

SENATE BILL REPORT

HB 1489

AS REPORTED BY COMMITTEE ON ENERGY & UTILITIES,
MARCH 28, 1991

Brief Description: Adding limited new services to the current common carrier exceptions to the privacy act.

SPONSORS: Representatives H. Myers, May, Grant, Miller, Ebersole, Ballard, Belcher, Casada, Leonard, Hine, Bray, Appelwick, Hochstatter, R. Meyers, Morris, Cooper, Rayburn, Schmidt, Broback, Neher, Wynne, Betrozoff and Winsley.

HOUSE COMMITTEE ON ENERGY & UTILITIES

SENATE COMMITTEE ON ENERGY & UTILITIES

Majority Report: Do pass.

Signed by Senators Thorsness, Chairman; Saling, Vice Chairman; Nelson, Patterson, Roach, Stratton, and Sutherland.

Minority Report: Do not pass.

Signed by Senators Jesernig and Williams.

Staff: Dave Monthie (786-7198)

Hearing Dates: March 26, 1991; March 28, 1991

BACKGROUND:

Technological changes have enabled telecommunications companies to offer customers new services that utilize the ability to identify the number of a person making a call. Such services include call tracing, call rejection, and caller identification, or "Caller ID." Caller ID utilizes a visual display on or with a telephone that identifies to the person being called the name and phone number or possibly other identifying information (such as location) of the person making the call. The technology is also sometimes called "Automatic Number Identification," or "ANI."

Concern has arisen in many states over the possible misuse of the caller identification service, its potential invasion of the caller's privacy, and its potential use in compiling large databases. Advocates of the service point to its potential for protecting the called person's privacy, as well as its utility to a business by quickly identifying a current or potential customer or client. This type technology has demonstrated its usefulness in "enhanced 911" emergency services, where the address of the person making the call is shown on a display unit at the phone of the emergency service receiving the call.

States have taken a variety of approaches to the privacy issue as it is raised by caller identification. Some states have permitted phone companies to offer the service without requiring the companies to allow the caller to "block" the display of their phone number or other information. Other states, such as California, have required by statute that, at a minimum, the companies offering the service provide customers with individual call blocking. Many states have policies under development.

Washington State's Privacy Act, contained in Title 9 RCW, generally prohibits the interception of private communications by telephone, telegraph, radio, or private conversations without the consent of all parties to the conversation. There are a number of exceptions to this general rule, including an exception for emergency calls to law enforcement, fire departments, and emergency response personnel.

The Privacy Act also contains a provision exempting a telecommunications company from the prohibitions of the Privacy Act for activities of the company in connection with the construction, maintenance, repair, and operations of the company's services, facilities, or equipment.

Recent decisions by Washington courts have interpreted the state's privacy laws in a fashion that could preclude the use of Caller ID in this state. In one 1987 decision, an appellate court decided that the disclosure of unlisted telephone numbers by a telephone company to law enforcement officers, which was authorized in a tariff approved by the Utilities and Transportation Commission, violated Washington's constitutional right to privacy.

The UTC has been investigating the potential use of caller identification service, and the accompanying privacy issues, since 1989. During the summer of 1990, the commission conducted a series of five public meetings on the issue statewide. Written and oral testimony was taken, and a survey on the use of the service taken on those attending the hearings.

The UTC staff issued a report in October, 1990. It recommended that the commission not accept any tariff that would include a Caller ID service. The staff cited as its principal reasons: (1) the state constitutional right to privacy, which is similar to Pennsylvania's, where an appellate court found that the proposed use of Caller ID, even with call blocking, was unconstitutional; (2) potential violations of the privacy provisions of Title 9 RCW; (3) other potential statutory objections under state wiretapping laws; (4) public policy concerns regarding the business use of the service; and (5) the opportunity to address some of the privacy concerns in a pending complaint filed with the UTC on the alleged unauthorized disclosure of unlisted telephone numbers.

The UTC commissioners issued a letter to persons interested in these issues in November, 1990. In the letter, the

commissioners rejected the staff recommendations because they did not believe that the evidence received in the hearings was conclusive as to what public policy should be, and because they believed it would be possible to craft a tariff that would permit caller identification service while offering adequate protection of citizens' privacy. They noted existing legislative direction to the UTC to provide a diversity of telecommunications services. They suggested that the best initial approach to the issue might be to institute a trial period during which various approaches could be tested, after which all parties could evaluate whether blocking options are effective, whether availability of widespread blocking decreases the value of the service, and whether there is a real market for the service.

The commissioners' letter concluded with the statement that any telecommunications company proposing to offer the service should work closely with interested parties to develop a proposal that would best meet the policy and legal issues raised.

SUMMARY:

Section 9.73.070 of the Washington Privacy Act is amended to provide that Chapter 9.73 does not apply to any common carrier automatic number, caller, or location identification service, including an enhanced 911 emergency service, that has been approved by the Washington Utilities and Transportation Commission.

Appropriation: none

Revenue: none

Fiscal Note: none requested

TESTIMONY FOR:

These are useful and desirable technologies. Having caller ID will protect people in their homes from unwanted telephone calls. The UTC has full authority to require appropriate protection of people's privacy if and when it approves the use of such services. Law enforcement will be helped by the availability of the technology, particularly as part of enhanced 911 emergency services. The legislation does not authorize anything, but removes a legal cloud over such services.

TESTIMONY AGAINST:

The Legislature should not delegate to the UTC policy decisions on how to protect people's privacy that these services are threatening. Crisis lines and shelters serving a variety of individuals in need, like AIDS victims and battered women, may be affected if callers or volunteers no longer have anonymity when they use the phone. It will be costly for such groups to advertise the fact that they do not have caller ID. Businesses providing confidential services,

such as medical clinics, may be violating confidentiality by telephoning a patient or client and having someone else answer the phone. The privacy issues should be addressed as part of a comprehensive look at telecommunications and privacy.

TESTIFIED: Bob Bratton, GTE NW (pro); Larry Kenney, Washington State Labor Council (pro); Carol Monohon, WUTC; Mary Pontavolo, Domestic Abuse Women's Network (con); Joella Hartness, Domestic Abuse Women's Network (con); Kenneth Leavens (pro); Paula Casey (pro); Dawn Larsen, Washington Coalition of Sexual Assault Programs (con); Tom Walker, US West (pro); Tim Erickson, State Patrol (pro); Randy Hamilton, Washington Association of Sheriffs and Police Chiefs (pro); Ann Simons, Washington Women United (con); Kay Godefroy (pro); Joan Gaumer, Privacy Fund (con); Mike Patrick, Washington State Council of Police Officers (pro); Yvonne Spies, Planned Parenthood Affiliates of Washington (con)