STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

February 26, 2004 **Agenda ID #3283**

TO: PARTIES OF RECORD IN CASE 02-11-032

Enclosed is the draft decision of Administrative Law Judge Reed. The decision will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at http://www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ Angela K. Minkin
Angela K. Minkin, Chief
Administrative Law Judge

ANG: avs

Decision **DRAFT DECISION OF ALJ REED** **(Mailed 2/26/2004)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Stuart L. Posselt, Complainant, vs. Pacific Bell Telephone Company, Defendant.	Case 02-11-032 (Filed November 7, 2002)

OPINION DISMISSING COMPLAINT

Summary

This decision dismisses the complaint of Stuart L. Posselt (Posselt) against Pacific Bell Telephone Company, doing business as SBC California, for failure to state a cause of action or set forth a violation of any statute, Commission order, rule or regulation. Case 02-11-032 is closed.

Background

On June 15, 2002, Posselt contacted SBC California's residence service center to report that his Caller ID Complete Blocking service was not blocking all outbound telephone calls. He stated that his telephone number was revealed to a telemarketer when he returned a call to an "866" number to request removal from the telemarketer's list. He contends that SBC California's offering of a service labeled as "Caller ID Complete Blocking" is intentionally erroneous and misled him into believing that no one he called received any information about him.

Citing Webster's New World Dictionary in the complaint, Posselt argues that the definition of "complete" is "whole" and "thorough," which does not imply any exception. Further, he asserts that given his selection of "Caller ID Complete Blocking" service, SBC California's failure to disclose who obtains information about him when he calls is an intentional invasion of the privacy to which SBC California acknowledges that he has a right. Posselt states that he has twice been the victim of identity thieves; consequently, he takes privacy very seriously. As relief, he asks to actually have " 'Caller ID Complete Blocking' with the exception of 911 as offered, ordered and as stated" on his bills. Posselt believes that this matter can be resolved without hearings.

In response to Posselt's initial contact, SBC California reported that one of its service representatives explained to him that Caller ID Complete Blocking prevents a customer's name and number from being transmitted on all outbound calls with the exception of those calls made to 911, 800, 888, and 900 numbers. After he filed an informal complaint at this Commission, SBC California advised Posselt by letter that, "Caller ID Complete Blocking prevents the transmission of your telephone number on all outbound calls, with the exception of 911, 800, 888, 877 and 866 number calls."[1]

[1] July 18, 2002 Letter to Stuart Posselt (italics in original), attached to SBC California's Answer to Complaint as Exhibit A.

In its answer to the formal complaint, SBC California denies any wrongdoing and maintains that it "is in compliance with all applicable statutes, government regulations and decisions relevant to Caller ID Complete Blocking." (SBC California Answer at 2.) It also states that pursuant to its statutory and regulatory obligations, SBC California provides a quarterly informational newsletter to all customers as well as an annual February bill insert entitled, "What's Available" to residential customers.[2] Both documents inform customers about the numbers that are the exceptions to Caller ID Complete Blocking.

SBC California asserts that these ongoing notifications meet its statutory and regulatory mandates for protecting privacy with 800, 888, and 900 numbers. Accordingly, it argues that this complaint should be dismissed for failure to state a cause of action because the complaint "does not set forth any act or thing done or omitted to be done, which is claimed to be in violation of any provision of law or any order or rule of the Commission." Public Utilities (Pub. Util.) Code § 1702 and Rule 9 of the Commission's Rules of Practice and Procedure. (SBC California Answer at 5.) SBC California considers the request for relief specified in the complaint, or any other relief, to be inappropriate. It also agrees that hearings are not necessary.

A prehearing conference was held on February 7, 2003. Thereafter, SBC California provided copies of the applicable tariffs to the assigned

[2] SBC California identified copies of the documents as Exhibits B and C, respectively, and appended them to its Answer.

Administrative Law Judge (ALJ) and the complainant. No evidentiary hearings were held.[3]

Discussion

Pursuant to Pub. Util. Code § 2891.2, telephone corporations must annually notify their subscribers that use of an "800" or "900" telephone number may result in the disclosure of a subscriber's telephone number to the called party. The documents submitted with SBC California's response indicate that it is in compliance with Section 2891.2.

Posselt alleged that SBC California did not fully inform him that Caller ID Complete Blocking service did not prevent his telephone number from being revealed to called parties at "800" and "900" numbers. Regarding the service, the bottom of the telephone bill that he attached to his complaint states:

> Caller ID Complete Blocking prevents your name and number from being sent to the person or business you are calling. To display your name and number on a call, press *82 (1182 on rotary phones) before dialing.

However, SBC California submitted copies of its quarterly newsletter and annual bill insert that notify customers of the numbers that the Complete Blocking service does not mask from automatic number identification (ANI).[4]

While Posselt has indicated that he does not remember either being told about the exception numbers by SBC California's customer service representatives or having received anything included with a telephone bill

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[3] Pursuant to Pub. Util. Code § 1701.1 and Rule 6.6, the rules and procedures of Pub. Util. Code § 1701.2, including the 12-month timeline, do not apply in the absence of an evidentiary hearing.

[4] The technical term for caller identification.

detailing the limitations of the service, he has also indicated that he tends not to read the additional pages surrounding the actual bill. Moreover, he asserts that it is the specific name of the service upon which he has relied and by which he has felt most deceived. He maintains that by calling the service Complete Blocking, SBC is offering a customer the ability to keep the caller's number and other personal data[5] concealed from all called parties.

SBC California has stated that there is no present capability to block the communication of the calling party number from a called party's automatic number identification process inherent in 800 series and 900 series telephone numbers.[6] It also indicates that Caller ID Complete Blocking is titled as such to distinguish it from Caller ID Selective Blocking service. SBC Tariff A5.5.4.10C.19 and 21 state:

> Selective Blocking allows customers to block the delivery of their name and telephone number on a per call basis. Customers may control the display of their name and telephone number by dialing *67 (1167 on rotary dial phones) before dialing the telephone number they are calling.
>
> Complete Blocking (* 82) allows customers to have the Utility block the delivery of their name and telephone number on all calls except those in which they elected to have their name and number delivered. Complete Blocking will have the capability of allowing customers to unblock their name and telephone number on a call by call basis by dialing (*82) (1182 on rotary phones) before dialing the telephone number of the

[5] Such as, name and address.

[6] Prehearing Conference Transcript at 9, lines 20-25 (February 7, 2003).

> called party. By dialing *82, the presentation status is changed to public for that specific call.[7]
>
> When either blocking option is used, both the name and telephone number of the calling party will not be identified when using Caller ID or any feature with a pre-selected list capability. Name and number blocking do not operate separately. Blocking does not affect the operation of Call Trace, 9-1-1, 800 or 900 service.[8]

According to the tariff, Complete Blocking prevents the transmission of a subscriber's telephone number on all phone calls (except 911 and national 800, 888 and 877 number calls) from that number,[9] while Selective Blocking enables the subscriber to decide with each outgoing call whether the subscriber wishes to prevent transmission by pressing *67[10] before dialing. While it appears that a customer, uninformed about the characteristics of Caller ID Complete Blocking service and/or relying on the former brief description on the bill, could assume that the service would block a telephone number from any and all numbers called, the widely distributed literature describing the service[11] details the limits of the blocking.

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[7] SBC Network and Exchange Services Tariff A.5.4.10C.19.

[8] SBC Network and Exchange Services Tariff A.5.4.10C. 21.

[9] The subscriber may remove the blocking by pressing *82 (or dialing 1182 on a rotary phone) before dialing a number.

[10] Alternatively, the customer may dial 1167 on a rotary phone. Selective Blocking also cannot be utilized with 911, or national 800, 888 and 877 phone numbers.

[11] Documentation supplied with the bill and separately, such as the SBC website. Official Notice is given to the Caller ID Blocking descriptions that appear under the fall 2003 "Terms and Conditions" section of the SBC California residential bill and state: "CALLER ID SELECTIVE & COMPLETE BLOCKING: Caller ID sends your name and telephone number to the person or business being called. Selective Call Blocking service allows you to block this information from being displayed to the party being

Footnote continued on next page

The Commission-mandated newsletter[12] advises customers that when they call 900 numbers or 800 and 888 toll-free numbers, the called party may be able to receive and display telephone numbers through ANI. With ANI, there is no way to prevent a called party from identifying customers' numbers during calls. Thus, the newsletter suggests that customers wanting to keep their phone numbers private should use a company's regular toll number instead of the toll-free number, call from a payphone, or if using the toll-free number, request that the company not give the caller's number to phone solicitors.

We find no support for the allegation that SBC California intended to mislead or confuse customers with the name of the service. Consequently, we deny this complaint, and dismiss it for failure to set forth a cause of action or violation of a statute, Commission rule, order, or regulation. At the same time, we urge SBC California to continue to be as informative as it can about the limitations of caller identification blocking.

Categorization

We confirm the categorization of this case, in the Instructions to Answer, as an adjudicatory proceeding but conclude that hearings are not necessary.

Assignment of Proceeding

Carl Wood is the Assigned Commissioner and Jacqueline A. Reed is the assigned ALJ and the Presiding Officer in this proceeding.

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called by dialing *67 (1167 from rotary phone) before placing the call. Complete Blocking may be ordered to block your name and number from being displayed on all out-going calls, except those that you elect not to be blocked. With this option, calls may be unblocked by dialing *82 (1182 from rotary phones). Calls to 911, 800 or 900 numbers will not be blocked. There is no monthly service charge for either of the services."

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

Findings of Fact

1. A prehearing conference was held on February 7, 2003; no evidentiary hearing was held.

2. Complainant Stuart L. Posselt ordered Caller ID Complete Blocking service from SBC California for his residential telephone number.

3. Complainant's monthly telephone bill reflects that SBC California placed Caller ID Complete Blocking service on his residential telephone line.

4. SBC California offers Caller ID Complete or Selective Blocking service without additional charge to the customer.

5. Complainant appended copies of SBC billing statements to his complaint, at the bottom of which appeared the statement: "Caller ID Complete Blocking prevents your name and number from being sent to the person or business you are calling. To display your name and number on a call, press *82 (1182 on rotary phones) before dialing."

6. SBC California has stated that there is no present capability to block the communication of the calling party number from a called party's automatic number identification process inherent in 800 series and 900 series telephone numbers.

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[12] Attached to SBC's Answer as Exhibit C: SBC Pacific Bell Connections, Fall 2002.

7. SBC submitted copies of a July 2002 letter describing Complete Blocking Caller ID service to complainant, a quarterly informational pamphlet, and an annual newsletter, all of which specified the 911, 900 and 800 numbers that could not be blocked from Automatic Number Identification.

8. Official Notice is taken of the current SBC California residential billing statement, which notes under the "Terms and Conditions," that: "Calls to 911, 800 or 900 numbers will not be blocked."

Conclusions of Law

1. SBC California offers and provides Caller ID Complete Blocking service in accordance with its Network and Exchange Services Tariff A5.5.4.10C. subsections 19 and 21.

2. Pursuant to Pub. Util. Code § 2891.2, SBC California's 2002 annual newsletter notifies customers that their telephone numbers cannot be blocked from called parties at 800 and 900 numbers.

3. SBC California's designation of the name "Complete Blocking" to the blocking option that most broadly conceals the calling party's phone number from the party called, and to distinguish the service from Selective Blocking, does not demonstrate an intent to mislead or confuse customers.

4. This complaint should be dismissed because SBC California's offering and provision of Caller Id Complete Blocking service does not violate any statute or Commission order, rule, or regulation.

5. An evidentiary hearing is not necessary.

6. This order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The complaint of Stuart L. Posselt against Pacific Bell Telephone Company, doing business as SBC California, is dismissed for failure to set forth a cause of action or a violation of any statute, Commission order, rule or regulation.

2. Case 02-11-032 is closed.

This order is effective today.

Dated _____, at San Francisco, California.