two available options, per-call blocking and per-line blocking. Per-line blocking, rather than per-line blocking with per-call enabling, will be the default option for customers with unlisted or nonpublished telephone numbers, and for emergency service organizations. The CNEP should be modified during this interim period to inform customers that per-line blocking with per-call enabling will be available at a future date. When the technology is available for providing per-call enabling in a manner that protects consumers' privacy interests, the per-line blocking with per-call enabling option shall be offered.[2] At that time, there shall be a renewed education effort regarding per-call enabling which meets the requirements of the CNEP adopted in D.92-06-065 and as modified by this decision. Furthermore, all customers should be able to choose this option free of charge, whether or not they have already had one free change order.

Pacific next contends that the decision violates Article III, section 3.5, of the California Constitution, which provides that an administrative agency does not have the power to declare a statute unenforceable, or refuse to enforce a statute, on the basis that it is unconstitutional. Pacific reasons that because Public Utilities Code section 2893 requires per-call blocking, the decision's conclusion that more restrictive blocking is required to protect privacy rights is a refusal to enforce section 2893, and implies that section 2893 is unconstitutional.

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2. If per-line blocking with per-call enabling is available prior to the time Caller ID is offered in an area, the per-call enabling option shall be the default option for customers with unlisted or nonpublished telephone numbers, and for emergency service organizations, in that area.

Article III, section 3.5, does not affect an agency's enforcement of its own rules or an agency's competence to examine evidence offered before it in light of constitutional standards. (Goldin v. Public Utilities Commission (1979) 23 Cal.3d 638, 669, fn. 18.) The decision does not declare section 2893 unenforceable or unconstitutional, nor does it refuse to enforce the statute. As stated above, the statute does not specify particular blocking mechanisms. Moreover, the decision is consistent with the overall intent of section 2893, which is to protect the right to privacy.[3]

Pacific further asserts that, by refusing to implement Public Utilities Code section 2893, the decision violates the privacy rights of the called party, which are protected by Article I, section 1, of the California Constitution. Again, Pacific's argument is based on its view that section 2893 requires per-call blocking.

In the decision, we explicitly recognized the right to privacy of the called party, that is, the right to be left alone. (D.92-06-065, mimeo at p. 19.) However, in balancing the competing rights of the calling and called parties, we concluded that the privacy interest of the called party with respect to Caller ID is of lesser significance than that of the calling party. We discussed a number of reasons for this conclusion. Among other things, we found that while implementation of Caller ID would enhance the privacy of the called party, it would diminish the privacy of the calling party. (D.92-06-065, mimeo

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3. Pacific also contends that pursuant to Article III, section 3.5, the Commission may not rely on the right to free speech to support the blocking safeguards we have adopted in the decision. This Commission, however, is bound by the United States and California Constitutions and may rely on the First Amendment principles of cases such as Huntley v. Public Util. Com. (1969) 69 Cal.2d 67 in rendering our decision. The conditions under which Caller ID may be offered as set forth in the decision protect First Amendment rights, as well as privacy rights.

at p. 20.) Thus, we find no support for Pacific's contention that the decision violates the privacy rights of the called party.

Pacific argues that the record does not support line blocking as an option, nor as a default for unlisted and nonpublished customers.[4] Pacific cites its own survey which indicates that most customers do not object to Caller ID with per-call blocking only, and that there is no significant difference between the reactions of published and nonpublished customers to Caller ID.[5] First, when the issue is protection of a constitutional right, the fact that some, or even most, customers are satisfied with per-call blocking is irrelevant. Moreover, the record is replete with testimony from public interest and consumer organizations indicating that per-line blocking, or per-line blocking with per-call enabling, is in the public interest. (See, e.g., Ex. 21, Testimony of Robert Ellis Smith/TURN; Ex. 47, Testimony of Jon Rainwater/California Alliance Against Domestic Violence; and Ex. 54, Testimony of Phillip Enis/DRA, at pp. 2-7 to 2-9.)

We also do not find the results of Pacific's survey persuasive regarding the privacy expectations of published versus nonpublished or unlisted customers. As the California Supreme Court has stated, by affirmatively requesting and paying an extra service charge to keep an unlisted number confidential, a customer has taken specific steps to ensure greater privacy than that afforded other telephone customers. (People v. Chapman (1984) 36 Cal.3d 98, 108.)

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4. Pacific's argument appears to encompass both per-line blocking with per-call enabling and absolute per-line blocking.

5. The survey results are contained in Exhibits 6 and 6A, which are designated as proprietary.

Pacific contends that the customer notification and education program (CNEP) adopted in D.92-06-065 is not supported by the record. Pacific asserts that the only evidence in the record supports Pacific's proposed customer education plan. Contrary to Pacific's assertions, a number of parties were critical of Pacific's proposed program. In addition, although Pacific complains about the number of messages which must be conveyed, Pacific does not state which messages it would eliminate. The required messages are reasonable based on the privacy interests implicated by Caller ID and other CLASS services and the number of options offered. (See D.92-06-065, mimeo at pp. 48-49.) As pointed out by DRA and TURN, the costs of the CNEP could be significantly lessened if per-line blocking were provided as a default to all customers. However, with per-call blocking as a default for published customers, a thorough education effort is essential to ensure that disclosure of such customers' telephone numbers is the result of informed consent.

We will modify the requirements contained in Ordering Paragraph (OP) 6 as follows. First, we will not require the full CNEP to be extended to all California ratepayers, ~~as~~ stated in OP 6.a. We recognize that this requirement could be very burdensome if only one telephone corporation offers Caller ID. Outside of the areas where CLASS services are offered, the calling party's telephone number will not be disclosed to the called party.[6]

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6. Both the calling and called parties must be served by Signaling System Seven (SS7) before the calling party's telephone number can be transmitted. Furthermore, it is our understanding that, although technically feasible, the applicants will not transmit the calling party's telephone number to the called party unless both the calling and called parties are served by CLASS. We direct the applicants to obtain Commission approval before transmitting any telephone numbers from areas not served by CLASS. If we were to consider such a change, we would want to ensure that the CNEP was extended to all areas served by SS7.

Thus, the intent of the requirement is to protect those persons who travel to areas where CLASS services are offered. We believe that the privacy interests of such persons will be sufficiently protected if they are notified of Caller ID by way of a bill insert. We also believe that this will result in less confusion for customers, and will eliminate information which would be useless to those customers who will not be affected by Caller ID.

Therefore, prior to deploying Caller ID in California, each applicant shall notify all of the customers in its service territory that Caller ID will be offered in specified areas in the state. Such notification shall be provided by way of a bill insert to customers The bill insert information shall explain that Caller ID and other privacy related services are available in certain areas within the applicant's service territory, and that in such areas a calling party's telephone number may be disclosed to a called party, whether or not the calling party subscribes to Caller ID or other privacy related services. The bill insert information shall also state that blocking options are available to prevent disclosure of the calling party's telephone number. Finally, the bill inserts should indicate that customers may call the applicants' 24-hour toll free number for more information about these services, and the local exchange carrier with complaints. Customers should be notified that they may contact the Commission's Consumer Affairs Branch regarding complaints that cannot be resolved with the local exchange carrier. Applicants shall submit the bill insert information to the Commission's Public Advisor for prior review and approval.

Second, we agree with Pacific that it is not the responsibility of local exchange carriers (LECs), such as Pacific, to educate customers about interexchange carrier (IEC) services. Nevertheless, we believe that it would be misleading if the LECs educate customers about blocking options available without informing them that those options may not apply to certain types of calls. We believe a simple statement will be sufficient to inform customers that (1) there is presently no

capability to block disclosure of the calling party's telephone number when making "800" and "900" calls, and (2) that blocking options offered by the LECs may not be effective for interstate calls. This information, to be reviewed and approved by the Commission's Public Advisor, should be sent by bill insert to all customers in the applicants' service territories.

Third, we agree with Pacific that there are inconsistencies in the decision regarding the CNEP requirements for "privacy related services." The decision states that privacy related CLASS services are those services which have the capability of revealing the telephone number of the calling party by means of a video display, audio announcement, or printed on the called party's telephone bill. Nonprivacy related CLASS services do not reveal the number of the calling party to the called party. (D.92-06-065, mimeo at p. 6.) According to this definition, Call Trace is not a privacy related service because this service would reveal the number of the calling party only to law enforcement officers. We will therefore modify the decision to delete Call Trace from the adopted CNEP. Instead, notice and education to consumers regarding Call Trace shall be provided by a bill insert as set forth in Conclusion of Law 19 of the decision. The proposed bill insert and any additional materials regarding Call Trace shall be subject to approval by the Commission's Public Advisor.

Regarding Call Block (also known as Call Screen) and Call Return, if these services are offered with the capability of revealing the calling party's telephone number to the called party by way of a printed message on the bill, or an audio message, then these services shall be subject to the adopted CNEP. This would be the case even if blocked numbers are not revealed. In such circumstances, the services would have essentially the same privacy implications as Caller ID. However, if these services are offered without the capability of revealing the calling party's number to the called party, whether or not

blocked, they would no longer be privacy related services and need not be subject to the CNEP.

Finally, Pacific asserts that the Commission erred in denying its proposed $10.00 nonrecurring service order charge for Call Trace. This issue has been the subject of some confusion. Pacific proposed nonrecurring rates of $5.00 ($6.00 for business) per order for CLASS services, regardless of the number of features ordered at the same time. If features are ordered separately, a separate nonrecurring rate of $5.00 would be charged for each order. Call Trace, however, was not included in this plan. As we understand it, Pacific proposed that Call Trace would have a nonrecurring rate of $10.00, which would apply separate from and in addition to any other nonrecurring rates charged for other features ordered at the same time.

We do not believe a separate $10.00 nonrecurring rate for Call Trace has been justified. However, in rejecting this proposal, it appears that the decision failed to approve any nonrecurring charge for Call Trace. We will therefore modify the decision to authorize a $5.00 ($6.00 for business) nonrecurring charge for Call Trace, which shall be charged in the same manner as Pacific's other nonrecurring rates for CLASS services. In other words, the $5.00 nonrecurring charge for Call Trace shall not be separate from and in addition to any other nonrecurring rates for other features ordered at the same time. However, if Call Trace alone is ordered, Pacific may charge $5.00 for the order.

TURN's Application for Rehearing

TURN contends that the decision errs in failing to make per-line blocking with per-call enabling the default option for all subscribers. Both Pacific and TURN contend that the default should be the same for all customers. While Pacific asserts that the default should be per-call blocking, TURN argues that it should be per-line blocking with per-call enabling. However, as

discussed above, customers with unlisted or nonpublished telephone numbers have demonstrated a greater expectation of privacy in their telephone numbers and should be provided per-line blocking with per-call enabling, or absolute per-line blocking, as a default. Conversely, it is reasonable to provide a less restrictive blocking default, along with extensive customer education, for those customers with published telephone numbers.

TURN also asserts that the approval of Anonymous Call Rejection (ACR) (also known as "Block the Blocker") is premature and without support in the record ACR allows a subscriber to have calls from blocked numbers intercepted before the subscriber's telephone rings. Instead, the central office equipment plays a recorded message informing the caller that the subscriber is unwilling to receive calls from a blocked number. Although, as TURN points out, none of the applications for CLASS services requested authorization for this service, approval of ACR was raised in the direct testimony of the California Bankers Clearing House Association and TURN did have the opportunity to respond in its reply testimony. Moreover, we believe that the record on this issue is sufficient to determine that ACR is not contrary to the constitution, statutes, or the public interest. Therefore, we affirm our approval of ACR. However, in order to ensure that the availability of ACR will not force customers to choose per-call blocking, ACR shall not be offered until per-call enabling is available. At such time, if an applicant wishes to offer ACR, it is directed to file an advice letter requesting this new service in accordance with General Order 96-A.

TURN also alleges that the Decision fails to allow interested parties adequate time to respond to the interim compliance reports which the applicants are required to file 18 months from the date they first provide CLASS privacy related services. (D.92-06-065, OP 6.n.) Given the level of detail to be included in the reports, we have decided that it is reasonable to extend the response period to 60 days.

Conclusion

We will grant a limited rehearing to inquire into the development of a separate code, or other technologies which might accomplish the same purpose, for per-call enabling. In all other respects, good cause for rehearing has not been shown. However, we will modify the decision as discussed above. In addition, we will make a number of modifications to correct clerical and other nonsubstantive errors.

Therefore, **IT IS ORDERED** that a limited rehearing of D.92-06-065 is granted for the purpose of determining when the per-line blocking with per-call enabling will be available. A prehearing conference will be held by the Administrative Law Judge to be assigned for the purpose of setting due dates for prepared testimony and hearing dates. The issues to be addressed in the rehearing are limited to those specifically set forth in this order.

IT IS FURTHER ORDERED that D.92-06-065 is modified as follows:

1. The "Call Trace" heading and the following paragraph on page 7 is deleted and inserted after the heading "Nonprivacy Related Class Services" on page 8.

2. The "Call Trace" heading and description in Table 1 on page 9 is deleted and inserted under the "Nonprivacy Related Services" heading. The list of CLASS Services is renumbered accordingly.

3. The second sentence in the last paragraph on page 20 is modified to read:

> For reasons which we will now elaborate, we have concluded that the privacy interest of the called party with respect to Caller ID is of lesser significance than that of the calling party.

4. In the first line of the first paragraph of the quotation on page 29, "board" is deleted and replaced with "broad".

5. In the last line of the first paragraph, in quotations, on page 30, "fact" is deleted and replaced with "face".

6. The second full paragraph on page 36 is modified to read:

> Applicants contend that the words "on an individual basis" refer to per-call blocking. We believe that this language cannot be interpreted as requiring a specific blocking mechanism. If the Legislature had intended the statute to require per-call blocking, it could have plainly stated this. Because the statute does not state which blocking options are required, it does not preclude us from requiring other, more restrictive blocking options to protect privacy in place of, or in addition to, per-call blocking.

7. In the fourth line from the bottom on page 44, the words "all Californians" should be replaced with "all ratepayers in the areas where privacy related CLASS services are offered".

8. In the first full paragraph on page 45, the words "Call Trace," are deleted.

9. Item no. 1 on page 45 is modified to read:

> Complete information shall be provided to all ratepayers in the areas where privacy related CLASS services are offered. All customers in each applicant's service territory should be notified by bill insert that Caller ID and other privacy related services are available which may result in the calling party's telephone number being disclosed to the called party, whether or not the calling party subscribes to such services. The customers should also be informed that blocking options are available to prevent disclosure of the calling party's telephone number. The bill inserts should indicate that customers may call the applicants' 24-hour toll free number for more information about these services, and the local exchange carrier with complaints. Customers should be

> notified that they may contact the Commission's Consumer Affairs Branch regarding complaints that cannot be resolved with the local exchange carrier. Applicants shall submit the bill insert information to the Commission's Public Advisor for prior review and approval.

10. Item no. 16 on page 47 should be modified to read:

> Consistent with the spirit of PU Code § 2893(d)(3), bill inserts, to be reviewed and approved by the Commission's Public Advisor, should inform all customers in the service territory of each applicant that there is presently no capability to block disclosure of the calling party's telephone number when making "800" or "900" calls.

11. Item no. 17 on page 48 should be modified to read:

> Bill inserts, to be reviewed and approved by the Commission's Public Advisor, should inform all customers in the service territory of each applicant that the blocking options offered by the local telephone companies may not be effective for interstate calls.

12. In the third line from the bottom on page 50, the words "all Californians" are deleted and replaced with the words "all ratepayers in the areas where privacy related CLASS services are offered".

13. In the third line from the top on page 51, the words "all Californians" are deleted and replaced with the words "all ratepayers in the areas where privacy related CLASS services are offered".

14. In the last paragraph beginning on page 55 and continuing on page 56, delete the first four sentences and replace them with the following:

> We believe that an appropriate charge for Call Trace is $5.00 per activation for Pacific and Contel, and $5 00 per month for GTE.

15. After the first paragraph on page 56 (before the first full paragraph), insert the following:

> We do not think that Pacific has justified its request for a $10.00 nonrecurring charge, separate and in addition to any other nonrecurring charge, for Call Trace. Instead, we will authorize a nonrecurring rate of $5.00 ($6.00 for business service) for Call Trace, to be applied in the same manner as Pacific's other nonrecurring service order charges for CLASS services.

16. In the eighth line from the top on page 61, the word "thirty" is deleted and replaced with "sixty".

17. In the fourth line of Finding of Fact No. 7, the word "changes" is deleted and replaced with the word "charges".

18. Finding of Fact No. 48 is modified to read:

> A charge of $5.00 by Pacific and Contel for each activation of Call Trace is reasonable. A cap equal to the charge for two activations from the same calling number in a billing period is also reasonable in connection with Call Trace service provided by Pacific and Contel, as is a cap equal to the charge for five activations from all numbers in the same billing period. A flat monthly charge of $5 by GTE for Call Trace will be reasonable, since GTE is technically unable to currently provide the service on a per-activation basis.

19. A new Finding of Fact No. 48A is inserted following Finding of Fact No. 48:

> Pacific has not justified a $10.00 nonrecurring charge, separate and in addition to any other nonrecurring charge, for Call Trace. Instead, a nonrecurring rate of $5.00 ($6.00 for business service) for Call Trace, to be applied in the same manner as Pacific's other nonrecurring service order charges for CLASS services, is reasonable.

20. In line 3 of Finding of Fact No. 50, delete the word "other" and replace it with the words "nonprivacy related".

21. Conclusion of Law No. 13 is modified to read:

> PU Code § 2893, which requires that we assure ourselves "that every telephone call identification service offered in this state by 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," does not specify the blocking mechanisms required by the statute.

22. A new Conclusion of Law No 19A is inserted following Conclusion of Law No. 19:

> Pacific should be authorized to charge a nonrecurring rate of $5.00 ($6.00 for business service) for Call Trace, to be applied in the same manner as Pacific's other nonrecurring service order charges for CLASS services.

23. Conclusion of Law No. 22 is deleted as unnecessary.

24. The Ordering Paragraphs of D.92-06-065 are modified in accordance with this order and are replaced with the Ordering Paragraphs set forth in Attachment 1 of this order.

25. Consumer Action's motion for late filing of its response is granted.

IT IS FURTHER ORDERED that except for the limited rehearing to address the issues relating to the per-call enabling option, rehearing of D.92-06-065 as modified herein is denied.

This order is effective today.

Dated November 23, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
NORMAN D. SHUMWAY
Commissioners

I will file a written dissent.

/s/ PATRICIA M. ECKERT
Commissioner

ATTACHMENT 1

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Bell (Pacific), GTE California Incorporated (GTE), and Contel of California, Inc. (Contel) are authorized to provide the existing and proposed nonprivacy related Custom Local Access Signaling Services (CLASS) features identified in the applications, on five days' notice, except that the provision of Call Trace shall be subject to the conditions of customer education set forth in this decision. For a limited two year trial period, Pacific, GTE, and Contel are authorized to provide privacy related CLASS services (Call Return, Call Block, and Caller ID) on an interim basis, subject to the protections specified in this order for such privacy related services. Pacific is authorized to provide existing COMMSTAR services in accordance with the terms and conditions of this decision.

a. Tariffs implementing Call Trace shall not become effective until applicants have provided customers notice and education concerning the service, and shall be filed in accordance with the rates and conditions set forth in Conclusions of Law Nos. 19 and 19A.

b. GTE is authorized to file rates for Special Call Acceptance in accordance with Conclusion of Law No. 21.

c. The applicants may file tariffs for the remaining services as set forth in the proposed tariffs in their respective applications.

d. In their tariff filings, the applicants shall include a definition of "emergency service organizations" entitled to default protection of per-line blocking with per-call enabling.

2. The codes used for per-call blocking shall be distinctly different than those for per-call enabling.

3. Prior to offering Call Return, Call Block, and Caller ID service, the applicants shall provide each telephone subscriber with a clear and easily understandable notice informing the subscriber (1) of the blocking option applicable to that party's telephone service, (2) whether that option was determined by choice or by default, (3) of the right of the subscriber to change the blocking option applicable to that subscriber's service one time free of charge, and (4) of the nature of the available blocking options to which the subscriber might wish to change.

4. Prior to offering Call Return, Call Block, and Caller ID service, the applicants shall ensure that there is a simple means of identifying the nature of the blocking option applicable to a particular telephone and that the public is fully informed of this means. The applicants should attempt to agree on the best means from the consumer's perspective, taking into account simplicity and reliability, and should attempt universal deployment of that means and a wide-ranging effort to publicize it. Information regarding the means of identifying the blocking option applicable to a particular telephone shall be included in the customer notification and education program.

5. Prior to offering Call Return, Call Block, and Caller ID service, the applicants shall widely publicize the fact that coin phones and certain other configurations, at least for the present, will not be capable of utilizing blocking, and shall undertake to ensure that all coin phones under their control have affixed to them a notice informing the user that blocking of the calling parties' number is not currently possible from that phone.

6. Each of the blocking options shall be provided free of charge to the subscriber for the initial selection (whether by affirmative choice or by default) and for one additional change of blocking option, and the applicants shall take steps to assure that any such change order is processed and effected expeditiously.

7. Call Return, Call Block, and Caller ID service shall not be provided until the applicants have filed (and served) revised customer notification and education plan(s) to be reviewed by CACD, in consultation with the Public Advisor and, if necessary, an independent consultant chosen by CACD and paid for by applicants, and such plan(s) shall not be implemented until approved by the Commission. Subsequently, such privacy related CLASS services shall not be provided until the applicants have made a showing in this proceeding, approved by Commission order, indicating compliance with the adopted customer notification and education requirements. An appropriate customer notification and education plan for the privacy related CLASS services must conform to the following requirements:

a. Complete information shall be provided to all ratepayers in the areas where privacy related CLASS services are offered. All customers in each applicant's service territory should be notified by bill insert that Caller ID and other privacy related services are available which may result in the calling party's telephone number being disclosed to the called party, whether or not the calling party subscribes to such services. The customers should also be informed that blocking options are available to prevent disclosure of the calling party's telephone number. The bill inserts should indicate that customers may call the applicants' 24-hour toll free number for more information about these services, and the local exchange carrier with complaints. Customers should be notified that they may contact the Commission's Consumer Affairs Branch regarding complaints that cannot be resolved with the local exchange carrier. Applicants shall submit the bill insert information to the Commission's Public Advisor for prior review and approval.

b. Additional efforts shall be made in the new areas where the services will be offered, as they are added by the local exchange carriers.

c. The consumer education campaign shall be most intensive in the first six months and then ongoing for as long as the services are being offered.

d. All utility consumer education efforts shall use the same terminology and be as similar as possible.

e. Customer messages ordered by this decision shall not be sales messages. They shall provide objective, neutral information on both the services themselves and how consumers can make informed choices about these changes.

f. Written messages shall state that they are provided by the local exchange carrier as required by the Commission.

g. The messages shall be provided in many languages, so as to reach all ratepayers. The media used in the plan shall include, but not be limited to, the following: bill inserts, white pages information, brochures, sales representative scripts, and paid advertising.

h. The plan shall make extra efforts to reach groups with special needs (such as seniors, children, the limited English speaking, the disabled, those with unlisted and nonpublished numbers).

i. The utilities shall establish a 24-hour toll free number for consumers to get information about the services and how they are used.

j. The messages shall tell consumers whom to contact if they have complaints about the way a service is being implemented (first the local exchange carrier, then the Commission's Consumer Affairs Branch).

k. Ordering per-line blocking or per-line blocking with per-call enabling shall be as simple as possible. A request form shall be included with the customer information.

l. Consistent with PU Code § 2893(c)(1), the applicants shall not offer the services until more than 30 days after they have notified their customers of the nature of the services they propose to provide.

m. Consistent with the spirit of PU Code § 2893(d)(4), the applicants shall send bill insert information, to be reviewed and approved by the Commission's Public Advisor, to all customers in their service territories stating that there is presently no capability to block disclosure of the calling party's telephone number when making "800" or "900" calls.

n Applicants shall send bill insert information, to be reviewed and approved by the Commission's Public Advisor, to all customers in their service territories stating that the blocking options offered by the local telephone companies may not be effective for interstate calls.

8. The applicants offering any privacy related CLASS services shall provide the following information to CACD in a periodic compliance report to be filed with the Director of CACD every six months after the services are offered:

a. Number of subscribers to each service.

b. Number of subscribers choosing per-call blocking.

c. Number of subscribers choosing per-line blocking.

d. Number of subscribers choosing per-line blocking with per-call enabling.

e. Number of subscribers assigned default per-line blocking with per-call enabling.

f. Number of subscribers assigned default per-call blocking.

g Number of subscribers ordering a change from initial blocking option, broken down by option changed from and option changed to

h. Number of subscribers with unlisted and nonpublished numbers with a breakdown of those subscribers by choice of blocking option.

i. Number of subscribers with unlisted and nonpublished numbers assigned default per-line blocking with per-call enabling.

j. Number and nature of complaints concerning the service.

9. In developing the customer notification and education plan, the applicants shall consult extensively with community and consumer leaders; applicants shall hold workshop(s) which will be open to all those interested, to review and comment on the plan prior to filing; we expect that applicants will modify their draft to reflect comments received, prior to filing. The plan shall not be implemented until approved by the Commission

10. Call Return, Call Block, and Caller ID service shall not be provided by an applicant until the applicant has made a showing, approved by the Commission, that the applicant has notified all of its customers of the nature of the service and the means by which they can protect their privacy, consistent with the provisions of this order.

11. Applicants shall contract with a reputable independent public opinion survey company free of conflict of interest to monitor the ongoing level of consumer awareness and understanding that has been attained during the period extending from the date of this decision to the date of expiration of the two-year trial period established herein.

12. Should we find that the utilities' implementation proves to be inadequate for any reason, we may supplement the customer notification and education plans with the program administered by CACD.

13. We direct CACD to closely monitor any complaints of "redlining" or unlawful discrimination through the use of Caller ID service, and to bring the problem to our attention along with recommendations as to how any such practices can be eliminated or controlled as necessary.

14. Call Trace shall be the subject of bill insert information and instruction to consumers.

15. GTE shall not offer Call Return until it has made the modifications to its hardware and software systems, including its billing system, necessary to suppress the calling parties' billing number on Call Return calls.

16. The privacy related CLASS features other than Caller ID (Call Return and Call Block) are authorized subject to the limitation that the calling party's number is not delivered or announced, under any circumstances, to the call recipients. Under these circumstances, the services are nonprivacy related services and are thus not subject to the customer notification and education program set forth in this order.

17 Final rates for the existing and proposed features identified and authorized in this decision will be established based upon the determinations made in the Implementation Rate Design (IRD) phase of the Commission's Alternative Regulatory Framework proceeding, Investigation (I.) 87-10-033, regarding unbundling, imputation, nondiscriminatory access, and monopoly building blocks (MBBs).

18. Within 90 days after issuance of the decision in the IRD phase of the Commission's Alternative Regulatory Framework proceeding, I.87-10-033, regarding unbundling, imputation, nondiscriminatory access, and MBBs, Pacific, GTE, and Contel shall file advice letters, with appropriate rates, for the services authorized by this decision.

19. The first tracking report, as described in Finding of Fact 60, shall be submitted to the Commission one year after commencement of the proposed services.

20. Within 18 months of the date that the applicants first provide privacy related CLASS services, they shall serve and file with the Docket Office the interim compliance report required by this decision. This report shall address in detail (1) the level of usage of the services, (2) the effectiveness of the privacy protections and education programs implemented under this decision, (3) the nature of the public response to the provision of the services, (4) whether there have been new developments

which militate in favor of discontinuance or alteration of the services, and (5) any other matter relating to the services which the applicant desires to call to the Commission's attention. A copy of that report shall be served on all parties to this proceeding. Parties shall have 60 days in which to file responses.

21. The Motion of Pacific to strike portions of the opening and closing briefs of the Division of Ratepayer Advocates is granted.

22. The Motion of MCI Requesting Declaratory Ruling or Other Relief is denied.

23. The Motion of Toward Utility Rate Normalization requesting notice of recent decisions of other Commissions relating to Caller ID and Pacific's related motion, are denied.

24. The applications are granted, in part, and denied, in part, as set forth above.

A.90-11-011, et. al.
D.92-11-062

Commissioner Patricia M. Eckert, Dissenting:

On reconsideration, I believe the majority opinion in the instant proceeding errs in its interpretation of Public Utilities Code Section 2893. This statute provides that every telephone corporation that offers a caller identification service "shall allow a caller to withhold display of the caller's telephone number, on an individual basis," from the telephone of the called party. I believe that the intent of the statute is to require per-call blocking.

Section 2893 specifically provides that a caller must be able to withhold display of the caller's number "on an individual basis". I agree with the conclusion of the majority in Decision 92-06-065 that this language is ambiguous. The phrase "on an individual basis" is clearly subject to more than one interpretation. According to established rules of statutory construction, when a statute is theoretically capable of more than one construction, the statute must be interpreted according to the meaning that most comports with the intent of the Legislature, (Moyer v. Worker's Comp. Appeals Bd. (1973) 10 Cal.3d 222, 232). While the legislative history is not entirely clear in this case, in contrast to the view of the majority, I am convinced that the intent of Section 2893 was to require the provision of per-call blocking. I reach this conclusion by reference to the legislative history of that section, as well as the general telecommunications policy of the State, as expressed by the Legislature in Public Utilities Code Section 709.

Section 1(b) of 1989 Statutes, chapter 483, which enacted Section 2893 contains the express legislative finding that "[t]o exercise their right to privacy, telephone subscribers must be able to limit the dissemination of their telephone number to the persons of their choosing." As Contel of California argued in its response to the petition for rehearing: "[t]his is possible

only with per-call blocking, clearly what the Legislature had in mind." (Response at p. 6) I agree with the positions of Pacific and Contel that the language of the statute should be interpreted as requiring per-call blocking.

An analysis by the Senate Committee On Energy and Public Utilities, dated July 17, 1989, lends further support to this interpretation. This analysis cites the importance of balancing the right to privacy with the introduction of new telecommunications technology. To properly balance these interests, Section 2893 must be viewed in conjunction with Public Utilities Code Section 709, enacted in 1987. In Section 709 the Legislature declared California's telecommunications policy to include "the development and deployment of new technologies " and "the availability of a wide choice of state-of-the-art services." I believe that the majority opinion fails to construe Section 2893 in a way which furthers the policy of Section 709.

In my view an approach which places greater emphasis on Section 709 is more consistent with the fundamental rule of statutory construction that in ascertaining legislative intent, a statute should be construed with reference to the whole system of law of which it is a part, so that all may be harmonized and have effect, (See Clean Air Constituency v. California State Air Resources Board (1970) 11 Cal.3d 801). In the construction of a particular statute, all acts relating to the same subject should be read together as if one law, even though they may have been passed at different times, (See Kahn v. Kahn (1977) 68 CA.3d 372). In my opinion the majority's view of Section 2893 would thwart the policy of Section 709, by placing restrictions on Caller ID and similar services which make these services impracticable to offer.

In view of the above, upon reconsideration, I conclude that the statute requires that the Commission adopt per-call blocking. By virtue of my conclusion that the Legislature expressly intended to direct the Commission to impose per-call blocking, I believe that the Commission is now prohibited from imposing more stringent blocking mechanisms. As stated by the court in Pacific Tel. and Tel. Co. v. Public Utilities Commission (1965) 62 Cal. 2d 634, 653, "[w]hatever may be the scope of regulatory power

under [section 701], it does not authorize disregard by the commission of express legislative directions to it." An analogous situation was presented in Southern California Gas Company v. Public Utilities Commission 24 Cal.3d 653, 657 (1979) in which the California Supreme Court annulled a decision by the Commission which imposed a mandatory financial assistance program on energy utilities while a similar program had been permissive under the terms of the Home Insulation Assistance and Financing Act. The court ruled that the express authorization of a permissive program impliedly precluded any authority to impose a mandatory program.

As a result of my conclusion that the Commission must adopt per call blocking, I also find persuasive Pacific's argument that by requiring more restrictive blocking options, the Commission has violated Article III, Section 3.5 of the California Constitution. I believe that by asserting that Caller ID with per-call blocking does not satisfy constitutional safeguards, the majority has implicitly declared Section 2893 to be unconstitutional. Such an interpretation directly conflicts with Article III, Section 3.5 of the California Constitution. That article expressly states, in pertinent part, that:

> "An administrative agency ... has no power ... to declare a statute enforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional."

In my opinion, the Legislature has set the standard in Section 2893 and the Commission, as an administrative agency, must comply with it. Accordingly, I dissent from the majority's position.

/s/ Patricia M. Eckert

PATRICIA M. ECKERT
Commissioner

November 23, 1992
San Francisco, California