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The communicative processes of regulation: A study of state commission initiatives on calling line identification services

Mukherjee, Roopali, Ph.D.
The Ohio State University, 1994

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THE COMMUNICATIVE PROCESSES OF REGULATION:
A STUDY OF STATE COMMISSION INITIATIVES ON CALLING LINE IDENTIFICATION SERVICES

DISSERTATION
Presented in Partial Fulfillment of the Requirements for the Degree Doctor of Philosophy in the Graduate School of the Ohio State University

By
Roopali Mukherjee, B.S.L., M.A.

* * * * *

The Ohio State University
1994

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Department of Communication
To
Sandeep and Sanjay
ACKNOWLEDGMENTS

I am indebted to Dr. Rohan Samarajiva for nurturing me intellectually and being my advocate in important ways. I thank Dr. Joseph Foley, Dr. Josina Makau and Dr. Douglas Jones for their questions, and Dr. Frank Collins and Dr. Don Cegala for their support. I am grateful to Michael Runkle, Betty Moeller, and Peg Allemang who helped make the department a place of refuge and support, and allowed me to take advantage of their generosity often.

Foremost among my influences in India are my parents, Tapan Kumar and Kalpana Mukherjee, who remain my most cherished educators. From my brother, Sandeep Mukherjee, I have learnt the importance of dreams and that pursuing them is the point. I am grateful for his example and friendship. I also thank Gitanjali Ghate, Sudnya Athalé, Chandana Mukherjee, Vimala Menon, Madhur and Raja Mathur, Dattu Advani, Don and Anjali Morris, Alok Saxena, Shantanu Haldar, Urvashi Pitre, Ravi Krishnamurthy and Ajit Dodani, who each in their own ways influenced and cheered my decision to attend graduate school in the U.S.

At the Illinois Commerce Commission, I thank Dr. Eric Schlaf for his kindness through my comma-traumas and other agonies; Charlotte TerKeurst, Doug Low, Dr. Tom Kennedy, Dr. Tony Visneski, and Dr. Karl McDermott for their votes of confidence; Peggy Rettle and Mike Starkey, who
helped me find my feet at the Commission; Chuck Spear for his generous computer assistance; and Christine Westerlund, fabulous book babe, for accommodating my requests.

My experience at Ohio State, both academic and personal, has been enriched by a number of exceptional individuals. I thank Sanjay Gadkari, my dearest friend and the most generous person I know, who has loved me through our redefinitions and despite our differences. I am indebted to Priya Jaikumar Mahey for supporting me emotionally and intellectually; to Anu Prakash for being family in so many ways; to Ursula Maier-Rabler for her uncontainable spunk and for sharing her home with me; to Kellie Hay for indulging my screams, moods and over-indulgences and for inspiring my personal liberation; to Arjun Mahey, who is predominantly responsible for helping me confront my theory demons; to Patrick Hadley for conscientizing me about the injustice; to Peter Shields for everything he has taught me so gently; to Tom Schumacher, who has pointed me in fascinating new directions; to Poonam Pillai, who arrived at Ohio State much too late and yet helped greatly to put this effort in perspective; to Linda Cooper for being patient through my run with the wolves; to Susan Kline, Brenda Dervin and Tidiane Gadio, who have asked critical questions of this dissertation; to Sujatha Gamage for Friday Group; to Rich Dicenzo for including me in the circle; to T.S. Ramesh and Sharada Krishnamoorthy for their support and friendship; and to Kim Barnett Gibson, who welcomed me into her home every holiday. Finally, I thank my students from whom I have learnt a great deal about myself.
### VITA

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<td>1987</td>
<td>B.S.L., University of Poona, India</td>
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- Telecommunications Policy and History: Dr. Joseph M. Foley
- Communication Theory: Dr. Josina Makau
- Administrative Regulation: Dr. Douglas N. Jones
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<td>C&amp;P Tel.</td>
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<td>Common Channel Signaling System 7</td>
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<td>CLASS²m</td>
<td>Custom Local Area Signaling Services</td>
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<td>PUCO</td>
<td>Public Utilities Commission of Ohio</td>
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<td>Regional Bell Operating Company</td>
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<td>Transaction Generated Information</td>
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<td>TTGI</td>
<td>Telecommunication Transaction Generated Information</td>
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<td>WUTC</td>
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CHAPTER I
INTRODUCTION

Overview

A number of inter-related telecommunication privacy concerns have gained prominence on regulatory agendas during the past few years. Regulatory initiatives addressing these concerns are notable because their inclusion on state policy agendas is a relatively recent development. This dissertation focuses on the rise in regulatory attention to telecommunication privacy issues raised in proceedings on Calling Line Identification (CLID)—commonly referred to as Caller ID—services. The circumstances of these initiatives are examined and trends are identified. This study provides insights into the process of policy-making, and enables evaluation of existing theories of regulatory behavior.

This chapter describes the regulatory and judicial record on telecommunication privacy issues. There is considerable disagreement over the existence of a constitutional "right" to privacy and inconsistency in adjudicatory treatment of various intrusions of privacy. Sociologists and communication scholars have conceptualized privacy by systematizing "rules" governing social interactions and theorizing the relationship between privacy and the "self." The chapter explicates some of these efforts at defining the complex privacy concept.
Next, the chapter briefly discusses traditional regulatory mandates in that they do not include privacy protection as a basic policy objective. As a result, regulators have generally not demonstrated a strong interest in privacy issues. However, the state regulatory record of recent years shows that conflicts over privacy have received considerable attention from agencies. State regulatory behavior in response to CLID services is an example of this concerted nationwide attention and action. The seven-year nationwide record on CLID proceedings reflects a number of trends. These trends enable comment on the nature and circumstances of regulatory agenda-setting and policy diffusion. Identifying and explaining trends in the case of CLID, the dissertation articulates a communicative conception of regulation.

Problem Statement

(i) Privacy in the Law

At the present time, there is a long-standing and highly-contested judicial definition of "the right to privacy." Numerous commentaries discuss the historical development of the right to privacy. Before legal sanctions were established, intrusion upon personal privacy was viewed as an issue of "personal honor."¹ "An invasion of a man's [sic]

private life would [have been] outside the boundaries of good taste or discretion rather than of the law."²

Others argue that the notion of social repute was closely associated with privacy. "Reputation, or the estimation in which a person is held by other men of the community with regard to a principal social value (and every community arranges social values on a scale of its own), was among the very first forms of individual property. While of no use to anyone else, it was the most valuable thing to each individual."³ Preceding these commentaries by centuries, Iago proclaimed in William Shakespeare's tragedy Othello,

Good name in man and woman, dear my lord,
Is the immediate jewel of their souls:
Who steals my purse steals trash; 't is something, nothing;
'T was mine, 'T is his, and has been slave to thousands;
But he that filches from me my good name
Rob me of that which not enriches him,
And makes me poor indeed.⁴

The most devastating form of lawlessness, therefore, was an attack upon reputation. Closely allied to an attack upon reputation was the intrusion of privacy.⁵

A crucial transformation in the legal status of "the right to privacy" is believed to have occurred following the publication of an impassioned indictment of the increasing intrusions of personal privacy made possible by

² O'Connor, "The right to privacy in historical perspective," 103.
⁴ Shakespeare, W., Othello, Act III, Scene iii, Line 155, 1604-1605.
⁵ Godkin, "Rights of the citizen...," 58.
modern enterprise and invention. In 1890, Samuel D. Warren and Louis D. Brandeis endorsed an enforceable right to privacy at a time when no English or American court had granted relief based expressly upon such a common law right.6 They "reviewed a number of cases in which relief had been afforded on the basis of defamation, invasion of some property right, or breach of confidence or an implied contract, and concluded that they were in reality based upon a broader principle which was entitled to separate recognition."7 It was part of the more general right to one's personality and was called the "right to privacy."8

The authors borrowed Cooley's notion of "the right to be let alone" that arose from the right of personal immunity9 and argued that "[t]he intensity and complexity of life, attendant upon advancing civilization have rendered necessary some retreat from the world, and man, under the refining influence of culture, has become more sensitive to publicity, so that solitude and privacy have become more essential to the individual; but modern enterprise and invention have, through invasions upon his privacy, subjected him to mental pain and distress, far greater than could be inflicted by mere bodily injury."10

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8 Warren and Brandeis, "The right to privacy," 207.


10 Warren and Brandeis, "The right to privacy," 196.
These invasions upon the "domestic circle," made some protection not only desirable but necessary.\textsuperscript{11} Echoing the words of Holmes,\textsuperscript{12} Warren and Brandeis suggested that, "[p]olitical, social and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the needs of society."\textsuperscript{13} Only then could each individual secure "the right of determining, ordinarily, to what extent his thoughts, sentiments, and emotions shall be communicated to others."\textsuperscript{14} Just as the law of torts had grown from recognizing only physical injury, such as battery, to address more intangible injuries with actions for nuisance, defamation and alienation of affection,\textsuperscript{15} so also could the common law be extended beyond property-based theories to recognize a cause of action based on the principle of "an inviolate personality."\textsuperscript{16}

Although the 1890 article has been viewed as an "outstanding example of the influence of legal periodicals upon the American law. . ."\textsuperscript{17} support from the courts did not come quickly.\textsuperscript{18} In 1905 the Supreme Court of

\begin{itemize}
  \item \textsuperscript{11} Warren and Brandeis, "The right to privacy," 196.
  \item \textsuperscript{12} Holmes, O.W., \textit{The Common Law}, Boston, MA: Little, Brown & Company, 1881, 1.
  \item \textsuperscript{13} Warren and Brandeis, "The right to privacy," 193.
  \item \textsuperscript{14} Warren and Brandeis, "The right to privacy," 198.
  \item \textsuperscript{15} Warren and Brandeis, "The right to privacy," 193-4.
  \item \textsuperscript{16} Warren and Brandeis, "The right to privacy," 205.
  \item \textsuperscript{17} Prosser, \textit{Restatement of Torts}, §802.
Georgia accepted Warren's and Brandeis' arguments and recognized the existence of a distinct right to privacy. In 1939, Prosser's *Restatement of Torts* approved a cause for action for unreasonable and serious interference with privacy, lending support to Warren's and Brandeis' arguments. By the early 1940s, a number of courts had affirmed the existence of a common law right to privacy independent of the common rights to property, contract, reputation and physical integrity.

From the 1940s to the present, "the right to privacy" has been upheld in numerous court decisions. Various spheres of protection have been established by legislators at the state and federal levels of government. These protections restrict some intrusive practices by state agencies and private entities. Several provisions of the Bill of Rights have been interpreted by the Supreme Court to protect individuals against intrusive government activity. They include the Fourth Amendment prohibition against unreasonable searches and seizures, the Fifth Amendment privilege against self-

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21. For a chronology of states addressing the existence of the right to privacy through common law decisions or statute during this period (1890 - 1940), see: Copple, R.F., "Privacy and the frontier thesis: An American intersection of self and society," *The American Journal of Jurisprudence*. Vol. 34, 1989, Appendix, "Table of state privacy laws," 126-131. The table provides (i) the year in which the right of privacy was first addressed in a published court opinion or state statute and, in the case of court opinion, the result, (ii) the type of action which gave rise to the cause of action based on Prosser's four tort categories, and (iii) whether use of technology or some other aspect of "complex society" gave rise to the action.
incrimination and requirement of Due Process, and the Fourteenth Amendment Equal Protection Clause. The Ninth Amendment, which reserves to the people other rights not specifically listed in the Constitution, has been interpreted as safeguarding certain aspects of privacy. Therefore, there is considerable, although highly-contested, judicial precedent on "the right to privacy."

Statutory privacy protections against governmental intrusions cover a broad range at both federal and state levels. The Privacy Act of 1974 and the Privacy Protection Study Commission that the Act established, attempted to investigate and address fears that mounted during the 1960s concerning the extent to which government agencies could accumulate information about individual citizens. Federal statutory restraints upon private businesses include the Fair Credit Reporting Act of 1970, the Family Education Rights and Privacy Act of 1974, the Electronic Funds Transfer Act of 1978, the Cable Communications Policy Act of 1984, the Electronic Communications Act of 1986, the Video Privacy Protection Act of 1988, the Employee Polygraphy Protection Act of 1988, the Automated Telephone Consumer Protection Act of 1991, among others. At the state level, virtually every jurisdiction has


codified protections for arrest records, bank records, insurance records, medical records, mailing lists, social security numbers, tax records and against computer crime and wiretaps. These legal/statutory protections provide highly-contested definitions of privacy.

Innovations in communication and information technologies raise new contests over privacy. New entrepreneurial ideas and practices include mining individual records for targeted marketing, the growing reliance upon direct-mail selling techniques, and profiling which involves "correlating a number of distinct data items in order to assess how close a person comes to a predetermined characterization or model of infraction."  

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These ideas and practices reflect the flourishing personal information market in which credit card companies, banking institutions, telecommunications providers, grocery stores, insurance companies, newspaper subscription sellers, video rental stores, cable companies, and


car rental companies currently participate. The existing scheme of legal/statutory privacy protections defines the manner in which these new contests will be resolved.

(ii) Ground Rules for Privacy in Everyday Interactions

Legal protections against intrusions upon personal privacy provide some definition of privacy. These definitions, however, view privacy from within a limited conceptual framework. They identify particular intrusions as actionable, and privilege a particular scheme of protections. Definitions of privacy in the existing scheme of legal protections intersect with everyday experiences of "the private" and "the public" that are governed by "mutually accepted ground rules" rather than formal rights. The intersections between legal definitions of privacy and the experience of "public" and "private" in everyday life may be illuminated through an alternative examination of privacy that begins "from research on face-to-face human interactions in public spaces conducted by sociologists and communication researchers."40


40 Samarąvi, R., "Privacy in electronic public space. . .," 89.
Building on the work of sociologists such as Erving Goffman and Irwin Altman, privacy has been defined as "the capability to explicitly or implicitly negotiate boundary conditions of social relations." This definition includes control over the "outflow" and "inflow" of information. Outflows of information include any disclosures of information that may be of strategic or aesthetic value to the person. Inflows of information include any receipt of information by an individual, and may be simply the initiation of contact with an individual.

Quoting Altman, Ruggles states that privacy defines the limits and boundaries of the self. He continues, "[the] process by which individual boundaries are coordinated and information disclosure enabled, limited, or prevented, has been labeled by psychologists the 'boundary management process'. While the extent and rigidity of individual boundaries varies widely, their existence, and their use in exercising self-control over personal information flows, is ubiquitous." Similarly Petronio whose research


43 Samarajiva, "Privacy in Electronic Public Space. . .," 90.

44 Samarajiva, "Privacy in Electronic Public Space. . .," 90.

45 Samarajiva, "Privacy in Electronic Public Space. . .," 90.


47 Ruggles, "Mixed signals. . .", 30-1.
focuses on communication strategies between marital couples, suggests that, individuals (spouses) strategically regulate the disclosure of private information through a transactional boundary coordination process which is aimed at balancing the need for disclosure with the need for privacy.48

The influence of Alan Westin's contributions may be discerned in the foregoing. Westin recognized four basic states of individual privacy. He suggested,

> privacy is the claim of individuals, groups, or institutions to determine for themselves when, how and to what extent information about them is communicated to others. Viewed in terms of the relation of the individual to social participation, privacy is the voluntary and temporary withdrawal of a person from the general society through physical or psychological means, either in a state of solitude or small group intimacy or, when among larger groups, in a condition of anonymity or reserve.49

Although Westin's definition emphasizes outflows over inflows, it suggests that "privacy is neither a self-sufficient state nor an end in itself. . . . It is only part of an individual's complex and shifting system of social needs."50 Since individuals are often in situations of intimacy and in group settings where they are known to others, they engage in the creation of "mental distance" to protect the personality. This "takes place in every sort of relationship under rules of social etiquette; it expresses the individual's

---


50 Westin, Privacy and Freedom, 39.
choice to withhold or disclose information—the choice that is the dynamic aspect of privacy in daily interpersonal relationships.\textsuperscript{51} Therefore, "all individuals are constantly engaged in an attempt to find sufficient privacy to serve their general social roles as well as their individual needs of the moment."\textsuperscript{52}

Based on these definitions, this dissertation views privacy as the capability of individual agents to strategically negotiate or manage boundary conditions in social relations and interactions. The existence of boundaries or the negotiation of boundary conditions is "ubiquitous," although the extent and strength of boundary conditions are relatively loose. This conception denies a stable state or condition identifiable as "private." Further, the public and private spheres are not self-contained and autonomous. They define each other, and shift through processes of boundary negotiation. Legal/statutory definitions significantly structure "the public" and "the private" but are dialectically connected with individual capabilities of boundary negotiation and the everyday practices of agents. In some instances, individual agents exert considerable control over these boundaries. In other cases, they have almost no autonomy over boundary conditions. In every instance, individuals are limited by the negotiating power of those with whom they interact.

\textsuperscript{51} Westin, Privacy and Freedom, 32.
\textsuperscript{52} Westin, Privacy and Freedom, 40.
(iii) Regulatory Responses to Privacy Contests

Traditional communication utility regulation follows the common carrier principle. Regulatory agencies are required by legislative mandate to ensure that local exchange companies (LECs) provide adequate telecommunications service to all who request it, at just and reasonable rates. Therefore, utility regulators mainly regulate rate issues, oversee deployment of new services and monitor market changes. Traditional regulatory mandates do not include privacy protection as a basic policy objective. Limited agency resources restrain regulatory action. The presumption of regulation as a proxy for competition further discourages regulators from micro-managing markets, and over-extending their regulatory responsibilities.

Where regulators have made efforts to facilitate contests over privacy, they have been driven by changes in communication technologies, and have often been inconsistent in their treatment of different intrusive practices. Policy decisions on telecommunication privacy issues have typically factored in a number of specific aspects—sensitivity of information, impact that use of the information would have on the consumer, consent/knowledge for use, and so on, to weigh "rights" that individuals forfeit against the value of the information to businesses. Often the value of particular compilations of data is considered high enough to businesses that it outweighs privacy interests.

Public policy objectives of, for instance, encouraging competition in domestic markets and a greater American presence in international telecommunication markets have traditionally dichotomized "efficiency" and "equity" regulatory objectives. Eli Noam argued that a schism developed between state and federal policy goals during the 1950s when federal agencies liberalized entry into the telecommunication marketplace moving towards a regulatory philosophy of economic efficiency while state agencies continued to practice equity policy. This argument places economic efficiency and equity concerns in opposition to one another.

In contrast, Cooper states that economic efficiency and equity concerns are not antithetical to each other in every circumstance. She explains, "[a] key question is whether the equity concerns are based on consumer or producer equity issues . . . . A shift in policy from a consumer equity thrust to a producer equity thrust [does not necessarily suggest] a shift to economic efficiency." However, Cooper's insights are not reflected in the mainstream which typically characterizes public policy goals of economic efficiency and equity policy as irreconcilable.

Recent utility regulatory responses to consumer privacy concerns contradict some of the basic principles and presumptions of utility regulation. Privacy concerns have gained considerable agenda-prominence. Later


chapters of this dissertation provide evidence that a large number of state utility commissions have been active on telecommunication privacy issues in inquiries about CLID services. Over the course of these inquiries, state commissions have recognized the salience of privacy issues, i.e., they have recognized them as a significant concern among consumers. Privacy protection has gained prominence as a legitimate public policy objective. In several cases, privacy protection has outweighed other more traditional public policy objectives.\textsuperscript{56}

In some cases, commissions have undertaken what may be referred to as "generic" investigations, on their own initiatives. These investigations have included efforts to evaluate privacy interests from a systemic, long-term point of view. Generic investigations have educated policymakers and raised public awareness on the issues. They have established long-term approaches to address privacy contests.

The adoption of "Privacy Principles" by the public service commission (PSC) of the state of New York is one example. The New York PSC adopted a set of privacy principles that provide a framework for protecting the privacy rights of consumers. The principles require that every new

\textsuperscript{56} A recent NRRI report entitled \textit{Utility Customer Information: Privacy and Competitive Implications} provides many examples of initiatives by state commissions to restrict disclosure of utility customer information (directory information, billing and usage records, credit data, information disclosed via Automatic Number Identification (ANI) and CLID, Customer Proprietary Network Information (CPNI)) to third parties on privacy grounds despite efficiencies that could result from such disclosures. Arguments for access to utility customer information are based mainly on the competitive implications of unequal access to these data. Arguments against access are based mainly on privacy grounds. Burns, R.E., R. Samarajiva and R. Mukherjee, \textit{Utility Customer Information: Privacy and Competitive Implications}, Columbus, OH: National Regulatory Research Institute, #92-11, September 1992.
telecommunications service be evaluated from the perspective of its implications for privacy as a matter of course in tariff proceedings. Further, the principles allow customers to choose from among varying levels of customized protection. This allows customers to choose from various degrees of privacy of both information outflows and inflows. Subscriber-specific information would be protected against use for unauthorized purposes. Where such use occurred, compensation to subscribers may be required. Providers are discouraged from designing automatic disclosures that subscribers would have to overcome or affirmatively undo. Further the principles require customer education about the privacy implications of telecommunications services. Where new services compromise existing levels of privacy, they cannot be offered without providing some means to restore the lost degree of privacy. Only in situations where customers required increased privacy, could they be required to pay for it. Existing levels of privacy protection would continue at no cost. Finally the principles allow for a conception of privacy which evolves with changes in telecommunications technology and services.57

These principles acknowledge the need for increased attention on consumer privacy concerns arising from specific network innovations. Further, they reflect a sensitive policy environment for privacy contests at the New York PSC. These principles were among the first to be approved in the

U.S. and offer an unusual level of uncompromised protection. However, the New York PSC has not been alone in its efforts to address consumer privacy concerns. Other states such as Colorado, Idaho and Pennsylvania have devised more modest regulations. Others, including California and Minnesota, have proposed policies but not concluded inquiries.

Regulators may indicate their preference for an issue by focusing on it in their speeches, by convening and attending conferences to discuss it, or by raising it tangentially in unrelated proceedings. In several jurisdictions, commissioners have signaled the need for greater protection for consumer privacy. While these are not official policies, they indicate a favorable policy climate for privacy concerns. Commissioner Rhodes of the Pennsylvania Public Utility Commission (PUC) developed five principles to assist regulators in addressing privacy concerns. He summarized these as follows:

(i) We have a duty to extend privacy protection with constitutional barriers . . . i.e. state regulators must not cede these

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59 Idaho Commission rules concerning the privacy of telephone subscriber records and disclosure of records to third parties by telephone utilities, Case No. 31.D-89-1, Gen Order No. 181, effective September 1, 1990.


62 In the matter of an investigation into the customer data collection practices of Minnesota utilities, including telephone companies, Order initiating investigation and establishing study group, Docket No. U-999/CI-89-943, dated November 8, 1989. 1989 Minn. PUC LEXIS 208.
issues to the courts; (ii) both 'leave-me-alone' and 'none-of-your-business' privacy must be safeguarded with 'none-of-your-business' privacy getting the nod in a dead heat . . . . 'Leave-me-alone' privacy essentially deals with a person's right to prevent others from communicating with him/her and 'none-of-your-business' privacy deals with a person's right to decide what information about him/her will be released. (iii) We must require affirmative consent before the disclosure of personal information over the network. (iv) Privacy should not be technologically defined; and (v) we should not sanction privacy wars. The supreme irony . . . is that if privacy protections . . . are not guaranteed, the use of the future network will simply never reach its full potential."63

Commissioner Katz of the Oregon PUC noted that if telephone consumers "had choices among alternative vendors as they do in the purchase of most . . . services, merchandising telephone privacy would be a thriving business." The Commissioner stated that privacy expectations in this country are high and new technology poses several new threats to those expectations. Fortunately, the technology can also offer methods for countering those threats. Katz urged regulators to strike a balance, suggesting that regulators "don't want to be luddites and oppose technological advances," however they "don't want technocratic disregard for privacy interests."64 Individuals must be aware of the ease of access that third parties have to information about them. They must be able to control the amount of


personal information that is released. They must be certain that information collected for one purpose is not used for another without their consent.65

Generic inquiries into telecommunications privacy concerns have been conducted relatively infrequently. More often, policymakers have addressed privacy issues over specific telecommunication technologies, services and practices. The issues are generally raised by consumer advocacy groups following specific proposals by telecommunications providers. One recent instance of state utility regulatory activity on privacy issues focused on CLID services. State regulators, as a group, have been extremely active on the privacy implications of CLID services. A large number of state commissions initiated investigations and held extensive hearings on the privacy implications of CLID services. By including these issues on their agendas, regulators extended their traditional areas of oversight despite long-standing regulatory attitudes towards privacy and other equity concerns, and restricted regulatory mandates and budgets. Over the course of CLID inquiries in various states, privacy protection gained prominence as a legitimate public policy objective. Therefore, the primary purpose of this dissertation is to identify and explain the circumstances of state regulatory initiatives on telecommunication privacy issues in CLID proceedings.

Scope

This dissertation focuses on regulatory initiatives on CLID services by utility commissions in 51 state jurisdictions (50 states and Washington D.C.) within the United States. The study is limited to a time frame from July 1987, when the first CLID tariffs were proposed, through May 1994, when most state PUCs had concluded proceedings on the issues.

The present study has developed from a research project sponsored by the National Regulatory Research Institute (NRRI) but is different from that study in two respects. The NRRI project researched the state of regulation on a number of privacy issues involving telecommunications, electric, gas, and water utilities. The present study focuses on the regulation of privacy issues in the telecommunications sector alone, and in particular, initiatives on the privacy implications of CLID services. Second, the NRRI project mainly addressed tensions between the competitive implications of utilizing customer information and the privacy implications of disclosures of these data.

In contrast, the theoretical project of the present study is to examine the process of regulation. Although contested regulatory objectives, e.g., reconciling market efficiency and producer equity issues or balancing consumer equity concerns, are germane, the primary research objective of this

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dissertation is to identify and explain the circumstances of state regulatory initiatives on telecommunication privacy issues in CLID proceedings.

The dissertation is more closely linked to a research project on telecommunications privacy regulation recently conducted in the Department of Communication at the Ohio State University. Both projects are focused at the state level, and attempt to understand how PUCs have addressed telecommunication privacy and why? However, while that project explored four discrete influencing factors viz., agency resources, mandates, strength of consumer advocacy, and public sensitivities to telecommunication privacy, on PUC regulatory behavior, the scope of this dissertation is narrower in its focus on CLID proceedings, but broader in its theoretical endeavor.

The empirical scope of the dissertation includes initiatives by 51 state commissions. Limiting the scope to the federal level or a few selected state commissions would enable more in-depth analysis on each. However, a broader perspective is chosen for the present study to enable comparison of agencies experimenting with different responses to more or less the same policy problem. As Samarajiva states, "the state regulatory process regarding calling line identification, stretching over a period of almost seven years . . ., covering 46 out of 51 jurisdictions . . ., and yielding a rich base of knowledge and a range of solutions, qualifies as a superb experiment conducted in this

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67 Samarajiva, R., Telecommunication Privacy and the Public Interest: An Investigation at the Frontier of State Utility Regulation, Grant proposal for the Ameritech Faculty Fellowship, April 1991. (I served as Graduate Research Associate on the project.)

68 Samarajiva, Telecommunication Privacy and the Public Interest. . ., 5.
laboratory." State PUCs serve as "laboratories in which are tried 'novel social and economic experiments without risk to the rest of the country.' State regulatory initiatives on CLID issues exemplify the "states as laboratories" phenomenon, and provide a case to study the phenomena of policy convergence and diffusion. Although its broad scope sacrifices contextual detail on individual policy initiatives, the focus on 51 state agencies rather than a smaller set of cases enables examination of the complex nationwide process across time by which privacy protection gained prominence as a legitimate public policy objective.

Further, LECs have typically requested authority to provide CLID services from state regulatory commissions and resultant contests have been deliberated in these fora. This provides a pragmatic rationale for focusing on regulatory activity at the state level. In the few instances where state legislatures and state Supreme Courts have been active on CLID issues, those initiatives are included in the analysis.

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Method

Policy analysis uses a number of research methods.\textsuperscript{71} From among them, this dissertation conducts a time series analysis that focuses on the sequence, magnitude and duration of changes in the policy process across time. Further, each commission decision is content analyzed qualitatively\textsuperscript{72} with attention to its place in time and its consonance or dissonance with conventional policy wisdom and the most popular solution.

Qualitative content analysis has been critiqued by, among others, Stempel, who argues that these analyses fail to be systematic in the full sense of the word. Advocates of qualitative content analysis, he continues, seem to overlook what would be lost in meaning if a study were not quantitative.\textsuperscript{73} However, there are significant dangers of relying exclusively on a quantitative research strategy. Stempel explains that quantitative content analysis involves the assigning numerical values to the frequency with which various defined types of content occur and drawing inferences from

\begin{footnotesize}
\begin{enumerate}
\item Christians and Carey, "The logic and aims of qualitative research," 342-62.
\item Stempel, "Content analysis," 124.
\end{enumerate}
\end{footnotesize}
these numerical values. Quantitative efforts are rooted in "truth-seeking" positivistic traditions aiming for objectivity, and typically analyze texts without their contexts. Their emphasis on quantifying the content of texts and isolating "manifest content" does not accommodate interpretive analysis. Quantitative analysis demands that content is taken at face value, "as it appears." In contrast, the analytic strategy used in this project focuses upon the content and context of policy initiatives.

Policy analysis through qualitative content analysis entails examination of the contents of public hearings, other government documents, and interest group publications to identify the determinants of policy change. Despite its commonly acknowledged difficulties concerning code reliability (how differently do coders interpret testimony?) and response validity (are respondents expressing their "true" opinions?), content analysis is valuable because it permits detailed analysis of orientations and interests beyond those that can be captured by partisan affiliation and interest group scorecards. Further, it is better suited than attitudinal surveys to examine changes in regulators and other elites' policy positions.

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74 Stempel, "Content analysis," 126.

Goggin, Bowman, Lester and O'Toole state that a common assumption among policy researchers is that regulation is influenced by a large number of contextual factors and, therefore, is best examined in specific cases. This has led to a reliance on the case study method and has resulted in "the too few cases/too many variables" problem. In other words, conclusions from case studies do not easily lend themselves to generalization beyond the specific case. However, this does not provide sufficiently compelling reasons to reject the case study as a research method in the present project. On the contrary, the case study enables extremely detailed analysis of developing policy positions and decisions. It allows examination of the changing relationships among policy participants, and highlights turning points in the progression of policy events. Further, the case study allows examination of developments across time which is an important factor in the present project.

State PUC actions are analyzed using primary sources, i.e., commission orders. While all state commissions do not follow identical administrative procedures, for the purposes of this dissertation, regulatory initiatives include suspensions of tariffs, investigative dockets (including notices of inquiry issued by commissions on their motion), rule-makings, and adjudicatory proceedings (including complaints). Other relatively informal commission activities including official correspondence with the President, with state and federal lawmakers, comments submitted to the Federal Communications

Commission (FCC), the Department of Justice and other federal agencies on privacy-related dockets, and National Association of Regulatory Utility Commissioners (NARUC) resolutions may have a role in particular instances, but are not included as regulatory initiatives.

Rationale

Questions about the manner in which particular social concerns become legitimate matters of state intervention guide this effort conceptually. Within this broad area of inquiry, the theoretical project of this dissertation is to approach an understanding of the circumstances under which telecommunication privacy concerns surrounding CLID services gained prominence on state-level regulatory agendas. In this effort, the dissertation explicates and evaluates several notable theories of regulation and regulatory behavior. Regulatory theories are evaluated based on their theoretical assumptions about the relationships between the state, economic interests and individual agents, and their conceptions of the regulatory process and its communicative nature.

Further, the dissertation evaluates regulatory theories at an empirical level. The regulatory experience with CLID issues serves as an exemplar for the processes of agenda-setting and policy diffusion. Proceedings on CLID issues are chosen for an important reason. They provide a unique exemplar for examination of the processes of agenda-setting and policy diffusion. They present a brief window for the examination of the circumstances under which a social concern that earlier received little regulatory attention, rose to high agenda-prominence among state jurisdictions across time. The CLID
proceedings allow isolation of "turning points," key events and diffusion trends across time. Tracing transformations in the regulatory treatment of the issues over the seven-year period offers theoretical insights into regulatory behavior and the process of regulation.

The present project is conceptually similar to some existing research on the process of judicial decision-making in state Supreme Courts. Despite conceptual similarities, theoretical insights about decision-making in state Supreme Courts cannot be generalized to state regulatory activity. State Supreme Courts are reactive entities. They respond to legal contests brought to them by the parties. In contrast, state regulatory agencies perform related quasi-legislative, quasi-judicial, and quasi-executive functions. They have greater leeway to include contested policy issues on their agendas and promulgate rules on their own initiative.

The policy process is dissimilar to the adjudicatory process with respect to procedural rigidity and level of public participation as well. Administrative regulation may follow formal or relatively informal procedures, e.g., evidentiary hearings, public hearings, administrative sessions, and allows greater direct public participation than the adjudicatory process. Research on the process of judicial decision-making, therefore,

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provides direction to this study, but is dissimilar in several, important respects from efforts to analyze regulatory behavior and the process of regulation.

Finally, privacy issues are currently emerging in regulatory fora across the United States. The telecommunication infrastructure is changing in terms of technological capability, and with regard to market characteristics and regulatory controls. Nationwide surveys have documented that a large percentage of Americans currently associate the telephone with privacy intrusions. Current innovations in telecommunications are routinizing outflows of information and setting the ground rules for inflows. Therefore, regulators are likely to encounter telecommunications privacy contests more frequently in the future. The privacy implications of CLID services constitute the proverbial tip of the iceberg, and regulatory treatment of these services will guide regulatory treatment of future privacy concerns.

Chapter Previews

The remainder of the dissertation is divided into four chapters. Chapter II addresses theoretical considerations. Policy-making institutions are conceptualized within a Giddensian macroscopic framework to articulate assumptions about the nature of regulatory institutions and the conditions of their existence. A number of notable theories of regulation are discussed and evaluated within Giddens' framework. Chapter III articulates the

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communicative nature of the policy process, building on theories of communication and discourse. In Chapter IV, a study of state-level initiatives on Calling Line Identification services and the treatment of telecommunication privacy issues within those proceedings is presented. The final chapter presents theoretical explanations for trends identified in the study, and articulates conclusions about regulatory behavior in general.
CHAPTER II
THEORETICAL CONSIDERATIONS

Introduction

Theories of regulation and regulatory behavior are guided by macro theoretical and methodological assumptions. Each theory espouses a theory of the state and makes assumptions about the nature of the state's interactions with other entities or groups, and its driving influences and objectives. Each theory makes assumptions about political and economic power, and the relation between "state and capitalist clusters." Theories of regulation are also guided by assumptions about agency and the nature of the relationship between agents and structures.

Samarajiva suggests that "[t]he central theoretical problem of telecommunication policy . . . is the problem of the state. Is the state an instrument of class rule or is it an autonomous actor? If it is an instrument of class rule, is it possible to discern a consistent pattern in state action? If it is an autonomous actor, what are the bounds of its relative autonomy? Is the state purely an arena for struggle by contending interests, and if so, is it skewed to one party or the other? Or is it a player and the arena?"1 Guided

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by the assumption that any attempt to meaningfully examine the process of regulation must entail theoretical examination of the state, agency and the relationship between agents and structures, this chapter begins by explicating some of these macro assumptions. Based upon these assumptions, a number of regulatory theories are briefly evaluated.

The State and Power

According to Anthony Giddens, social systems are "composed of interactions, regularized by social practices, the most persisting of these being institutions." Institutions are distinct from social systems. Giddens defines institutions as "practices [that] 'stretch' over long time-space distances in the reproduction of social systems."

All social systems . . . can be studied as incorporating or expressing modes of domination . . . Social systems that have some regularized existence across time-space are always 'power systems,' or exhibit forms of domination, in the sense that they are comprised of relations of autonomy and dependence between actors or collectivities of actors . . . .

All social systems of any duration involve an 'institutional mediation of power.' That is to say, domination is expressed in and through the institutions that represent the most deeply embedded continuities of social life.

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Giddens defines the state as "a set of collectivities that are concerned with the institutionalized organization of political power." All forms of state administrative bodies "are collectivities in which knowledge about the conditions of system reproduction is reflexively used to influence, shape or modify that system reproduction." "All states involve the reflexive monitoring of aspects of the reproduction of social systems subject to their rule."

According to Giddens, "to be a human being is to be an agent ... and to be an agent is to have power." In a highly-generalized sense, power means "transformative capacity, the capability to intervene in a given set of events so as in some way to alter them." Giddens suggests that this generalized sense of power may be refined in two ways. First, power must be related to the resources that agents employ in the course of their transformative activities. Two kinds of resources may be distinguished--allocative and authoritative. Allocative resources involve dominion over material facilities, including material goods and the natural forces that may be harnessed in their production. Authoritative resources involve the means of dominion over the activities of human beings themselves. Giddens offers a second refinement to the generalized notion of power. He states that

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5 Giddens, *A Contemporary Critique* . . . , 220.


resources do not automatically enter into the reproduction of social systems, but are instead drawn upon by contextually located actors in the conduct of their day-to-day lives.10

[In the context of any collectivity, association or organization, domination is expressed as modes of control, whereby some agents seek to achieve and maintain the compliance of others... Relatively stable forms of control [are referred to as] types of rule [and need to be analytically separated from the 'institutional mediation of power.'] Forms of rule are (more or less) stable relations of autonomy and dependence in social systems... and are sustained by the routine practices that those in superordinate positions employ to influence the activities of others... All types of rule, then, rest upon the institutional mediation of power, but channel this through the use of definite strategies of control.11

All strategies of control employed by "superordinate" individuals or groups elicit counter-strategies from subordinates. Giddens refers to this phenomenon as the "dialectic of control." He explains:

To be an agent is to be able to make a difference to the world, and to be able to make a difference is to have power. No matter how great the intensity of control superordinates possess, since their power presumes the active compliance of others, those others can bring to bear strategies of their own, and apply specific types of sanctions. . . . what is at issue is the capability even of the most dependent, weak and the most oppressed to have the ability to carve out spheres of autonomy of their own.

All forms of rules have their 'openings' that can be utilized by those in subordinate positions to influence the activities of those who hold power over them... formalized procedures of rule—therefore rarely if ever work with the 'fixity' which on the face of things they might seem to possess. The more a social system is one in which the control exercised by

10 Giddens, . . . The Nation-state and Violence, 8.

superordinates depends upon a considerable scope of power over subordinates, the more shifting and potentially volatile its organization is likely to be.\textsuperscript{12}

Therefore, the strongest manifestation of power is not when it is applied as a sanction of force, but when it runs silently through the "repetition of institutionalized practices."\textsuperscript{13} Power is not manifest solely in acts or decisions taken by individual agents. Beyond chosen and rejected courses of action, some courses of action are not considered at all.\textsuperscript{14} It is inaccurate to view "non-decisions" simply as the obverse of decisions. Rather, "non-decisions" should be seen as influencing the circumstances in which a choice of courses of action is available.\textsuperscript{15} David Dery states,

An organization is itself a solution to a predefined problem. The scope of relevant inquiry is severely restricted so as to accommodate available resources and policy instruments, interests, constraints, prevailing values, and other commitments—the previous definition of problems.

\textcolor{red}{\ldots} [Further o]rganizations do not (or cannot) \ldots challenge and replace their own premises. Viewed as inquiry systems, organizations are designed to ask certain questions to the exclusion of others.\textsuperscript{16}

\begin{itemize}
\item \textsuperscript{12} Giddens, \ldots \textit{The Nation-state and Violence}, 11.
\item \textsuperscript{13} Giddens, \ldots \textit{The Nation-state and Violence}, 9.
\item \textsuperscript{14} Giddens, \ldots \textit{The Nation-state and Violence}, 9.
\item \textsuperscript{15} Giddens, \ldots \textit{The Nation-state and Violence}, 9.
\item \textsuperscript{16} Dery, D., \textit{Problem Definition in Policy Analysis}, Lawrence, KS: University Press of Kansas, 1984, xii. For example, when a state consumer advocacy organization requests regulatory consideration of an issue, the strength and longevity of the state administrative system may be underscored not only by the chosen policy response, but also by the fact that the advocacy organization chooses to approach the state regulatory agency with its grievance.
\end{itemize}
The dialectic of control is possible because all social action consists of social practices situated in time-space and organized in a skilled and knowledgeable fashion by human agents. However, this "knowledgeability is always 'bounded' by unacknowledged conditions of action on the one hand, and unintended consequences of action on the other." Human agents are not "cultural dopes" but instead, borrowing from Erving Goffman, are highly knowledgeable about the institutions they produce and reproduce in and through their actions. The knowledgeability of social actors operates only partly in terms of "discursive consciousness." Social actors additionally rely upon non-discursive practical consciousness that embeds the structural properties of social system, but is distinguished from unconscious sources of cognition and motivation.

Giddens states that it is through the day-to-day actions of individual agents that the longue durée of institutions is developed and sedimented. "All human interaction involves the communication of meaning, the operation of power, and modes of normative sanctioning that are constitutive of interaction. In the production of interaction, actors draw upon and reproduce corresponding structural properties of social systems:

signification, domination and legitimation." All social actors, both the powerful and the relatively powerless, have some degree of discursive penetration of the conditions governing the reproduction of the social systems they produce and reproduce in their actions.

The State and Capitalist Clusters

Giddens conceptualizes "the state cluster" and "the cluster of capitalist groups" as "locales." Locales are circumscribed arenas for the generation of administrative power. They refer to the setting of interaction, including the physical aspects of setting, i.e., their architecture, within which systemic aspects of interaction and social relations are concentrated. A locale is a "power container" insofar as it permits a concentration of allocative and authoritative resources. While the generation of allocative resources is influenced directly by forms of available technology in any society, the level of their concentration depends primarily upon factors creating authoritative resources. Such factors may include the possibilities for surveillance, assembling large numbers of individuals within definite settings, the development of military power, and the formation of ideology.

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Melody and Mansell state, "... the institutional structure is neither monolithic nor static; adversarial and conflicting interests are continuously adjusting to dynamic and uncertain circumstances. This uncertain, changing character of the structure of institutions over time, in shifting dialectic relation to one another, provides the opportunities for beneficial or detrimental change. ... Policy issues are decision opportunities to influence the direction of change, and they are generated by friction in the workings of society's institutional structure."26 The state apparatus, when viewed as the administrative organs of government, "consists of a plurality of organizations."27 Neither the state nor the capitalist cluster is monolithic. Rather, both clusters comprise several organizations that may be discordant and internally inconsistent.

Giddens suggests that capitalist societies are characterized by economic change and technological innovation that resist as well as stimulate state management of the economy as a whole.28 The management of the national economy is a preoccupation of the state.29 State intervention has become the conventional term for referring to the managerial activities of the state and include a range of surveillance activities.30 Therefore, the state is dependent

upon the activities of the capitalist cluster (employers, producers) for its revenue and operates within a context of numerous capitalist imperatives.\footnote{Giddens, \textit{A Contemporary Critique} . . ., 211.}

Within capitalism, the state depends upon a highly-dynamic economic sector that it does not directly or completely control. However, based on Giddens' notion of the "dialectic of control," the state enjoys "relative autonomy" in its interactions with other interests, including various fractions within the capitalist class. Giddens states that the term "relative" is redundant because "any social processes or institutions that were 'absolutely' autonomous from others by definition would have no connection with them. . . . All autonomy is therefore relative."\footnote{Giddens, \textit{A Contemporary Critique} . . ., 217.}

Given the fractured nature of the capitalist cluster and the relative autonomy of the state, policies may often be implemented that are detrimental to specific business interests.\footnote{Giddens, \textit{A Contemporary Critique} . . ., 218.} However, the capitalist cluster's mistrust of the state is not adequately explained either by the possibility that some groups of capitalists fear that opposing interests will be favored, or that they will be forced to "harmonize" with numerous other capitalist interests.\footnote{Giddens, \textit{A Contemporary Critique} . . ., 219.}

For Giddens, a much more compelling explanation may be found in the contradictory character of the state within contemporary capitalism. "The state is directly enmeshed in the contradictions of capitalism. . . . The state is not necessarily the defender of the status quo. . . . It can in some part be seen
as an emancipatory force: neither a class-neutral agency of social reform . . . ,
nor a mere functional vehicle of the 'needs' of the capitalist mode of
production. . . ."35

Responding to Some Theories of Regulation

Giddens illuminates some aspects of the polemical debate among some regulatory theorists. Based on Giddens, the state is neither an instrument of class rule nor an autonomous actor. It cannot be conceptualized as a captured vehicle for capitalist interests as capture/cartel theories of regulation suggest. These theories of regulation view agencies as serving some well-defined interest, either because the agency was set up to serve that client (cartel theory) or because, over time, agencies become vulnerable to being taken over by some special interest (capture theory).36 The special interest identified as being served by the regulatory agency is generally the producer in the market that the agency regulates. Other special interests that may be served by the organization include a professional elite within agencies, such as lawyers with cumbersome procedures, or an especially powerful group of customers, such as gas utilities in the regulation of natural gas prices.

The Marxist cartel theory vests political control in the hands of those controlling economic production.37 Government is an instrument for

protecting capitalist interests. Regulatory agencies are therefore agents for increasing the wealth of producers, usually by creating legally enforceable cartels. However, Marxist cartel theory provides no explanation for the few instances where regulation has been imposed on an industry against its will. Nor does this theory provide an explanation for instances where industries have tried and failed to obtain an effective cartel. According to Noll, the flaws in Marxist cartel theory arise from their simple dichotomy of interests into capitalists and workers. Instead, if a model of society as a complex combination of numerous interests is espoused, explanation for the diversity of regulatory institutions may be available.

George Stigler proposed the economic theory of regulation.\textsuperscript{38} He suggested that producer groups stand to benefit from institutionalized protection from competition. In this view, potential beneficiaries assess the magnitude of potential benefits and make commensurate payments to legislators. Payments may include direct campaign contributions or votes. Indirect payments include improvements in service quality or the provision of uneconomic services to designated constituents of key legislators. In turn, legislators seeking re-election confer benefits on voters and potential campaign contributors.

Roger Noll focuses on two flaws of the economic theory of regulation. First, the theory is tautological. It assumes its conclusion by presuming the existence of suppliers and demanders and an equilibrium between the two.

Cartel theory cannot explain why certain groups receive benefits as successful purchasers of institutional protections while others receive no benefits at all. Economic theories may provide insights into the emergence of political issues relevant to regulatory policies and the relationship between interest-group characteristics and the effectiveness of groups in the political decision making process. However explanation of how or why these factors leads to cartelization is hard to find.

Further, capture/cartel hypotheses are not preferred because following Giddens power is connected to the nature and extent of available allocative and authoritative resources. Individuals and groups with greater access to resources may wield greater power in interactions. However, power is not defined by access to resources alone. Structures and agents are connected in a dialectic of control. The stability and longevity of institutional structures is developed and maintained in the day-to-day activities of individual agents. In turn, individual agents are enabled and constrained by institutional structures. The power of the state in enabling and constraining agents, therefore, relies upon both, the resources it commands and the actions of agents. Only theories that allow the relative autonomy of structures and agents are viable.

Similarly, theories of regulation that postulate the state as the defender of the status quo are not supported. Bruce Owen and Ronald Braeutigam propose the status quo theory of regulation which assumes that the long delays in regulatory proceedings and careful attention to precedent are not
failures of regulation but rather methods of fulfilling its primary purpose.\textsuperscript{39} Under this view, regulation serves to protect the status quo, and to prevent parties from incurring sudden capital losses intrinsic to the market system. Formal regulatory proceedings are considered elaborate charades that serve only to preserve existing prices and patterns of service. This status quo bias provides substantial benefits including reducing risk and expediting planning.

The social contract approach to regulation\textsuperscript{40} is similar to the status quo approach and states that regulation is created to administer a long-term flexible contract between consumers and producers. Regulatory agencies serve as bargaining agents for consumers in transactions with producers. Regulated and unregulated industries are assumed to be similar in that both operate under contracts that require periodic interpretation and modification. Therefore, producers and consumers alike are limited in their alternatives and settle differences through a process of bargaining, that may sometimes involve lawsuits, rather than choosing new producers.

These theories over-estimate the relative autonomy of regulatory agencies. In contrast, this dissertation argues that the state is neither purely an arena for struggle by contending interests, nor a neutral driver of social reform. Administrative agencies of the state do not engage in the "impartial, disinterested or objective search for 'correct' solutions to policy problems.


\textsuperscript{40} Jones, D.N., \textit{A Perspective on Social Contract and Telecommunications Regulation}, Columbus, OH: National Regulatory Research Institute, NRRI 87-5, June 1987.
Public officials—legislators, administrators, and perhaps to a lesser extent, judges—do not stand impartially about [sic] the policy struggle." Agencies are actors with relative autonomy and are driven by self-interests in the regulatory process. However, as Paul Teske clarifies, "government actors are not simply another interest group. Their legitimate state role in formulating and implementing policy at the end of a chain of influence differentiates them from external interest groups."42

Goal deflection theories postulate a concern within agencies to serve a broad public purpose, but predict goal deflection as the agency builds up relations with external clients43 or as the agency, through experience, comes to rely on certain types of professional employees.44 In the first scenario, agency employees develop a symbiotic relationship with their principal client. Administrative agencies see potential allies in producers for dealing with government budgeters or with potential threats to the survival of the organization. In some cases, this relationship is driven by the desire to avoid conflict between parties with whom each is in constant contact. The result is


a compromise of objectives between organizations in the interest of regularity and predictability.

An alternate goal deflection theory argues that organizational goals are compromised to match the interests and values of an elite group--the key group--within the organization. The influence of doctors upon hospital policy and lawyers on regulatory agendas are examples. In both examples, the services of members of the key group are crucial to the organization. The key group will dominate organizational decisions even on matters not closely related to its own welfare. Lawyer dominance theories of regulation argue that formal adversarial procedures and specific goals toward which lawyers are biased will prevail. These include the maintenance of due process, the protection of private entities, the focus on achieving consensus, adherence to professional norms and to fair process elements--formal rules of evidence, precedent, and fairness. Insistence upon these procedures and goals, directly and indirectly, excludes particular parties and interests. Further, lawyer dominance effectively discourages procedural change and any proposed alterations in agency goals.

Lawyer dominance theories have been criticized for their inability to explain regulatory behavior adequately. First, the significance of lawyer dominance is difficult to estimate. In many cases, the influence of one particular key group is impossible to separate from other factors. Second, attention to legal process is necessary owing to constitutional protections of private property, due process and rights to petition for redress of grievances. Although it may be argued that lawyer dominance and deference to legal process is built into most agencies because Congress mandates administrative
agencies and includes many lawyers, that fact alone does not explain why agencies differ in the formality of their process. Moreover, not all agencies are equally dominated by lawyers.

Some theorists argue that regulators are driven primarily by incentives for personal gain. The bureau-as-enterprise hypothesis views an agency as having motivations similar to those of a private entrepreneur. This theory states that agencies attempt to maximize their budgets, or that agencies are focused on fortifying their bargaining strength against budgeters. When faced with declining workloads and appropriations resulting from factors such as deregulation and federal preemption, a budget-maximizing bureau will seek additional missions, produce more service and attempt to expand its budget. Further, a budget-maximizing agency would seek to expand the number of regulated markets. This would provide greater numbers of clients, larger workloads and therefore bigger budgets. Agencies would prefer formalized, lengthy procedures for decision making to raise the costs of administrative tasks.

However, the actual behavior of regulatory agencies does not support these hypotheses. Most regulatory agencies have relatively small, stable budgets and very little programmatic responsibility. They appear to prefer fewer firms and generally oppose new entrants with new technology. According to Noll, budget-based theories are flawed because typically they have been unable to provide accurate characterizations of the budgeting

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process, upon which these theories depend, at least in part. Moreover, bureau-as-enterprise theories are untenable because they simplistically assume that regulatory agencies are only driven to maximize their budgets.

A corollary to budget-based theories is the view that agencies operate to maximize the income of administrative heads. Analysis of the career opportunities of administrators, some of whom may view employment with an agency as a vehicle to obtain better employment in the private sector, is at the heart of this approach. Although there is substantial empirical support for the theory, that alone does not demonstrate a connection between the observed employment pattern and decisions made by regulatory officials. In other words, evidence of agency officials seeking and finding positions in the industry they previously regulated does not necessarily suggest that regulators ultimately seek outside employment or that the agency operates primarily to serve the interests of the regulated interest.

A more viable hypothesis is that officials, expecting to find employment with the regulated industry, are only interested in the immediate results of agency policies. Therefore, decisions that resolve an issue temporarily may often be preferred. Alternatively, an official may insist upon a lengthy procedure that postpones a decision until after his/her tenure, sparing that official deferred consequences of some unfavorable action.

Despite its potential, Noll states, one does not need the administrator income theory (referred to as the "permanent income theory" by Noll) to predict that


regulatory agencies will be oriented toward the short-term. The tenure of administrative officials is typically very short. Therefore, agencies tend to focus on short-term problems rather than on long-term planning and technological change. This theory may, in fact, suggest that officials would have a stake in the long-term consequences of decisions because of their potential effects upon future employment possibilities.

Regulators are influenced by political and economic elites, and to varying degrees, numerous other interests. In turn, the institutional structure and organization of the state influences the process of regulation. This presents a significant challenge for regulatory theorists—illuminating the complex schema of interacting influences upon policy actors, including political decision makers.

Several theories of regulation are guided by assumptions about the influence of various, divergent contending interests. According to Teske, interest group theories argue that affected groups or stakeholders lobby legislators and bureaucrats for favorable regulatory changes.48 Teske states that interest group effectiveness is generally a function of group size and per capita stakes. Exogenous changes, such as technological innovation and endogenous policy choices, such as government funding of consumer advocates, may change the constellation of interest groups over time. According to William Gormley, proxy advocacy groups participate in

regulatory proceedings on behalf of larger, less organized groups which are themselves unable to participate due to inadequate resources.49

Interest group theories generally suggest that a single interest group rarely succeeds in capturing regulators. Rather, a balance of external interests determines policy. A complex interest group environment, approaching a crude form of pluralism, is envisaged. Although not of equal political strength, several groups actively compete for influence. With so many groups pressuring regulators, complete capture by any one group is unlikely. This is in opposition to Stigler's vision of government agencies responding passively to the demands of the most powerful coalition. Given that interests groups vary in their political strength, and that there is considerable uncertainty about the precise strength of coalitions, regulators may have a "zone of discretion" where they balance the political and economic costs of supporting one group over others. Only where interest groups approach a rough equilibrium in strength can regulators have scope to bring their own ideologies, advice from staff, and elements of institutional structure into their decisions.

Whereas traditional and newer interest groups theories assume that individual policy participants are typically "silent" in regulatory proceedings, these individuals are characterized quite differently in game theories of regulation. Game theories view policy participants as highly strategic game-players. William Dutton argues for an "ecology of games" that conceptualizes

the policy process as an extremely complex, but not chaotic, system of interactions. The notion of an ecology of games highlights the roles played by those who shape the rules of the game. This theory emphasizes the potential for unanticipated, unplanned developments, while raising doubts about perspectives on policy-making that posit a more governed, isolated, and predictable system of action. Dutton is opposed to theories that view policy outcomes as "a result of demands and supports, as a compromise among competing interest groups, or as the outcome of a pluralist or elitist process of decision-making." Instead, policy outcomes are the outcome of "an unfolding history of separate but interdependent games."

A related theory of bureaucratic games is presented by Graham Allison. He proposes a bureaucratic politics model that assumes that bureau heads are players in a central competitive game. The game involves bargaining along regularized channels among players positioned hierarchically within the government. Players do not constitute a monolithic group and do not focus on a single strategic issue. Rather, various players focus on diverse problems and do not operate to achieve a consistent set of strategic objectives. Players entertain diverse conceptions of national, organizational and personal goals. They neither influence government decisions based on purposive choices

51 Dutton, "The ecology of games...", 306.
52 Dutton, "The ecology of games...", 306.
made by consistent actors, nor on rational choice, motivated by conscious calculations of advantages. Governmental decisions are the outcome of political demands. Allison places emphasis on the environment, pace, structure, rules and rewards of the game. He identifies a series of bargaining games that involve highly politicized processes of discovery, framing, and choice. He acknowledges the influence of individual personality, parochial priorities and perceptions, vested interests, contextual factors (such as, how busy the players are and their focus on the immediate rather than strategic problem), and the role of action channels in structuring the game itself.

David McCarty also views the outcomes of specific regulatory proceedings as being shaped by the interaction of various players' strategies and relative political influence, and constrained by the formal and informal rules that define the nature of the game and nuances of strategy. In turn, many of these outcomes materially affect the subsequent development of infrastructures and the nature of the regulatory processes themselves. "The process of telecommunication regulation—that is, the way in which telecommunications regulation is developed, maintained, enforced, modified or abandoned over time—shares several fundamental characteristics with 'games'." Both involve various players with different levels of resources and influence. Players are assumed to have specific objectives with regard to the game. These objectives may conflict in some cases, or coincide to some

54 Allison, "Conceptual models. . .," 74.

degree. Taking account of the known objectives and strategies of others, players adopt specific strategies that they believe will be most effective to achieve their particular objectives.

Game theories of regulation have been severely critiqued on the validity of extending the notion of games to political decision-making. The metaphor of games, some have argued, trivializes the process and outcomes of regulation. Beyond these criticisms, the ecology of games framework is unsatisfactory because it assumes an excessive degree of agency among players. The assumption that individual agents engage in strategic game-playing with adequate knowledge of and control over the consequences of their actions as well as insight into the objectives and strategies of other players is untenable. Assuming a fractured terrain of political and economic interests, each contesting in different regulatory games within an ecology of separate but interdependent games, further muddies the knowledgeability of players and their control over outcomes.

Summary

This chapter has explicated various theoretical assumptions that guide this dissertation, and engaged some of the predominant theories of regulation and regulatory behavior. Anthony Giddens' contributions proved valuable in this endeavor. A dialectic of control is suggested between agents and structures. State power relies on allocative and authoritative resources drawn into interactions by agents in their day-to-day activities. Agencies of the contemporary state enjoy relative autonomy. They coexist with a multitude of fragmented capitalist and other interests. The state's relative autonomy
encounters various policy actors. The state is one among several policy actors. Various interacting influences impinge upon political decision-making. A number of regulatory theories oppose these assumptions. They are discussed briefly. The following chapter articulates theoretical assumptions about the process of regulation. This discussion will entail explication of several alternative regulatory theories that may be distinguished from those discussed in this chapter based on their assumptions about the communicative nature of regulation.
CHAPTER III
THE COMMUNICATIVE PROCESSES OF REGULATION

Introduction

This chapter conceptualizes the regulatory process as communicative, within a context of power that operates discursively and hegemonically. Regulatory agencies are seen performing related material and symbolic functions that cannot be easily separated. Gradual processes of social learning occur within policy communities and through inter-governmental communicative networks, and influence the agenda-prominence of social issues. While in some cases, sudden events drive agenda-prominence, emulation among agencies is an important factor in the circumstances under which regulators come to focus on particular social concerns.

Overlapping Phases in the Regulatory Process

Regulatory theorists typically view regulation as consisting of several overlapping stages or phases. Lasswell proposed an early version of the policy phases that included intelligence, promotion, prescription, invocation, application, termination and appraisal. May and Wildavsky describe "a policy cycle" that includes agenda-setting, issue analysis, implementation, evaluation, and termination. According to Brewer and deLeon, policy-
making progresses through a series of stages: initiation, estimation, selection, implementation, evaluation, and termination.¹

Agenda-setting involves the process through which policymakers decide whether an issue is worthy of attention and the extent of agency resources it warrants. When an issue "wins out" over others, policymakers are involved in a procedural stage where formal or informal administrative procedures are chosen. During this stage, policymakers decide, for instance, whether an issue warrants formal public hearings, or if it can be resolved without hearings.² In the next stage, policies are formulated. Policymakers choose a solution to a policy issue from among the available options. In the final stage, policy decisions are implemented.

Issue-Status and Agenda-Prominence

B. Guy Peters suggests that "[b]efore a policy choice can be made, a problem in society must have been accepted as part of the agenda of the policy-making system—that is, as a portion of the range of problems deemed amenable to public action and worthy of the attention of policymakers. Many problems, if they are not so perceived by authoritative actors, are not given


² Viswanath, K. and R. Samarajiva, News Coverage as a Factor in State Regulation of Telecommunication Privacy: A Content Analysis of Specialized and General News Media in Relation to Early Caller ID Hearings, Grant Proposal for the Ameritech Faculty Fellowship, 1992-93 submitted to the Ameritech Advisory Committee at the Graduate School of the Ohio State University, April 1992, 10.
further consideration."³ Derthick and Quirk suggest that agenda-setting relies crucially on the difficult process of policymakers "agreeing on what to do and having the means to effectuate the agreement."⁴ According to John Kingdon, a problem comes to occupy the attention of regulators when positive or negative political changes are imminent, or when its inclusion is induced by visible political participants.⁵ The means by which regulators learn about the problem and the ways in which it is defined as a problem are other forces that influence the "issue-status" of social problems.⁶

If the motivating interest is maximizing social welfare or serving "the public interest" as public interest theories argue, social problems that are included on regulatory agendas must reflect "the public interest." Public interest theories have provided the traditional bases for regulation in the law and early economic writings. These theories state that regulation is a substitute for market competition, aimed at protecting consumers from the arbitrary exercise of monopoly power by the producer.

A democratically-elected legislature is responsible for detecting market imperfections--monopoly markets, negative externalities, and imperfections in information--and establishing administrative agencies to rectify these

⁶ Kingdon, Agendas, Alternatives, and Public Policy.
imperfections. Bureaucratic institutions are assumed highly effective mechanisms for these rectifications. Administrative agencies often cause substantial redistribution of wealth and are, therefore, potential targets for corruption. Therefore, these agencies employ "experts," who are assumed to be removed from partisan politics and engaged in problem-solving. This view is reflected in the "technocratic model" of policy-making.7

Public interest theories have been severely criticized based on their assumption of a well-defined, consistent public interest. However, as Noll suggests, the shaky foundations for a clear, identifiable public interest concept does not imply any fundamental error in these theories.

As long as officials believe that a public interest has been defined for them and act to serve it, the fact that the public interest they perceive lacks interesting normative properties is inessential to the theory of their behavior. The key issue is what they believe the public interest to be, not whether their beliefs are correct or theoretically well-founded.8

Public interest theories are criticized further because "they oversimplify the social function of an organization, ignore the relationship between its responsibilities and its costs, and give scant attention to the manner in which it [the regulating organization] establishes and adjusts policies in light of perceptions of the response of its environment to its actions and to other sources of change."9 According to Noll, public interest theories are not viable

8 Noll, "Government regulatory behavior...", 19.
9 Noll, "Government regulatory behavior...", 22.
unless two criteria are met: they must include a model of how an agency comes to perceive the public interest and they must identify the source of the agency's motivations to pursue a particular objective. Traditional public interest theories do not meet either criterion.

Based on the assumption that regulators mainly act on issues that they perceive to be in the public interest, rather than those that match pre-determined, well-established standards of improvement, a number of explanations are available of how an agency comes to its perception of the public interest. One such explanation is provided by the external signals hypothesis. The underlying assumption of external signals theory is that "agencies try to serve the public interest but have difficulty identifying it, because the public interest is such an elusive concept. Consequently, they judge the extent to which their decisions satisfy the public interest by observing the responses of other institutions to their policies and rules."¹⁰

Sources of performance indicators include the courts, elected political officials (including congressional committees that decide upon the budget and legislative program of the agency), and the general public (including the press, all other agencies and constituent interest groups). From each source, agencies receive indicators: actions that express approval or disapproval of the agency's decisions. These include instances when budget requests and legislative proposals are well received, or when encounters with Congress are conflict-free, or when agency decisions are rarely appealed to or rejected by the courts.

¹⁰ Noll, "Government regulatory behavior. . .," 41.
Central to the external signals theory is the assumption of a communicative process of receiving and interpreting external signals from various sources. Agencies are involved in interpreting signals from political entities, actively seeking to maximize positive feedback or avoid negative feedback. While the courts are primarily concerned with procedural fairness and rational bases for agency decisions, political leaders play a more complex role. They may use regulatory policy to further re-election aims, or they may seek to provide favors to specific constituents, to respond to swings in the electorate. Whether or not the general voting population is a consideration for politicians depends upon the salience of regulatory policy, i.e., "whether at any given time particular regulation, either in general or a specific part of it, is important enough in relation to other issues that voters will give it significant weight in making voting decisions."  

Therefore, external signals theory provides an explanation of the conditions under which Congress and the executive branch will engage in effective oversight of agencies. However, according to Noll, the deeper question is why Congress and the executive sometimes become extraordinarily active on some issues. External signals theory suggests that when the clients of an agency are satisfied and the agency is not receiving public attention, there is no reason for extensive political oversight. But, when agencies are in conflict, appeals are made to the political system and regulatory policy becomes salient. Agencies that are the focus of political conflict should systematically receive more political attention than more

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11 Noll, "Government regulatory behavior. . . ," 42.
placid bureaus. Alternately, the external signals theory suggests that some agencies develop cumbersome procedures and exhibit excessive concern for the preservation of particular private equities as "natural responses" to combat concerted attempts by competing interest groups to influence agency decisions.

Regulatory agencies may also rely on the mass media for indications of the public interest. A significant tradition of communication policy research has examined the influence of "information sources and the impact of their delivery and restriction by journalists and other gatekeepers to participants in the policy arena." The tradition of effects research and media impact studies spurred research on the agenda-setting function of the mass media. This included demonstrating how the media set the public agenda with regard to the most important issues of the day, the role of gatekeepers in influencing salience and analyses of the influence of news coverage of choices made by government officials.


Rowland states that some of these efforts have "reformulate[d] media research problems in the light of the complex current discourses about power, ideology, the state, social structure, symbolic reality and cultural meaning. . . . [They are] epistemologically sophisticated, recognizing the relationships between knowledge and power and introducing matters of class, structure, legitimation and normativism."16 However, other efforts have remained "descriptive [rather] than analytical, identifying the major participants in the policy arena . . . and describing the major issues over which they contend . . . ."17 They have relied upon social psychology with a traditional focus on the audience or consumer as the target of mass communication and as Gandy has argued, "offer the same conclusions as those offered by the armies of equivocation: some coverage will affect the agendas of some people, regarding some issues, some of the time."18

The foregoing denies objective standards of improvement and pre-established notions of the public interest. Regulators perceive and interpret the public interest from "signals" from external political entities and the mass media. This suggests that complex communicative and interpretive processes are at work during agenda-setting and other stages of the policy process. In addition to external signals of the public interest, regulatory perceptions of the


18 Gandy, O.H. Jr., Beyond Agenda-Setting...
public interest are influenced by policy participants arguing from varying policy positions and interests.

According to Carol Weiss, "the public policy positions taken by policy actors are resultant of . . . their ideologies, their interests (e.g., in power, reputation, financial reward) and the information they have. Each of these forces interacts with the others in determining the participant's stance in policy-making." When a plurality of actors are involved, numerous other structural and procedural factors come into play. These include "hierarchy, specialization and internal division of labor, fragmentation of issues, reliance of standard operating procedures, control of information sources, and so on." However, the content of each group's policy positions is based on the interplay of ideology, interests, and information.


Weiss, "Ideology, interests, and information . . . ," 221.

Weiss, "Ideology, interests, and information . . . ," 224.
Heineman, Bluhm, Peterson and Kearny argue a similar point. "Ideological beliefs," they write, "[that] are neither necessarily rational in structure nor cognitively salient, are especially influential normative frameworks for decision makers."\(^2^2\) Rationality does not describe the decision making process. The "values of policy-makers may be more important in decision making situations than purely rational conclusions based on analysis."\(^2^3\) Fischer quotes policy theorists like Rein\(^2^4\) and Dror\(^2^5\) who emphasize "the necessity of studying the normative political dimensions of policy evaluation and decision making."\(^2^6\) Further, Rule asserts that "there can be no definition of a 'social problem' [that] does not involve political judgments, nor certainly any 'solution' to such problems devoid of partisan content. To pretend otherwise merely leads to the introduction of partisan measures in the guise of non-political, technocratic 'problem solving.'"\(^2^7\)

Further, policy positions are guided by various interests of policy actors. Weiss defines these primarily in terms of self-interest. Even organized


interest groups are not concerned with representing their constituents' interests alone. "They also concern themselves with maintaining their legitimacy and the perceived effectiveness of their organizations."28 A number of regulatory theorists have suggested that "regulatory behavior is governed largely by the preferences of interest groups, that are in turn, partly shaped by economic and technological contextual factors."29 These theories often focus upon organized interest groups external to the regulating agency, vying for influence and control over regulatory agendas. These interest groups are not all of equal strength and influence.

The costs of participating in the policy process are closely linked with the ability of groups to participate. Groups face high costs of participation when they do not have a high economic stake in a policy outcome. The logic of collective action argued by Mancur Olson suggests that large diffuse groups, such as, consumers lack incentives to coalesce or participate. Small groups have greater incentives to participate in the policy process than large groups, as is the case with producers over consumers, and regulated interests over the general public.30 Gormley disagrees suggesting that Olson does not consider the possibility of a small number of individuals who organize and participate

28 Weiss, "Ideology, interests, and information. . .," 224.


on behalf of large diffuse interests.\textsuperscript{31} For Gormley, the central problem facing grassroots advocates is not a lack of incentives but a lack of resources.\textsuperscript{32}

When numerous interest groups pressure regulators, complete capture by any one is unlikely. In some cases, interest group theories that espouse a fragmented terrain of interests focus on the struggle over the legitimation of particular "ideas." Organized interests sometimes find fleeting alliances with other groups, and temporarily gain control over regulatory proceedings. Some theories assume a vital role for "political entrepreneurs" who push "pet issues."

A number of theories of regulation oppose the view that regulatory behavior is primarily driven by various concentrated interests. Teske asserts that, "over time government institutions develop their own interests, using their own resources and the insulation given them by the original winning coalition to deal with future political uncertainty. . . . [I]nstitutions do not stand completely on their own, and . . . they are embedded in and influenced by external forces. However, government actors are not simply another interest group. Their legitimate state role in formulating and implementing policy at the end of a chain of influence differentiates them from external interest groups."\textsuperscript{33}


\textsuperscript{32} Gormley, \textit{The Politics of Public Utility Regulation}, 149.

\textsuperscript{33} Teske, \textit{After Divestiture} . . . , 22.
Rather than arguing the predominance of either interest groups or institutional factors, "it is reasonable to expect that both interests and institutions shape policy decisions."\textsuperscript{34} According to Teske, the key question is how the influences of interests and institutions interact. Specifically, he asks, "how much discretion do institutional actors develop and retain after political coalitions establish them and interest group power changes?"\textsuperscript{35} In response, he suggests that "both the institutional and interests group theories are necessary to develop a full explanation of . . . policies. . . . Incorporating variables from institutional theories that emphasize the role of regulatory commissions and legislators, helps explain state decisions. . . better than simply analyzing the interests of affected persons."\textsuperscript{36}

Weiss identifies the information available to policy actors as another set of forces that drives policy positions. Various types of information from a multitude of sources are included. "Elite knowledge" such as theoretical and applied social science concepts, information from other governmental organizations, other jurisdictions or regimes, the media, "craft lore," unsolicited information from external sources (e.g., constituents, consumer groups) and everyday knowledge combine to influence the positions of actors.\textsuperscript{37}

\textsuperscript{34} Teske, \textit{After Divestiture} . . . , 23. Derthick and Quirk, \textit{The Politics of Deregulation}, 1985.

\textsuperscript{35} Teske, \textit{After Divestiture} . . . , 23.

\textsuperscript{36} Teske, \textit{After Divestiture} . . . , 125.

\textsuperscript{37} Weiss, "Ideology, interests, and information. . . ," 227-8.
The struggle over the "criteria for classification, the boundaries of categories and the definition of ideas that guide the way issues are thought of occurs constantly during policy-making."38 Here again, the communicative nature of regulation is underscored. According to David Dery, "[n]o difficulties are" prima facie "the difficulties to be alleviated, nor are there logically predetermined dimensions for improvement. . . ." Lindblom and Cohen suggest that "[w]e do not discover a problem 'out there,' we make a choice about how we want to formulate a problem."39 Elliott states, "it is self-deception to think any description free of ideology, to believe any viewpoint can approximate that of an impartial spectator. . . . A person's moral judgment is reflected in what he [sic] chooses to include in a description."40

Any frame through which an issue is described is neither free of ideology nor impartial. Viswanath and Samarajiva rely on Todd Gitlin's assertion that a policy frame is "a cognitive schema or package with a central core that helps in interpretation and processing . . . ."41 Based on Erving Goffman, a frame is "a conceptual means of organizing and delimiting the

41 Viswanath, K. and R. Samarajiva, News Coverage as a Factor in State Regulation of Telecommunication Privacy . . . , 8.
scope of what one pays attention to."

"A frame defines the kind of questions that are asked and suggests the answers to these questions." Therefore, "all organization, conceptual or otherwise, is bias. Each frame, privileging as it does a particular unit, relation, and level of analysis, conditions the questions that are asked, and thereby the answers obtained."

The choice of frame makes it impossible to perceive other frames. Although there is a multiplicity of possible ways in which a problem may be described, the terms of one description typically cannot and do not contain those of another. "What makes it extremely difficult to see two or more frames is precisely that they are often neither opposites nor mirror images nor better or worse representations of a single truth."

The concept of frames emphasizes the communicative nature of the policy process. The process of framing is as interpretive one, aimed at constructing existing situations in particular ways, privileging particular questions and answers. Frames are organizing strategies that illuminate some aspects of a situation, and obscure others. They construct policy issues

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so that some policy outcomes may be viewed as acceptable and others as extreme.

Giddens' notion of "structure" clarifies the concept of policy frames. Frames are lasting across time-space distances and contain power. Once established, they are reproduced in every instance where they are relied upon by intervenors in policy proceedings to describe issues. Although parties are restricted by the structure of frames, particular courses of action are also enabled by frames. According to Edelman, "once the premises of the political scene become fixed, they are experienced as fact, although they may be problematic constructions reflecting one specific situation and the concerns of one particular class."46 Once these premises become established, the conditions for the possibility of alternatives are limited. These "facts" affect which "issues come to be issues on the governmental agenda, how the alternatives from which decision makers choose are generated, and why some potential issues and some likely alternatives never come to be the focus of serious attention."47 However, Giddens would suggest that the structure of frames contains "openings" that may be utilized by subordinates.48 Therefore, although frames constrain individual action, the structure of a frame privileges particular alternatives and enables individual action in pursuit of those alternatives.


47 Kingdon, Agendas, Alternatives and Public Policies, 1.

The Hegemonic Process of Regulation

From among various versions of the public interest offered by participants, particular social concerns come to occupy the attention of regulators, and particular courses of action are viewed as acceptable. The process by which decision-makers reconcile frames for policy issues and their policy positions may be explained by illustrating the "hegemonic nature of the political process." Samarajiva borrows from Gramsci and argues that the political/policy process itself plays a significant ideological role. When parties to a policy proceeding present their policy positions, "these presentations take the form of rhetorically converting statements of private interest into statements of public interest. Thus all presentations will appear to be in the public interest despite the enmity of the various parties."\(^{49}\) Decision makers follow highly structured, formal procedures, and assert their own version of the public interest, consistent with the record. They "establish a connection between their version of the public interest and the various versions presented by the parties. This is a hegemonic process that clothes particular interests in the language of the universal interest."\(^{50}\)

Samarajiva argues that "agencies of the state strive to establish hegemony over each other and multiple industry players. Certain issues are placed on the agenda and others are not. Issues are framed in specific ways. The terrain of policy discourse is defined, marking out certain positions as

\(^{49}\) Samarajiva, "Toward a theoretical understanding...", 95.

\(^{50}\) Samarajiva, "Toward a theoretical understanding...", 95.
acceptable and others as extreme."\textsuperscript{51} Compromises may be made in specific, limited policy contexts to achieve consensus on broader issues and vice versa. Samarajiva states that the Gramscian theory of hegemony is a communication-based theory. "The hegemonic processes . . . are essentially communication relations between various groups that exercise economic and political power in society. Indeed, the Gramscian notion of hegemony reconceptualizes power in communication terms. Absent communication, there can be no hegemony."\textsuperscript{52}

**Persuasion and Argument in Political Decision-making**

The hegemonic nature of political decision-making presumes a central role for persuasion and argumentation in the regulatory process. Policy participants identify and describe the issues relevant to a proceeding and argue from various ideologies, for diverse interests and with varying levels of information. They communicate their policy positions through reasoned arguments. Policy actors engage in various evaluative and prescriptive activities.\textsuperscript{53} Some evaluations and prescriptions are acceptable, others are extreme. These descriptions of issues, negotiations and compromise between various evaluations and prescriptions, and justifications offered for policy decisions are open to public view and held up to some standards of

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\textsuperscript{51} Samarajiva, "Toward a theoretical understanding, . . .," 95.
\textsuperscript{52} Samarajiva, "Toward a theoretical understanding, . . .," 99.
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"substantive rationality." Therefore, policy-making exemplifies "the extraordinary potential of persuasion."

According to Majone, argumentation is the key process through which citizens and policymakers arrive at policy choices. He suggests that "[a] persuasive argument is not a logical demonstration, but it does not become irrational or mere rationalization because of this." "On the one hand, facts and values are so intertwined in policy-making that factual arguments unaided by persuasion seldom play a significant role in public debate. On the other hand, persuasion is needed in order to increase both the acceptability of advice and the willingness to act on less than conclusive evidence."

Public policy-making is unlike personal decision-making in that the former is "made through group discourses in which multiple policymakers with different information and values advocate their claims." You states that policy-making is dependent upon public discourse and must be open to public view. Under these conditions, policy-making relies upon the soundness of reasons for particular policy decisions rather than formal logical necessity. Effective communicators who intend to influence other participants, offer arguments--claims with reasoned support.

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54 Fischer, "Practical discourse in policy argumentation," 320.
56 Majone, Argument and Persuasion . . . , 8.
57 Majone, Argument and Persuasion . . . , 8.
Extending Toulmin's work on "argument," Dunn argues that "policy arguments go beyond the mere production of information or the justification of favored policy alternatives. . . ." A policy argument is not only the form that arranges and composes information and evidence, but also the "main vehicle for conducting debates about public policy issues." Arguing a similar point, Fischer states "moral and political judgments are statements in support of decisions that can be forceably [sic] or poorly defended. They are neither factual nor emotive statements. . . . They are rationally constructed but not proven inductively or deductively like a scientific proposition." Premises are not presented merely as "facts," but rather as arguments that stress those aspects of a situation that favor some policy position and decision.

According to Karon, extrapolating from Chaim Perelman's notion of "presence," the persuasive abilities of policy actors focuses attention on certain elements in a situation to the exclusion of others and thereby transposes a contested phenomenon from the realm of the contingent to the

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realm of the absolute. Presence or the power to direct attention determines what is relevant in an argumentative situation and what should receive priority. As the presence of an idea increases, other ideas are forced out of attention and the "universal rationality" or acceptability of the idea can be asserted. Thus presence constructs the "rationality of premises" by influencing the audience's apprehension of consensus about that premise.

Symbolic Dimensions of Policy

Some theories of regulation urge the inclusion of the expressive dimensions of policy in analysis. Maynard-Moody and Stull argue, "[p]olicies have tangible results, and examining effects, whether through experiments or in-depth interviews, is an essential component of policy analysis. But policies have an expressive as well as an instrumental side. They say as well as do things, they communicate values and intentions, and they distribute symbolic rewards as well as alter behavior. . . . These expressive dimensions of policy

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66 Perelman's "universal audience" has been critiqued for its implied elitism and the circular standard for judging the quality of arguments. Perelman measures the quality of arguments not only by the effectiveness of the discourse, in terms of the consensus of the audience addressed, but also by the quality of the audience. McKerrow, R.E., "Pragmatic justification and Perelman's philosophic rhetoric," in Practical Reasoning in Human Affairs, J.L. Golden and J.J. Pilotta, eds., D. Reidel Publishing Co., 1986, 219-21.

67 Leff, "In search of Ariadne's thread. . . , 81.
are central to understanding government actions but are left out of current discussions of policy analysis. Policy outcomes have generally been given primacy and symbolic actions have been either ignored or seen as part of manipulative efforts to control outcomes, rather than the other way around.

For these authors, the expressive dimension may take several forms. These forms are not exclusive, i.e., a single policy can include them all. The first of these forms is strategic. These policies are designed to specifically send a message that policymakers are serious about a problem. They are intentionally expressive. Second, policymakers may distribute symbolic rewards. Such policies communicate to individuals and groups the "rightness" of their causes, even if the policies do little to remedy problems. They reward groups with legitimacy and attention. Third, policies express values and beliefs that may have little to do with encouraging certain outcomes. Although the norm of rational discourse requires that policymakers describe and defend their decisions with rational arguments and in terms of effects, they are also always engaged in balancing value conflicts. Typically, the policy process involves framing issues so that conflicting views and values are brought together.


Maynard-Moody and Stull agree with Edelman that "political language is . . . not simply an instrument for describing events but itself part of the events, shaping their meaning and helping to shape the political roles officials and the general public play."⁷⁰ However, for Edelman the policy process is constituted by ritualized procedures that do not necessarily and perhaps cannot attempt the solution of social problems. He writes,

Administrative agencies are to be understood as economic and political instruments of the parties they regulate and benefit, not of a reified 'society,' 'general will' or 'public interest.' At the same time they perform this instrumental function, they perform an equally important expressive function for the polity as a whole: to create and sustain an impression that induces acquiescence of the public in the face of private tactics that might otherwise be expected to produce resentment, protest, resistance.⁷¹

Edelman emphasizes the pervasiveness of symbolic elements in governmental proceedings and the impact of symbolic functions upon elite and mass behavior. Political institutions and forms take on strong meanings that are vital for the acquiescence of the general public in the actions of elites. Therefore, they come to symbolize what large masses need to believe about the state to reassure themselves.⁷²

"[E]very political institution and act evokes and reinforces a particular response in its audiences. . . . In democratic countries these institutions reinforce beliefs in the reality of citizen participation in government and in


the rational basis of governmental decisions. . ."73 As is the case with elections and voting behavior, participation in most political institutions is more a ritual act, and like all ritual, it draws attention to common social ties and to the importance and apparent reasonableness of accepting the public policies that are adopted.74 Edelman distinguishes this ritualized or symbolic participation that promotes conformity and evokes satisfaction in conformity from the possibility of "real influence."75 "Formal [governmental] procedures are ritualistic in the sense that they will not effect any basic or radical change in existing inequalities in wealth or power. They will certainly yield many policies that have symbolic effects and that may effect minor changes . . ." that due to socialization and symbolic processes many people will define as significant.76

Focusing on the uses of myths, ritual and other symbolic forms in public policy formation, Edelman argues that social problems are constructed through discourse reinforcing particular ideologies.77 "In communications between political authorities and mass publics, elites significantly structure the expectations people have of them, and significantly contribute to the

accepting relationship of mass publics to authority itself. Particular social problems enable the perpetuation of particular interests. In doing so they negate other problems and in some cases get perpetuated by the solutions devised for them.

... those affected by a policy are not simply quiescent or apathetic or even completely unaware of the issue. [Rather] those who are potentially able and willing to apply political sanctions constitute the politically significant group. ... where public understanding [of an issue] is vague and information rare, interests in reassurance will be all the more potent and all the more susceptible to manipulation by political symbols. ... The integral connection is apparent between symbolic satisfaction of the disorganized, on the one hand, and the success of the organized, on the other, in using governmental instrumentalities as aids in securing the tangible resources they claim. ... Far from representing an obstacle to organized groups, [non-elites] become defenders of the very system of law which permits the organized to pursue their interests effectively.

Therefore, when the number of people who benefit or think they benefit from a particular solution is large or they occupy strategic positions, "a regime has a strong incentive to depict as solution, any development that is associated with the problem linguistically, logically, or in fantasy. ... A verbal or physical gesture that takes the form of a response to a problem ... "

Public officials and bureaucracies have the means at their disposal to build cognitive structures, to shape public opinion, to "mollify a wider public and immobilize potential opposition and internal qualms ... through

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78 Edelman, Political Language ..., xx. From Introduction by M. Lipsky.
79 Edelman, Symbolic Uses ..., 38.
80 Edelman, Constructing the Political Spectacle, 24.
problematic definitions of what they do and equally problematic definitions of the public opinion to which they respond. 81

Edelman's theory may be criticized for its assumptions concerning the motivations of regulatory agencies. All policy institutions are assumed to be protective of elite interests, engaged in ritualized symbolic gestures to which the non-elites are always acquiescent. Moreover, Edelman assumes the symbolic and the real are separable and privileges locating "real solutions" to social problems as opposed to what policy agencies do in actuality—providing symbolic reassurances in various ways.

Most troublesome is that Edelman fails to distinguish between regulation as "banal political spectacle" and the symbolic aspect of governmental activity. In suggesting that governmental agencies perform ritualized acts that are neither capable nor intended to solve social problems, this ritualized spectacle is viewed as making symbolic reassurances to individuals and subdue them. Therefore, according to Edelman, the symbolic dimension of policy is akin to sham, used by policymakers to deceive the mass public. There is, however, a crucial distinction between the symbolic dimension of governmental activity and perverse regulatory incentives to engage in ritualized spectacle. Regulators' activities and decisions have a significant symbolic dimension or effect. This symbolic dimension of regulatory activity and the symbolic effects of policies cannot be mistaken for sham or banal spectacle.

81 Edelman, Political Language . . ., 79.
Communicative Phenomena of Inducements, Emulation and Diffusion

A communication-centered perspective on regulation is, perhaps, most valuable in instances of regulatory activity that show policy diffusion and convergence among regulatory agencies. Goggin, Bowman, Lester and O'Toole suggest a communications model of intergovernmental policy implementation. Although this model focuses on the implementation stage of policy-making, it may be extrapolated to regulatory behavior generally. The product of the implementation process, conceptualized as inputs and outputs, is viewed as resulting from choices made by state-level agencies. Policy decisions are influenced by a host of external and internal factors. Therefore, no single factor alone can explain differences in implementation.

Goggin et al. explain that, "state implementation behavior is a function of inducements and constraints provided to or imposed on the states from elsewhere in the federal system—above or below the state level—as well as of the state's own propensity to act and its capacity to effectuate preferences. Inducements are factors, conditions and actions, that stimulate implementation; constraints have the opposite effect." The authors posit three clusters of variables that affect state implementation of policies. These variables include inducements and constraints from the "top" (federal level), inducements and constraints from the "bottom" (state and local levels), and state decisional outcomes and capacities.

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83 Goggin, Implementation Theory and Practice, 32-3.
Crucial in this conception are communicative links between different governmental levels and various state agencies, each with its own policy agenda. Communication theory, the authors assert, provides a means to understand the relationships in intergovernmental policy implementation. They propose a middle-range communications theory to link the pieces of the model.84

State-level regulators form the nexus for the communication channels. These regulators receive and evaluate streams of policy-related information and directives from both federal and local agencies. However, there are significant possibilities for distortion in this process of interpretation. This allows for varied interpretations. In turn, these varied interpretations result in discord in state regulatory decisions. Even within a single state, the pluralistic and interactive nature of local policy-making increases the probability that regulators will decode multiple, conflicting messages and consequently establish inconsistent or varying policies.

Goggin et al. suggest that, "[a]n implementation subsystem full of messages, messengers, channels, and targets operates within a broader communications system."85 The joint nature of decisions and actions of interdependent government institutions and bargaining between the three levels of government are included within the broader communications system.

84 Goggin, Implementation Theory and Practice... , 32.
85 Goggin, Implementation Theory and Practice... , 33.
State regulatory decisions are influenced by the content, form, and salience of federal inducements and constraints. Clearly articulated inducements that are consistent with other policy objectives, unanimous support for inducements among senders, and the legitimacy and credibility of senders are factors with significant influence. At the state-level, inducements may come from three interacting institutional clusters, each with divergent expectations, vested interests and with disproportionate access to resources. The three clusters include interest groups, state and local elected officials and their associated political institutions, and the focal (implementing or regulating) state agency. Messages from all three clusters generate a "receptivity climate" that is the context of laws, regulations and support structures that federal inducements encounter in each state. Political, cultural and economic environments and the process of decision-making itself further constrain regulatory decisions.

After receiving policy directives from federal and local agencies, state agencies are influenced by internal factors (the psychological predispositions of regulators) and external factors (the interpersonal relations among politicians and representatives of organized interests) in their decision to act. The decision to act is connected to the agency's capacity to act. Organizational capacity (the institution's structural, personnel and resource characteristics) and ecological capacity (the contextual environment—socio-economic and political conditions within a state, the degree of policy enforcement, etc.)

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86 Goggin, Implementation Theory and Practice... 36.
87 Goggin, Implementation Theory and Practice... 38.
liberalism, the political culture of a state, public opinion, the media attention given to an issue and therefore, the salience of the issue) are significantly influential.88

Despite its reliance upon the much critiqued transmission model of communication, involving senders and receivers connected by feedback loops, Goggin et al.'s scheme offers an intriguing explanation for discord among regulators within and across states. The authors present a complex matrix of factors that influence, induce, and constrain policy-makers, situated within and affected by a "broader communications context."

Intergovernmental networks have very often been ignored in theories of regulation. By focusing on these networks, these authors acknowledge the significant influence they may have on regulatory behavior.

John Kingdon's policy streams framework focuses on the question: "What makes people in and around government attend, at any given time, to some subjects and not to others?"89 Kingdon occupies himself with two pre-decision processes--agenda-setting and the specification of alternatives. Agenda-setting involves processes through which a problem comes to occupy the attention of regulators. The processes by which particular issues are selected for serious consideration by regulators constitute the specification of alternatives.

88 Goggin, Implementation Theory and Practice... , 38-9.
With regard to agenda-setting, Kingdon suggests that the means by which officials learn about conditions, and the ways in which conditions become defined as problems are crucial. Further, agenda-setting is influenced by politics. Changes in regulatory foci follow swings of national mood, vagaries of public opinion, election results, changes of administration, and turnovers in Congress. Clarifying this point, Kingdon asks, "How much does politicians' receptivity to certain ideas depend on such considerations as maintaining or building electoral coalitions, being re-elected, or running for higher office? How much do important people compete for policy turf, and what effect does that competition have?" Finally, agenda-setting is influenced by visible participants—the president, his high-level appointees, prominent members of Congress, the media, etc. Where a visible cluster of actors argues for the inclusion of a particular issue on a regulatory agenda, that subject is pushed into agenda prominence.

This is similar to the notion of external inducement—a hypothesis that has enjoyed favor among a number of scholars explaining influences upon policymakers. It is a central component of Goggin et al.'s theory of intergovernmental communication. Derthick and Quirk too explain the adoption of deregulation as a policy objective in the early 1980s by suggesting that, "it was the convergence of external influences [sanctions and rewards from influential institutions] on commissions—the simultaneous tendency of the President, congressional critics, courts, and elite opinion in general to

90 Kingdon, Agendas, Alternatives and Public Policies, 19.
push them in the direction of pro-competitive deregulation—that largely accounts for the commission choosing that course of action."^91

With regard to the specification of alternatives, Kingdon argues that two factors are responsible for narrowing the list of possible alternatives. First, limitations are posed by the policy stream itself. These include technical feasibility, congruence with the values of community members, the anticipation of future constraints, public acceptability, and politicians' receptivity. Alternatives may be narrowed further by a process of gradual accumulation of knowledge and perspectives among specialists (academic specialists, career bureaucrats, congressional staff, etc.) in a given policy area, and the generation of policy proposals by such specialists. These specialists are viewed as relatively hidden participants. Further, independent of scientific and technological innovations, ideas may sweep policy communities like fads, or gain prominence gradually through a constant process of discussion (speeches, hearings, bill introductions, expert testimony).^92

Agenda-setting and the specification of alternatives may be influenced by broad, stable, normative standards as well. Kingdon asks, "[h]ow much do ideas like equity and efficiency affect the participants? More broadly, what values affect the processes and how much are people motivated by their desire to change the existing order to bring it into line with their conception


of the ideal order? How much do they acquire new ideas by studying situations similar to their own in [other] states or other countries? . . . How much does feedback from the operation of existing programs affect the agenda?"93

The separate streams of problems, policy proposals and political events converge at particular points in time. This convergence directs regulatory attention to a particular social problem and pushes a particular solution, neglecting all others. This convergence presents policy windows--opportunities for advocates to promote their pet solutions or to urge attention on their special problems. Sometimes these open predictably. At other times, as in moments of crises, windows open unpredictably.94

Colin Bennett posits a theory of policy convergence to explain regulatory behavior. Convergence denotes "a pattern of development over time, a process rather than a condition. The essential theoretical dimension is not only spatial . . . but also temporal. . . ."95 Generally, theories of policy convergence state that, "technological and economic development has a leveling impact on diverse social structures, cultural traditions, and public policies."96 Bennett quotes, "Modernization brings processes and implications in its wake: an emphasis on planning and rationalization; a

96 Bennett, *Regulating Privacy*, 4.
replacement of an ideological with a pragmatic imperative; a centrality for a technocratic elite; and a pervasive role for high technology.97

However, convergence theories typically make imprecise formulations, obscure critical divergences, and are over-deterministic. Therefore, Bennett identifies a number of hypotheses that, in combination, explain policy convergence.98 They include technological determinism, emulation, elite networking, harmonization, and penetration. Convergence may result when regulators have no readily available solution within the existing repertoire of policy and procedural techniques. Faced with pressures to conform in an insecure and tentative policy-making climate, regulators tend to look abroad, to see how other states have responded, to share ideas, and to bring foreign evidence to bear on the domestic decision-making process.99

Further, convergence may result from consensus among members of a transnational "policy community" or "issue network"—relatively coherent and enduring networks of elites bound by expertise on a issue and a common concern for the resolution of issues.100 In some cases, an international organization or regime may explicitly attempt to harmonize policy among transnational actors. These attempts are driven by the recognition of interdependence and the need to avoid unnecessary discrepancies and


98 Bennett's research is focused on the international diffusion of data protection policies.

99 Bennett, Regulating Privacy, 4-5.

100 Bennett, Regulating Privacy, 5.
incompatibilities. Finally, Bennett suggests that convergence may result in situations where policy action on an issue within one jurisdiction carries costs that penetrate to jurisdictions that have not yet responded to that issue.\textsuperscript{101}

John Ikenberry offers a theory of regulation that is similar to Bennett's model. Both efforts focus on identifying trends through which several independent regimes adopt similar policies at particular points in time. Both offer explanations of the circumstances of parallel and coincident transformations in policies in various countries. But whereas Ikenberry hypothesizes a process of policy diffusion across national borders,\textsuperscript{102} Bennett perceives a process of convergence by which different national regimes adopt converging policies. Ikenberry's framework incorporates three interacting processes: external inducement, emulation or "policy bandwagoning" and social learning. Together these processes of diffusion create a bundle of policy ideas that drive the diffusion of innovative regulatory decisions.\textsuperscript{103}

Ikenberry clarifies that although underlying trends capable of driving policy changes may exist, that policy emerges is not inevitable. Further, "a particular set of economic circumstances does not inexorably produce a single

\textsuperscript{101} Bennett, *Regulating Privacy*, 5-6.

\textsuperscript{102} Ikenberry's research focuses on national communication infrastructure policies towards privatization in a number of developing countries.

policy response."\textsuperscript{104} The external inducement theory focuses on the role of direct, external political pressure. External inducement occurs when one state or its agents provides incentives or inducements that lead others to adopt a preferred policy. External inducements range from overt coercion to the loose structuring of incentives and sanctions.

Further, Ikenberry suggests that a policy may "spread when its adoption in one country creates 'successes' that other countries seek to emulate."\textsuperscript{105} The process of emulation is driven by several forces. These include the most overt imperatives of interstate or international competitive pressures, political or economic rewards for government elites and state involvement in the economy and society. In all these cases, Ikenberry suggests, "emulation is a process whereby elites monitor policy change abroad and seeking similar successes, import the appropriate policies. What emerges is a sort of 'policy bandwagoning.'"\textsuperscript{106}

Virginia Gray extensively researched the phenomenon of diffusion of policy innovations among the American states. She fit the diffusion process with an interactive equation, assuming complete intermingling and interchangeability of the states. The interactive equation states that when states exchange favorable assessments of new policies, interaction effects occur. Policy innovations that diffuse through interaction, therefore, spread quicker than those without interaction effects. According to Gray,

\textsuperscript{104} Ikenberry, "The international spread of privatization policies . . .," 98.
\textsuperscript{105} Ikenberry, "The international spread of privatization policies . . ., 101.
\textsuperscript{106} Ikenberry, "The international spread of privatization policies . . ., 101.
innovations get diffused among states when they perceive and acknowledge the need for a new policy. States emulate policy innovations not only because of expert pressure (legislative mandates, recommendations from policy professionals in the state executive branch, etc.), but also because the other state provides a timely model that may be seen as the solution to a vexing local problem.

Some states are consistently among the leaders on a variety of policies, while others lag behind in nearly every area. Diffusion patterns may be incapable of commenting on the innovativeness of states, but could record the spread of necessity rather than the emulation of virtue. Eyestone explains, "leaders may lead because they are also the first to suffer the undesirable effects of some urban and industrial growth [that] create demands for state policy responses."107 Within Gray's completely intermixed model, any state could potentially play the role of leader, adopting an innovative policy and serving as model for others.108 In contrast, Jack Walker argues for an emulation pattern with a regional component, in which states follow regional leaders.109

Diffusion of policy innovations is accompanied by repeals, amendments, and reinstatements. Therefore, Howlett points to acts of


omission—non-decisions or decisions against taking any action—emphasizing that policy analysts must investigate both acts of commission and omission. External and internal factors may be equally influential in driving and rescinding the adoption of innovations in other states.

Some existing research on predictive models for judicial decision-making and innovation among state courts shares the conceptual framework of the foregoing models. Some of these efforts postulate state Supreme Court decisions as dependent upon various related independent variables. A key task in these efforts has been to isolate and estimate the influence of various independent variables. Some of these independent variables are indicative of more diffused factors. For instance, Swinford includes the court's liberalism, the strength of provisions in state law, the sum of previous cases decided by other supreme courts, etc., among the independent variables that affect state court decisions. While these factors indicate dynamic emulative behavior, gradual processes of learning, and the persuasive


influence of existing legal fact and procedure, the communicative nature of these processes is not made explicit.

Ikenberry makes the point by stating that in addition to external inducements and emulation, policy diffusion is also driven by "social learning." This refers to the spread of new information with which governments make policy choices. Social learning theory suggests that the diffusion of policy-relevant knowledge is driven by "evolving consensual knowledge." This is a shared fund of knowledge among social and political elites about the nature of socioeconomic change and effective policy. A number of notable commentaries are available on the exchange of knowledge between the policy arena and the sphere of social science theory and research. Some have concluded that, "the most important effects of disciplined discourse are indirect and long-term; that discourse serves an enlightenment function rather than an engineering one, and that it reshapes the fundamental conceptual grasp of reality on the part of the general public

113 Ikenberry, "The international spread of privatization policies . . . , 103.

and policymakers alike and thereby opens up, or forecloses, whole avenues of action.\textsuperscript{115}

Ikenberry explains that, "[s]ocial learning involves a set of interlocking processes. New forms of theoretical and policy knowledge must make their way into a professional community. These ideas, in turn, need to find their way into the councils of government."\textsuperscript{116} Quoting Haas, he continues, "[k]nowledge becomes salient . . . only after it has seeped into the consciousness of policymakers and other influential groups and individuals."\textsuperscript{117} Behind this process of diffusion is the image of government attempting to solve problems and politicians and bureaucrats open to new information at points in time. Old reigning ideas are discredited, perhaps provoking a crisis or accompanied by changes in a regime. A new conventional wisdom emerges and therefrom a new policy culture.\textsuperscript{118}

Ikenberry borrows Haas' concept of "epistemic communities"\textsuperscript{119} that are constituted by professionals who share a commitment to a common causal model and a common set of political values, and who are involved in


\textsuperscript{116} Ikenberry, "The international spread of privatization policies . . . ., 104.

\textsuperscript{117} Ikenberry, "The international spread of privatization policies . . . ., 104.

\textsuperscript{118} Ikenberry, "The international spread of privatization policies . . . ., 105.

the generation of new knowledge. Changes in the definition of a policy problem or innovations in policy priorities are explained by the role of epistemic communities in contact with policy participants. Yves Meny states that "policy communities" are cohesive and orienting bonds underlying any particular issue.\textsuperscript{120} The most developed form of policy community is the institutionalized relationship between an interest group and public authorities. Meny's notion of the policy community does not form a homogeneous and stable entity. The emergence of new actors, changes in the relative influence of different actors and external pressures upon the community affect the cohesiveness of policy communities. Emerging consensual knowledge is replete with conflict.

Not all actors in the policy community possess the same degree of influence or are involved in every stage of regulation. Often, entire policy communities are outsiders, excluded from the policy process. However well-recognized, a policy community has, at best, incomplete control over the policy process and is generally restricted by factors outside the control of the community.\textsuperscript{121} Although strong incentives exist for actors to "structure the choices of others in such a way as to produce . . . outcomes that give them distributional advantage,"\textsuperscript{122} they do not have complete control. In many

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\textsuperscript{121} Meny, "... French policy communities," 390.
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instances, "the effects of political institutions are . . . very different from those intended even by their creators." Nevertheless, policy communities form to exploit their room for decisional maneuver.

According to Maurice Wright, policy communities are distinguishable from policy networks. A network is "the linking process, the outcome of exchanges [or transactions of resources between policy actors within communities in order to balance and optimize mutual relationships]. A policy network is a complex of organizations connected to each other by resource dependencies . . . " Not all policy communities generate policy networks. Members of policy communities may be affiliated with several different structures of dependence or policy networks.

The Discursive Backdrop

Taking the social learning theory a step further, Wittrock and Wagner hypothesize that policies are not so much "influenced" by intervening variables of different sorts, but rather are, premised on a vast range of discursive rules that define the domains of reality and relevant parameters for effective intervention—that is, not only the processes of policy making


123 Rothstein, "Marxism and institutional analysis. . .," 94.


125 Wright, "Policy community. . .," 606.

126 Wright, "Policy community. . .," 606-7.
have to be studied but also policy constitutions through discourse. Thus in every polity there will be a set of standard operating procedures for making and shaping policies in institutional terms. There will, however, also be more or less predominant, more or less embattled domains of discourse that serve as tacit backdrops for every such policy process and course of action. The rules of this domain of discourse define the field of policy intervention and the range of proper policies. They are both enabling and constraining and decisively delineate the range of options open for policy agents at any time. . . .127

The authors propose policy analysis through "discourse structuration." Such analysis "gives weight to the socio-political traditions and to the respective institutions that underpin and help reproduce these traditions. Furthermore, it . . . focuses on actual human beings propounding and perpetuating different intellectual projects, establishing discourse coalitions under historically, but nor arbitrarily, changing states and political organizations."128

Foregoing sections of this chapter have argued for policy participants arguing a multitude of descriptions, within mutually-eclipsing frames. While this may suggest a bewildering plurality of policy positions, every description is not equally legitimate. Leslie Pal emphasizes the ontological relationship between knowledge and power. She states, "power does not only repress, censor, conceal, it also produces, and 'the individual and the knowledge that may be gained of him belong to this production.'"129

Borrowing from Michel Foucault, Pal continues that "the exercise of power

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127 Wittrock and Wagner, "Policy constitution through discourse. . .," 227.
128 Wittrock and Wagner, "Policy constitution through discourse. . .," 229.
itself creates and causes to emerge new objects of knowledge and accumulates new bodies of information."\textsuperscript{130} Foucault suggests that,

Each society has its regime of truth, its 'general politics' of truth: that is, the types of discourse [that] it accepts and makes function as true; the mechanisms and instances [that] enable one to distinguish true and false statements, the means by which each is sanctioned; the techniques and procedures accorded value in the acquisition of truth; the status of those who are charged with saying what counts as true.\textsuperscript{131}

Given the continuous relationship between power and knowledge, there can be no knowledge without power, and no power without knowledge.\textsuperscript{132} If one were "to map the contours of knowledge and ignorance, of those who speak and those who remain silent," one would discover, "a terrain of power where knowledge and science, far from lacking influence, are so pervasive that they define our social practice and our political struggles."\textsuperscript{133} Pal suggests that all political decision making is driven by,

(i) the way state power shapes knowledge, (ii) the way hegemonic but discontinuous power centers develop colonies of the mind, and (iii) the way that resistances erect their own barricades of perceptions and knowing.\textsuperscript{134}


\textsuperscript{131} Foucault, Power/Knowledge. . . , 131.

\textsuperscript{132} Pal, "Knowledge, power and policy . . . , 151.

\textsuperscript{133} Pal, "Knowledge, power and policy . . . , 156-7.

\textsuperscript{134} Pal, "Knowledge, power and policy . . . , 151.
Serving as an over-arching and pervasive framework for knowledge, the "dominant discourse" influences ideology, interests and knowledge. Foucault's theory of discourse places the generation and repression of knowledge at the heart of political and economic power. Power manifests in the legitimation of particular types of knowledge and ways of knowing. Therefore, a dominant discourse communicates some preferred interpretation as "true." In this sense, Foucault's discursive formations assert the communicative core of power.

Summary

Theories explicated in this chapter espouse various assumptions about the nature, motivations, and effects of regulatory behavior. The chapter characterized the policy realm as consisting of fragmented interests with varying degrees of incomplete control over regulatory agendas. Where various interests approach equilibrium in strength, institutional factors become significant drivers of policy decisions. Most institutional theories acknowledge the combined influence of interests and various political and economic contextual factors.

This idea is supported by theorists who place regulatory decision-making within a complex context of interacting pressures. These pressures may be internal or external to regulating agencies, relatively stable or fleeting, and may manifest themselves in particular political or market events or in gradually diffusing social discourses. In various combinations, these pressures are believed to drive regulatory behavior. The regulatory process is conceptualized within a context of power that operates discursively and
hegemonically. Regulatory agencies are seen as performing related material and symbolic functions that cannot be easily separated.

Asserting the communicative nature of regulation, several theorists suggest that policy actors identify frames that highlight some issues and obscure others. Their descriptions of the issues are neither free of ideology nor impartial. These frames and descriptions constitute rational and normative arguments for particular evaluations and prescriptions. Actors make evaluative and prescriptive statements that favor particular policy outcomes through persuasion and argumentation. These prescriptions and evaluations are influenced by their ideologies, self-interests, and the level of information available to them. Participants are engaged in rhetorically aligning their policy positions to acceptable policy objectives and the "public interest."

Decision-makers, operating within the dominant discourse, favor particular descriptions, frames and prescriptions. The phenomena of external inducements, convergence and diffusion, as well as emulation among regulators and gradual processes of learning underscore the communicative nature of the policy processes. Policy communities and networks, and epistemic communities perform significant informing and information processing functions. Every such organization relies upon interaction and communication among and within groups. Policy preferences are communicated through policy decisions. These preferences underpin the hegemonic nature of policy-making and the way state power shapes knowledge.
CHAPTER IV
A STUDY OF REGULATORY INITIATIVES ON CALLING LINE IDENTIFICATION SERVICES

Introduction

Regulatory concern over telecommunication privacy issues has increased during the past seven years. A large majority of state utility commissions addressed these issues in investigations of Calling Line Identification (CLID) services. Examination of regulatory activity on CLID services from July 1987 through May 1994 illuminates the process by which telecommunication privacy gained agenda-prominence. This examination includes identification of the frames that described the problem, arguments presented by various parties, exchanges among state regulators and other decision makers, and trends in policy decisions.

This chapter traces the regulatory experience with telecommunication privacy in CLID proceedings over time. Actions by utility commissions in fifty-one state jurisdictions (50 states and Washington D.C.) on CLID services are detailed. Actions are situated in time, and changes in the regulatory treatment of telecommunications privacy issues are documented. Changes in the level of concern for these issues and the diffusion of this concern across jurisdictions are described. Migrations in state commissions' positions on the implications of
CLID services are documented. In conclusion, the chapter identifies trends in the state-level regulatory experience with CLID services.

The Case of CLID Services

With the deployment of a new switching technology—Common Channel Signaling System Seven (SS7)—a number of new services were enabled. Typically, these have been proposed by local exchange companies (LECs) in various Custom Local Area Signaling Services (CLASS℠) packages. CLASS packages most often include the following services: CLID (allows a called party to view the number from where a call is being placed before answering the call); Call Return (dials the number from where the last incoming call was made); Call Screen (rejects calls from specified numbers); Call Trace (allows a subscriber to notify the central office to record the last call received); Continuous Redial (redials a busy station continuously until a connection is made); and Selective Call Forward (allows only specified incoming calls to be forwarded to another station).

A large majority of state PUCs (47 out of 51) have concluded proceedings and issued regulations concerning CLID service. Typically, commissions relied on similar frames to describe the problem and chose solutions from a limited pool of alternatives. These similarities show trends in policy-making and diffusion, and facilitate comparative analysis across jurisdictions. In Alaska, Hawaii, Montana, and Rhode Island, regulators have not yet begun proceedings on CLID service. In Montana and Rhode Island, providers have initiated limited market trials but state regulators have not yet initiated investigative action or issued rules.
In most state jurisdictions, CLID service has been permitted with number blocking schemes. Blocking allows customers to stop their telephone numbers from being transmitted to recipients of their calls. Customers have been permitted to block disclosure of their numbers in a variety of arrangements. Some states require a charge for blocking, others have mandated free blocking. Some jurisdictions have required blocking on a per-call basis, while others have chosen per-line blocking. A number of states have allowed customers both per-call and per-line options. In some states blocking is available only to customers who qualify as "at-risk" organizations. These are individuals or organizations that face harm or whose safety is compromised by the disclosure of their telephone numbers. In some jurisdictions these "at risk" customers are provided the option of self-certifying their need for protection. In other states regulatory staff or telephone companies are assigned the responsibility of deciding who should receive protection from disclosure.

Blocking arrangements reflect sensitivity to privacy concerns. CLID service transmits calling line information to called parties. This information is typically very limited in its abilities to enhance the privacy of called parties. The commonly-used trade name, "Caller ID," is a misnomer in that portrays CLID service as identifying callers and potentially deterring unwanted calls. CLID services have far more serious implications for the privacy of calling parties. It enables the systematic release of calling information to any CLID subscriber, including businesses equipped with technologies to store calling numbers and computerized reverse telephone directories. Rather than enhancing the control of called parties, CLID services "hard-wire" outflows of calling information, and reduce callers' control over this information.
Based on these factors, no-block CLID reflects the lowest level of privacy protection because it provides no options or protection to calling parties who do not wish to disclose their numbers. Blocking arrangements that provide both free per-call and free per-line blocking to all customers, and allow customers to shift without charge from one type of blocking scheme to another provide the highest level of protection. In situations where CLID services are prohibited, the "relative autonomy" of called and calling parties remains unchanged. Although called parties are precluded from the marginal benefits possible through CLID, calling parties are protected from disclosures of their calling information. Therefore, court rulings that prohibited CLID reflect high levels of privacy protection.

Early proposals for CLID service did not include options to block disclosure of calling numbers. Following the trend among commissions to mandate some form of blocking, LECs began to include blocking options in their tariff proposals or market trials.¹ Some providers postponed their offerings until the full implications of the service were examined and the extent of protection

needed was determined. Other providers deviated from the policy adopted by their Regional Holding Company (RHC) parents and proposed blocking arrangements in their initial filings to avoid regulatory action and delay. Some providers faced with requirements for blocking as a condition of approval, have made no move to offer the service because number blocking, they have argued, reduces the value of the service.

A nationwide view of regulatory activity on CLID services across time is instructive about changing regulatory attitudes towards privacy concerns. A succession of issues have assumed center-stage at different points in the seven-year regulatory history of the issues. The following narrative discerns three overlapping waves, each focused on distinct central issues. The narrative argues that state regulators progressed from being focused on the problem of choosing between the rights of callers and called parties, to questioning the lawfulness of the service, to selecting number blocking schemes. State regulators did not break cleanly from an issue, but rather straddled clusters of concerns for periods of time.

During the first phase, regulators focused on the problem of choosing between callers and called parties. The marketing efforts of telephone providers

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2 Dean Matsuura, Staff Administrator, Regulatory Affairs, Hawaiian Telephone Co., interview July 13, 1993.


4 Since the California PUC's decision, as of July 12, 1993, PacBell had neither withdrawn nor had it offered any Caller ID service. M.J. Purcell, CAPUC, interview July 12, 1993.
portrayed the service as alleviating the problem of harassing and crank callers and as enhancing individuals' control over their telephone interactions. The privacy-enhancing capabilities of the new service were challenged with arguments that the new service seriously jeopardized callers' expectations of privacy. Difficulties posed by unlisted and unpublished subscribers were identified. Early proposals for CLID service had no provision to protect unlisted and unpublished subscribers from the release of their numbers. Further, telephone users with special needs—suicidal or runaway teenagers desiring contact with helplines, abused women calling their homes from domestic violence shelters, police informants desiring anonymity—were seen facing strong disincentives because CLID services would disclose their calling numbers to called parties.

The earliest arguments against CLID isolated the service from others in the CLASS package. It was argued that CLID service was particularly intrusive and had broad privacy implications. State PUCs generally framed the issue as involving the privacy interests of a calling party whose telephone number is transmitted to the called party versus those of a called party to receive calling information. Most state PUCs remained within this individual-individual frame, where resolution required either a choice between the two or some scheme to balance the two interests. From the perspective of calling parties, the service stripped them of any control over the disclosure of their numbers to called parties. From the point of view of called parties, CLID was a valuable service

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because it could discourage harassing and obscene calls as well as allow called parties control over their interactions over the telephone.6

The second phase, spurred by the 1989 Commonwealth Court's decision in Pennsylvania focused regulatory attention on the wiretap implications of CLID service. A number of state commissions and state courts posed questions about whether CLID violated state and federal trap and trace laws. Adjudicatory proceedings in Pennsylvania provided the first forum where CLID implications were scrutinized in detail. Although the wiretap issues are primarily matters of criminal law (outside the jurisdiction of state regulators), the court proceedings in Pennsylvania influenced the salience of CLID implications, and changed regulators' attitudes towards the service.

The third phase in the regulatory experience with CLID services began in 1990 when state regulators acknowledged the privacy implications of outflows of calling information, and turned their attentions to blocking options. Starting in 1990, few commissions held extensive discussions on whether or not CLID services had serious privacy implications. Few state commissions deliberated the necessity of providing additional protections to "at-risk" entities and agencies. The main contest in CLID proceedings after 1990 focused on blocking options. During this third phase, different blocking arrangements enjoyed periods of high popularity. From 1990 to 1991, per-call blocking was the predominant choice. However, after early 1992, commissions decisions reflected a preference for both per-call and per-line blocking in various arrangements.

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6 Samarajiva and Shields, "Emergent institutions of the 'intelligent network' ..", 402-04.
A Narrative Across Time

On July 16, 1987, New Jersey Bell (NJ Bell) made the first proposal to offer the CLASS Feature Caller ID. The filing requested a revision in tariff BPU-NJ No. 2, introducing CLASS Calling service on a limited basis. NJ Bell proposed to offer CLID service without blocking options. An intervention was filed by the Division of Rate Counsel of the New Jersey Department of Public Advocates on August 12, 1987. The Public Advocate argued that "... these services result in a substantial change in all telephone callers' privacy expectations. Moreover, these services provide vehicles by which New Jersey Bell will electronically disseminate the telephone numbers of unlisted subscribers who happen to unknowingly call an IdentaCall™ equipped plant." The Public Advocate continued that "other CLASS services, such as Call Block and Call Trace, would be better means of combating harassing telephone calls, and that use of CLID as a call screening device would actually be counter-productive, because subscribers might not answer calls from family members or friends calling from unfamiliar telephone numbers (including hospital emergency rooms)."

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8 This has been referred to as all number delivery, no-block service or unblocked service.

9 Makul, R.E., Director, Division of Rate Counsel, Department of Public Advocate. Intervention in New Jersey Bell's request for revision of tariffs to introduce N.J. Bell's CLASS Calling service on a limited basis, dated August 12, 1987, 1.

10 Makul testimony at 41, In the matter of filing by N.J. Bell Tel. Co. for a revision of tariff BPU-NJ No. 2, Providing for the introduction of CLASS Calling service on a limited basis, Hearing before the N.J. Board of Pub. Utility., (September 14, 1987).
A central objection against CLID was that the service would "allow a called party to obtain the telephone number of a calling party without the calling party's knowledge." This privacy violation was seen as one of potentially wide magnitude, leading to inappropriate acquisition of calling party numbers by "individuals who had histories of convictions for criminal use of the telephone, sex offenders, snoopy individuals and government agencies, overzealous salesmen [sic], supposedly 'confidential' hotlines, and numbers featuring recorded messages." The Public Advocate concluded that, "[t]he lack of notice and publicity regarding this filing denies the Board of the benefit of public comment on what we believe would be a highly controversial proposal, with both supporters and detractors, if it were known by the public at large."

The New Jersey Board of Regulatory Commissioners (NJ BRC, formerly Board of Public Utilities (BPU)) did not respond positively to any of these arguments presented by the Public Advocate. When the NJ Civil Liberties Union threatened to file a class action suit on behalf of all unlisted subscribers, the NJ BRC responded by conducting a public hearing on CLID service on September 14, 1987. Nine witnesses appeared in a one-day hearing. On September 17, 1987, the NJ BRC issued a Decision and Order approving one-year trial service and

11 Makul testimony at 41.
12 Makul testimony at 42.
13 Makul, R.E., Director, Division of Rate Counsel, Department of Public Advocate, Notice of Motion to Intervene in New Jersey Bell's request for revision of tariffs to introduce N.J. Bell's CLASS Calling service on a limited basis, Docket No. TT8611340, dated August 12, 1987, 5.
imposed study and six-monthly reporting requirements upon New Jersey Bell.\textsuperscript{14}

Trial service began in November 1987 and lasted eight months. In July 1988, NJ Bell declared the service a success and requested permission to offer CLASS services statewide with no-block CLID. This time the Board denied the request of the Division of Rate Counsel for more extensive administrative hearings. A divided Board\textsuperscript{15} approved the statewide provision of CLID service as proposed on October 20, 1988.\textsuperscript{16}

The second instance of regulatory activity concerning CLID service occurred in Pennsylvania, soon after the New Jersey decision. On January 18, 1989, Bell of Pennsylvania (PA Bell) filed a revision to Tariff PA PUC No. 1 proposing CLASS tariffs that included CLID service with the Public Utility Commission of Pennsylvania (PA PUC). No blocking was proposed with CLID. Several parties (Office of Consumer Advocate, Office of Attorney General, the American Civil Liberties Union, the Pennsylvania Coalition Against Domestic Violence, the Pennsylvania Coalition Against Rape) filed a complaint on March 8, 1989. The complaint alleged that callers would be caught unawares and that “the legitimate privacy expectations of customers who subscribe to non-published or unlisted number services, as well as all other customers who presently have a

\textsuperscript{14} In the matter of filing by N.J. Bell Tel. Co. for a revision of tariff BPU-NJ No. 2, Providing for the introduction of CLASS Calling service on a limited basis, Decision and Order (N.J. Board of Pub. Util., September 17, 1987).

\textsuperscript{15} Commissioner Christine Whitman, then Board President, dissented, emphasizing privacy concerns.

\textsuperscript{16} In the matter of filing by N.J. Bell Tel. Co. for a revision of tariff BPU-NJ No. 2, Providing for Approval of Provision of CLASS Calling Service on a Standard Tariff Basis and the Withdrawal of the Interim Limited CLASS Calling Service Tariff at 5, Docket TT88070825, (N.J. Board of Pub. Util., October 20, 1988).
reasonable expectation that the telephone number from where they are calling will not be provided to the called party without their consent" would be jeopardized. In an order dated March 31, 1989, the PA PUC suspended the proposed tariff for investigative purposes.

Public hearings and evidentiary hearings were held. This formal inquiry generated a voluminous and highly contentious record. "The record consisted of 271 pages of prefilled direct, rebuttal and surrebuttal testimony accompanied by 17 appendices, attachments, or exhibits; as well as 765 pages of transcript from evidentiary hearings accompanied by 22 exhibits; and 717 pages of public input transcript accompanied by two exhibits. There were also 175 letters of comment, both pro and con." The appointed Administrative Law Judge (ALJ) issued a decision on September 22, 1989. The ALJ's decision recommended that callers be given the ability to block transmission of their numbers to CLID subscribers. Such blocking would have to be free and on a per-call basis. Without blocking, the service violated state wiretap law.

By this time, regulators in several other states had issued decisions concerning CLID service. In June 1989, despite objections from the state Consumer Advocate Division, the West Virginia Public Service Commission (PSC) approved Chesapeake & Potomac Telephone's (C&P Tel) CLID option without blocking. The PSC's decision heavily cited on-going deliberations in

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17 News release from the Office of Consumer Advocate dated March 8, 1989. The implications of disclosure and use of consumer information by telephone utilities and third parties were raised.

Pennsylvania, and referred to NJ Bell's experience where a large number of non-published customers had "purchased the service to enhance their privacy." On September 15, 1989, Governor Deukmejian of California signed into law a bill requiring free per-call blocking with CLID service.\textsuperscript{19} The ALJ's decision in Pennsylvania came a week after this legislative action in California.

On October 1, 1989, state regulators in Virginia and Maryland allowed no-block CLID to take effect. On November 7, 1989, BellSouth was permitted to add CLID without blocking to its Touchstar service package in Tennessee. Two days later, on November 9, 1989, the PA PUC rejected the ALJ's recommendation. The PA PUC noted that in areas where the service had already been implemented, none of the "grave results" suggested by the complainants had been established. Rather, CLID provided important benefits to the great majority of PA Bell's customers. On these grounds, the PA PUC approved CLID without blocking options for the general public. However, per-call blocking was required for private, non-profit, tax-exempt domestic violence intervention agencies and home telephone numbers of staff members of such agencies whose personal safety would be at risk if their numbers were revealed, and for federal, state and local law enforcement agencies and individuals identified by such law enforcement agencies.\textsuperscript{20}

A number of parties requested the PA PUC for a stay of the November 9th Order. When the PA PUC rejected the request, the petitioners appealed to the

\textsuperscript{19} Assembly Bill 1446, California Public Utility Code, § 2893, signed on September 15, 1989.

\textsuperscript{20} \textit{Opinion and Order} at 7, November 9, 1989. Commissioner Rhodes, Jr. dissented from the opinion.
Commonwealth Court of Pennsylvania for a partial stay. The court granted a stay of the PA PUC Order on December 29, 1989.\textsuperscript{21} By this time, Pennsylvania state representative D.R. Wright (D) had introduced a bill virtually identical to the California statute that would have reversed the PUC's decision and mandate free per-call blocking with CLID.\textsuperscript{22} Hearings on the bill were postponed until a decision was issued in the Commonwealth court proceeding.\textsuperscript{23}

Generally, the Regional Bell Operating Companies (RBOCs) proposed tariffs that reflected company-wide blocking policy established by their Regional Holding Company (RHC) parents. By the end of 1989, Pacific Telesis (PacTel) and USWest conceded on their no-blocking stance. Pacific Bell, a PacTel affiliate serving parts of California, was bound by state law to offer per-call blocking at a minimum. PacTel decided that its other affiliate—Nevada Bell—would offer per-call blocking as well.\textsuperscript{24} US West's three affiliates, serving customers in 14 states, agreed to a corporate policy of per-call blocking with CLID service.\textsuperscript{25} However, Ameritech, Bell Atlantic, BellSouth, NYNEX and Southwestern Bell remained firm in their policy against blocking options. When Southern Bell, a BellSouth


\textsuperscript{22} General Assembly of Pennsylvania, House Bill No. 2127, introduced November 29, 1989.

\textsuperscript{23} Shultz, Caller ID, ANI & Privacy. 46.


\textsuperscript{25} "C&P seeks charge for caller ID blocking. . . .", 10.
affiliate, filed for CLID in Florida, it offered no blocking options. In response, the Florida PSC asked the utility to work with Commission staff to develop a plan to accommodate blocking for state agencies such as law enforcement and violence intervention centers, and to determine what costs would be involved in offering this limited blocking capability.26

On March 20, 1990, Ohio Bell Telephone, an Ameritech affiliate, proposed no-block service,27 and on April 12, 1990, Indiana Bell, another Ameritech affiliate, proposed similar CLID tariffs.28 The proposals were suspended in both states.29 Despite the growing number of commissions that were suspending no-block tariffs and opening investigations on the privacy implications of CLID service by this time, some state commissions viewed CLID as providing important benefits to many customers. On April 19, 1990, the South Carolina Commission approved Southern Bell’s tariff for CLID with all-number delivery for the general public and blocking for some law enforcement agencies and crisis centers.30

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27 The Ohio Bell Telephone Company Application for Exchange and Network Services Tariff (Miscellaneous Services and Arrangements), filed March 20, 1990.

28 Rotenberg, M., *Testimony in Vermont PSB’s investigation of NET&T Co.’s PHONESMART Call Management Services*, 44.


In April 1990, the Oklahoma legislature enacted a statutory provision that specifically excluded CLID service from the trap and trace provisions of the state's wiretap act. This statutory revision was the first of its kind. By revising state wiretap laws to ensure the legality of CLID, the Oklahoma legislature effectively solved a significant obstacle to CLID deployment that would be raised by the court in Pennsylvania. On May 30, 1990, the Commonwealth Court of Pennsylvania rejected the PA PUC’s decision and ruled that CLID—with or without blocking—violated state wiretap law as well as constitutional privacy rights. Paul Shultz noted in a comprehensive report on the status of CLID proceedings that the Commonwealth court’s decision created quite a stir in other jurisdictions. This groundbreaking decision marked a turning point in regulatory attitudes towards privacy concerns raised in CLID investigations. For a brief period, the Pennsylvania ruling pushed a second set of issues to center-stage—whether or not statutory trap and trace prohibitions were applicable to CLID service.

The Ohio Office of Consumers' Counsel (OCC), which had previously filed its opposition to Ohio Bell Telephone's proposed CLID tariff, filed a strongly worded reply to Ohio Bell's Memoranda Contra to OCC's previous

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motion. Quoting the Pennsylvania decision, the OCC argued that CLID is "violative of constitutional privacy protections and federal statutes." In June 1990, the South Carolina PSC that had approved blocking only for some law enforcement agencies and crisis centers stayed its order. The PSC argued that if CLID violated the state's wiretap law this was a criminal matter over which the Commission had no jurisdiction. This prompted Southern Bell to seek a declaratory judgment in the Richland County Court of Common Pleas in South Carolina arguing that CLID was a legal offering under the state's wiretap statute. The South Carolina Consumer Advocate filed a motion with the court seeking a ruling that CLID was illegal on grounds similar to those set forth by the Commonwealth Court of Pennsylvania. In North Carolina, where Southern Bell had been engaged in a hotly contested battle over CLID, the state Attorney General's Criminal Division determined that the service violated both state and federal trap and trace laws.

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34 Reply to Ohio Bell's Memoranda Contra OCC's Motion to Intervene and Suspend and Motion for Local Public Hearings and Customer Notice, In the Matter of the Application of the Ohio Bell Telephone Co. to Revise its Exchange and Network Services Tariff, PUCO No.1, to Establish Regulations, Rates, and Charges for an Advanced Custom Calling Service Known as Caller ID, Ohio PUC Case No. 90-467-TP-ATA, May 31, 1990.

35 Order Granting Motion for Stay, June 7, 1990.

36 Southern Bell Telephone and Telegraph Co. v. Steven W. Hamm and the South Carolina Department of Consumer Affairs, Richland County Court of Common Pleas, June 7, 1990.


38 In its July 17, 1990 memorandum, the Criminal Division stated that the "user consent" exception in both state and federal statutes applies only to the use of the device by providers of telecommunications services. The Caller ID device is intended for use by telephone subscribers, not telephone providers and is therefore not among the exceptions
Another turning point came on July 20, 1990, when regulators in Washington D.C. decided that per-call blocking would adequately balance the interests of called and calling parties. The D.C. PSC ordered that CLID could only be offered with such a blocking option. The Washington D.C. PSC was the first regulatory commission to mandate blocking with a permanent offering of CLID service. The decision of the Commission was not unanimous. Commissioner Long dissented, stating that the service was not in the public interest and should not be approved. He suggested that C&P Tel's real motivation to offer the service was to provide a business service to build files of potential customers and allow retrieval of demographic information about customers at the time they call.

39 In the matter of the application of the Chesapeake and Potomac Telephone Company to offer Return Call and Caller ID within the District of Columbia, Formal Case No. 891, Order No. 9506, July 20, 1990.

40 Opinion and Order, Formal Case No. 891, In the Matter of the Application of the Chesapeake and Potomac Telephone Company to Offer Return Call and Caller ID Within the District of Columbia, Order No. 9506, July 20, 1990. Service was not actually approved in the District of Columbia until February 1991. C&P Tel opposed the PSC's free central-office based blocking, proposing operator-assisted blocking at 45 cents per use instead. But in early 1991, the LEC yielded on the blocking question and with that service was approved.

By late 1990, state regulators began emphasizing the need for more evaluation of privacy implications of CLID. During August 1990, the Alabama PSC suspended South Central Bell's CLID proposal for six months, during which time the PSC would investigate and determine whether the service was in the public interest. On August 20, 1990, the Nevada Commission required an unprecedented privacy option—free per-line and per-call blocking.

Several RHCs had changed their policy on CLID blocking. On September 13, 1990, NYNEX, previously in support of all number delivery, stated that it would recommend free per-call blocking throughout its territory. NYNEX was not alone in its move away from no-block CLID. Pacific Telesis and US West had conceded earlier. For many of the RHCs, "blocking was either a legitimate privacy-protection measure or a necessary evil for getting CLID tariffs approved." Together, these corporate policy changes affected CLID service in 27 states.

Ameritech, Bell Atlantic, and BellSouth serving 21 jurisdictions, remained firm in their no-block policies. CLID without blocking was in effect in five states—New Jersey, Maryland, Tennessee, Virginia, and West Virginia. In some of these states, regulators and legislators were beginning to reexamine their decisions. On September 17, 1990, the Maryland PSC scheduled a series of hearings to investigate the issues further and reevaluate its decision in the CLID docket.

42 Order of Suspension, Alabama PSC Docket No. 21592, dated August 6, 1990.
44 Shultz, Caller ID, ANI & Privacy, 45.
Lawmakers in Virginia introduced legislation to require per-call blocking for CLID service. In Indiana, Ohio, North Carolina, Georgia and Alabama, contested all-number delivery tariffs were either pending or suspended by regulators. Figure 1 graphically depicts state regulatory activity on CLID as of mid-September 1990.

Regulatory activity on CLID increased during late 1990 through 1991. Several state PUCs initiated proceedings and some reversed previously held positions. In October 1990, the Iowa Utilities Board (IUB) initiated an investigation into the legal, technical and procedural issues associated with CLID and other CLASS services. A month later, the IUB approved Northwestern Bell's tariff to introduce blocking on a per-line basis to federal, state and local law enforcement agencies, as well as to non-profit domestic violence agencies. In October 1990, the Kentucky PSC approved GTE South's CLID tariff with

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45 VA Senate Bill 181.

46 During this time, the Pennsylvania Commonwealth Court's decision had been appealed to the state Supreme Court. Figure 1 shows the blocking option mandated by the Commonwealth Court despite the pending appeal.


Figure 1: Status of State Regulatory Actions on CLID Service in September 1990
Protective Number Service (PNS) and free per-call blocking. In mid-October 1990, Commission staff at the Washington Utilities and Transportation Commission (WUTC) recommended that introduction of CLID tariffs should be rejected on grounds that it was not supported by the public and that the service could violate privacy rights under state constitutional and wiretap provisions.

In November 1990, the Maryland PSC changed its position on blocking. After six months of no-block service, the PSC announced that C&P Tel would provide free per-call blocking to balance the needs of all subscribers, although unblocked service had proven useful in discouraging annoying callers and for screening calls. On November 20, 1990 the state court in South Carolina ruled that CLID neither violated the state trap and trace laws nor any provision of the

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49 Protected Number Service or PNS allows customers to keep their numbers from appearing on Caller ID devices by providing customers with two phone numbers on a single line and with two ringing patterns. One number is the customer’s current number, which would not appear on Caller ID display units when the customer places a call. When that number is called back, it generates a distinctive ring, indicating a "friendly" call. The second number is a “new” non-published number that will appear on Caller ID screens. But because it is non-published the number cannot be associated with the caller’s name through reverse directory assistance. When that non-published number is called back, the phone rings normally alerting the customer that this may be an unwanted call. Shultz, Caller ID, ANI & Privacy . . . , 29.

50 Kentucky PSC Weekly Summary, dated October 22, 1990.


52 Re: Chesapeake and Potomac Telephone Co. of Maryland, Case No. 8283, Order No. 69021, November 20, 1990, 118 PUR 4th 464.
federal or South Carolina constitutions. A week later, the ruling was appealed to the state Supreme court.

By this time, a third wave of issues had assumed center stage in state-level CLID inquiries. Four years after the first contest over CLID in New Jersey, state PUCs now held that the service had significant privacy implications, and began focusing on evaluating various blocking schemes. In Washington, the state privacy statute was amended with House Resolution 1489, approving CLID but with heavy blocking requirements. US West was required to provide free per-call blocking to all customers, and free per-line blocking to all customers during an initial 90-day window. The window would reopen annually for 30 days during which period consumers could sign-up for free per-line blocking. Abuse shelters had free per-line blocking at any time.

In December 1990, the Alabama PSC approved South Central Bell's revised tariff with free per-call and per-line blocking. Blocking was available to domestic violence intervention agencies, state and county human resource shelters and other agencies where it could be certified that the personal safety of employees would be jeopardized without blocking. This approval was to be monitored by the PSC for one year to determine its effect upon the public. The


54 Telecommunication Reports, November 26, 1990, 1.

55 This was the first proposal incorporating a 90-day window option.

56 The service was phased in the Seattle and Tacoma areas (covering almost half of US West's customers in Washington) after public hearings were held during June and July 1990. Roger Kouchi, Utility Services Examiner, WUTC, interview July 26, 1993.
Order required that blocking be advertised during the one-year trial.\textsuperscript{57} In December 1990, the Diamond State Telephone Company in Delaware was required to offer CLID with free per-call blocking.\textsuperscript{58} During this time, C&P Tel petitioned the Maryland PSC for a rehearing of its order requiring per-call blocking and was denied.\textsuperscript{59}

Early in 1991, the Indiana Utilities Regulatory Commission (IURC) staff recommended that CLID be made available only with free per-call blocking to all customers, and per-line blocking upon requests from customers for a one-time, non-recurring charge.\textsuperscript{60} During early 1991, the Idaho PUC ordered US West, which preferred to offer per-line blocking as a premium service, to liberalize its line blocking policy.\textsuperscript{61} Telephone providers continued to change from no-blocking policies to proposals that included some form of blocking. During February 1991, Southern Bell shifted from its all number delivery policy and agreed to offer a trial with blocking for law enforcement and crisis management centers.\textsuperscript{62} Southwestern Bell followed with free per-call blocking for all


\textsuperscript{59} Maryland PSC Case 8283, Order No. 69056, dated December 21, 1990.


\textsuperscript{61} Rotenberg, M, Testimony in VT PSB investigation of NET&T Co.'s PHONESMART Call Management Services, 41.

\textsuperscript{62} "BOCs embrace Caller ID trials with different approaches to blocking," Telephone News, February 25, 1991, 5.
customers in its proposed market trial. On May 14, 1991, the Oklahoma Corporation Commission issued an interim order requiring per-call blocking. On May 20, 1991, the Florida PSC rejected CLID tariffs as filed, and ordered free per-call blocking for all customers (including unlisted and unpublished subscribers) and free per-line blocking for certain law enforcement and crisis counseling agencies. The Louisiana PUC approved South Central Bell's tariff effective May 27, 1991 with blocking available only to agencies providing confidential services. The North Carolina Utilities Commission approved Southern Bell's tariff for intrastate SS7 access with free per-line and per-call blocking on May 31, 1991.

Despite the growing trend among state PUCs to choose privacy protective options, some states remained unconvinced of the intrusive capabilities of CLID and the necessity of establishing privacy-protective protocols. In June 1991, the NJ BRC reiterated its position against blocking and allowed the United

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66 Francis, A.R. Nationwide state status on Caller ID.

Telephone Company to offer CLASS including CLID with all-number delivery.\textsuperscript{68} The State Corporation Commission (SCC) in Virginia strongly encouraged C&P Tel to deploy Automatic Call Rejection (ACR). ACR is identical to "block-the-blocker" service. It allows customers to block incoming calls from parties who have blocked the transmission of their telephone numbers to CLID devices. C&P Tel proposed that ACR be available to telephone users in all service areas in Virginia by the end of 1993.\textsuperscript{69} These instances were exceptions to the dominant trend during 1991--requiring blocking options with CLID service. US West tariffed CLID with per-call blocking with a charge and per-line blocking for emergency agencies in Nebraska on June 18, 1991.\textsuperscript{70} On June 25, 1991, the Florida PSC required free per-call blocking to all and free per-line blocking, but only for customers with a proven need for extra privacy, e.g., domestic violence shelters and law enforcement agencies.\textsuperscript{71} South Central Bell's tariff was approved by the Mississippi Commission in August 1991 with free blocking for agencies providing confidential services and unblockable service to all other subscribers.\textsuperscript{72} On August 27, 1991, the Idaho PUC held that CLID was within its

\textsuperscript{68} \textit{Telecommunication Reports}, June, 3, 1991, 21.

\textsuperscript{69} Bob Gillespie, Associate General Counsel, Virginia State Corp. Comm., interview July 2, 1993.

\textsuperscript{70} Following deregulated procedures, ten days after the tariff was filed, the provider could offer the service to the public. John Burvainis, Accountant, Nebraska PSC, Telecommunications, interview November 18, 1991.


jurisdiction, and directed US West to provide per-call and per-line blocking to all its customers.73

On August 13, 1991, the Hearing Examiner issued a Proposed Order in the Illinois Bell and Centel CLID case in Illinois. Free per-call blocking was required to all customers. Additionally, for residential customers, governmental agencies and social service agencies who preferred to keep their telephone line information private, the Hearing Examiner approved per-line blocking with an option that permitted them to affirmatively unblock their lines on particular calls.74 On October 3, 1991, the Illinois Commerce Commission (ICC) rejected the Hearing Examiner's recommendations in part, and issued a considerably toned down final order. The ICC approved Centel's tariff with free per-call blocking to all single-line business and residential telephone users in its service area. In the same Order, the ICC rejected Illinois Bell's proposal for CLID without blocking, and urged the company to file revised tariffs.75

On October 7, 1991, the South Carolina Supreme Court upheld the decisions of the lower court and the PUC, ruling that CLID without universally applicable blocking did not violate any state wiretap laws or constitutional


privacy rights. In effect, the Supreme Court approved no-block CLID in South Carolina. Following the court decision, the South Carolina Commission reopened the docket to address questions that had been left pending. State Consumer Advocate Hamm persuaded the PSC to reexamine its no-blocking stance. This reexamination concluded with the South Carolina PSC reversing itself and requiring free per-call blocking and pay per-line blocking (at $2 each month) to all subscribers on March 16, 1992. Law enforcement agencies and crisis prevention centers would receive per-line blocking free.

On October 9, 1991, two days after the South Carolina decision had been issued, the Massachusetts Department of Public Utilities issued an order approving CLID with per-call blocking as proposed by New England Telephone and additionally required per-line blocking for all customers. US West's eight-month name/number trial in Boise, Idaho ended October 25, 1991. Six CLASS features, including name and number CLID with per-call and per-line blocking for all customers, were made permanent offerings in the largest of US West's three Local Access Transport Areas (LATAs) in the state.

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78 Open Docket DPU-91-64, Order issued October 9, 1991. Paul Vasington, Acting Director, Massachusetts DPU, Telecommunications, interview July 12, 1993. Call Return and Repeat Dialing were approved as submitted.

79 Re: US West Communications, 125 PUR 4th 225. The Commission found that there should be no charge for per-call blocking while per-line blocking may be offered for a fee. Birdelle Brown, Telecommunications Analyst, Idaho PUC, interview July 13, 1993. Investigation into the provision of Caller ID by US West Communications, Order No. 23860, August 27, 1991.
On October 23, 1991, the Federal Communications Commission (FCC) opened a rule-making proceeding to establish a national standard for blocking and other matters relating to CLID and Automatic Number Identification (ANI). The central focus of the federal docket was on setting a uniform policy for interstate transport of CLID information in the face of divergent state policies on blocking. Intrastate CLID was to be treated as a separate but related issue in the rule-making. The FCC tentatively concluded that per-call blocking best balanced the privacy interests of the calling and called parties. The FCC rejected the per-line blocking option, arguing that such blocking would diminish the value of the service. States that favored this option would be preempted by the FCC rules.

The Public Service Board in Vermont held that CLID "blocking options would significantly affect basic telephone service." Therefore, despite a deregulated mandate, the Board retained jurisdiction over blocking policy. New England Telephone (NET) was required to make free per-call blocking available to all subscribers and free per-line blocking for all unlisted subscribers and others who had "a legitimate concern that it would be unsafe to transmit" their telephone numbers, including clients, volunteers and staff associated with domestic violence and sexual assault agencies.

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In 1992, regulators continued to perceive CLID as an intrusive service, and emphasized privacy protective mechanisms. Michigan Bell, affiliated with Ameritech, which had aggressively pursued a company-wide policy of no-block CLID, announced that it would offer CLID in parts of the state by March 1992 with per-call blocking. Legislators in some states began to restrict PUC policies. On February 27, 1992 the Indiana legislature passed a bill that prohibited the IURC from requiring any blocking, other than per-call or per-line blocking for law enforcement and crisis intervention agencies certified by the Commission. This statutory provision directly opposed the early-1991 recommendations of commission staff for per-call and per-line blocking for all subscribers.

On March 9, 1992, the Governor of the state of Maine approved an act that mandated free per-call blocking to all subscribers, as well as per-line blocking to individuals, agencies and groups that requested it in writing, asserting a specific need based on health and safety. On March 18, 1992, the Pennsylvania Supreme Court affirmed the decision of the Commonwealth Court. The Court ruled that non-blockable CLID violated the state Wiretapping and Electronic Surveillance Control Act and hence could not be offered in Pennsylvania.

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85 State House proposal 1118 (Legislative Document 1643) creating an *Act to Protect Telephone Customer Privacy* (Chapter 654), approved by the Governor March 9, 1992. MRSA, § 7102, 1992 Me. ALS 654; 1992 Me. Laws 654; 1992 Me. Ch. 654; 1992 Me. HI’ 1118. There would be no charge for the first request for per-line blocking or unblocking.

86 18 P.S. Sections. §§ 5701-5781.
Several other PUCs made decisions concerning CLID during this time. On March 27, 1992, the Arizona Corporation Commission approved name and number CLID with free per-call blocking for all, free line blocking for all law enforcement entities, domestic violence shelters and all other customers for a 90-day period from the date that CLID was deployed. After the 90-day window, a one-time charge of $5 for residential customers and $10.95 for businesses would apply. Free default line blocking would be available to unpublished customers. Customers with line blocking would have a per-call unblocking option.88 Effective March 30, 1992, a WUTC rule required per-call or per-line blocking without any recurring charges except for the delivery of caller numbers, names or locations to a 911 or enhanced 911 service or other emergency service or a customer-originated trace.89 In early April 1992, the WUTC ruled that US West would be required to offer free line blocking as well.90 In April 1992, CLID with blocking became a permanent offering in Oklahoma after a one-year trial.91


90 The Commission allowed a one-time $8 charge for line blocking after a 90-day introductory period during which blocking would be provided free. For unpublished customers blocking would be free at any time. Janie Waller, Consumer Service Specialist, Arizona Corp. Comm., interview July 12, 1993. Communications Daily-Electronic Newsmagazine, V. 12, No. 67, April 7, 1992, 6.

91 State Telephone Regulation Report, September 10, 1992, 12.
On April 6, 1992, the Georgia PSC permitted Southern Bell's CLID tariff with presumptive per-call blocking and per-request per-line blocking as a permanent offering on a state-wide basis. This arrangement had been in effect during a one-year trial of CLID service that preceding this decision. A few days later, on April 9, 1992, the New York PSC permitted New York Telephone to introduce CLID throughout its service territory. All customers would be permitted to elect, at no charge, per-call blocking or per-line blocking. On April 28, 1992, the state legislature in Wisconsin enacted a new law that required free per-call blocking and free per-line blocking for domestic violence shelters, law enforcement agencies and other "at-risk" customers.

On May 6, 1992, the Oregon PUC allowed customers a choice between free per-call and free per-line blocking. Customers with per-line blocking were allowed the option of per-call unblocking. Distinctive call ringing was

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92 PSC Docket 3924-U, Second Amendatory Order, dated April 6, 1992. Harriet VanNorte, Director, Consumer Affairs and Public Information, Georgia PSC interview July 7, 1993. Free blocking would be provided to law enforcement agencies, domestic violence shelters, battered women's shelters, crisis intervention centers and volunteers working at these organizations. Southern Bell would certify which agencies were entitled to such blocking. Southern Bell's customers must be advised of the availability of per-line blocking.


94 A customer making no election would be provided per-call blocking. A customer could change his/her blocking option twice at no charge during the first six months the service was offered in any area and any new telephone customer may do so twice during the first six months that customer took telephone service; thereafter, the company could impose a charge of $5.00 for each change. Proceeding on Motion of the Commission to Investigate New York Telephone Company's Proposal to Institute Caller ID Service, Case 91-C-0428; Opinion No. 92-5.132 PUR 4th 525, issued April 9, 1992. Service has been available since December 1, 1992. Doug Sieg, Associate Systems Planner, Communications Division, New York PSC, interview July 2, 1993.

incorporated into a privacy option. On May 12, 1992, the North Carolina UC modified its May 31, 1991 order affirming blocking options provided by its previous order. Per-call blocking was available for all automatically, per-line blocking could be requested by all customers. On May 20, 1992, the Colorado PUC approved CLID with free per-blocking to all customers, free per-line blocking to all customer during an initial six-month transition period, and free per-line blocking to unlisted customers at any time.

The Public Utilities Commission of Ohio (PUCO) required contemporaneous provision of CLID, Call Trace, and Call Screen and free per-call blocking to all subscribers on May 21, 1992. This allowed customers an alternative to CLID if they wished to identify calling numbers or avoid calls. For non-published customers, per-line blocking would be provided automatically without any additional charge, or the customer could affirmatively choose to get free per-call blocking after being informed of the availability of per-line and per-call blocking. Subscription per-line blocking would be made available for published customers at a charge equivalent to non-published number service rates.

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96 Re: Caller ID, UM 365, Order No. 92-662, dated May 6, 1992, 133 PUR 4th 168.


On June 17, 1992, the California PUC approved Calling Number ID on a two-year interim basis. Customers were offered a choice of three blocking options: (i) universal, free per-call blocking (required by state law), (ii) presumptive per-line blocking for non-published customers and optional per-line blocking for published customers and (iii) per-line blocking with per-call enabling capability. On the same day, the Connecticut Public Utilities Control Authority permitted Southern New England Telephone (SNET) to offer a package of services that included CLID. SNET was required to provide per-call blocking free to all customers. Free per-line blocking was required to all social service agencies and professionals.

In mid-June 1992, the New Hampshire PUC ordered that per-line blocking be made available without charge to unpublished and unlisted customers and to customers who believed their health or safety would be threatened by disclosure to CLID devices. All customers had a 90-day period to decide if they wanted

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101 Pacific Bell [Commstar], Order Modifying Decision, 92-06-065, Decision 92-11-062, issued November 23, 1992. M.J. Purcell, California PUC, interview July 12, 1993. Customers who failed to specify an option would be assigned blocking as follows: unlisted subscribers and emergency service providers will get per-line blocking with per-call unblocking, other residential customers will get per-call blocking.

102 "Regulators clear way for caller identification," Hartford Courant, June 18, 1992, b1.

103 They include law enforcement agencies, domestic violence shelters and non-profit crisis intervention centers and help lines, and at all coin-operated telephones and to all those individuals who self-certified that Caller ID would pose a risk to their personal safety. Re: SNET, 134 PUR 4th 124, Docket 92-02-04, issued June 17, 1992.
per-line blocking. Identical arrangements were approved, late in June 1992, by the PSC in Kentucky and by the Delaware state legislature. Figure 2 depicts the status of state-level CLID proceedings during mid-1992. Jurisdictions had either made no decision or not opened dockets on CLID.

The Colorado PUC approved a one-year trial of CLID service that started January 1993 with free per-call and free per-line blocking on a generally available basis. Unpublished subscribers would have free per-line blocking automatically and others would automatically get per-call blocking. Customers were permitted to shift from one type of blocking to another for the first 90 days after introduction of service. The PUCO approved Cincinnati Bell's proposal for CLID without hearings with the same blocking requirements that were placed on Ohio Bell Telephone.

At the end of 1992, the Arkansas PSC approved a one-year limited area trial proposed by Southwestern Bell. Free per-call blocking to all customers and

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106 Debra M. Berry, Director Regulatory Affairs, Diamond State Telephone Co., interview July 14 1993. Diamond State has provided per-line to these subscribers since September 1992.


108 State Telephone Regulation Report, November 19, 1992, 5-6, 10-11. The Ohio Consumer's Counsel applied for reconsideration of this decision and was denied by the Supreme Court without opinion on November 10, 1992. David C. Bergmann, Telecommunications Counsel, Ohio Consumer's Counsel, interview July 2, 1993.
Figure 2: Status of State Regulatory Actions on CLID Service in July 1992
free per-line blocking to law enforcement agencies and domestic violence shelters were required. The Kansas Corporation Commission approved Southwestern Bell's CLID service in mid-December 1992. Southwestern Bell was required to offer per-call blocking for the general public and per-line blocking for law enforcement agencies, domestic violence shelters and individuals working at these agencies who requested line blocking on their home phones in order to avoid personal harm by disclosure of their calling numbers. The Wyoming Commission held hearings on US West's proposed CLID service in early 1993. CLID is currently available in the Cheyenne exchanges with free per-call blocking for all customers and free per-line blocking for 90 days to all customers.

In early 1993, the Oregon PUC modified its May 1992 order that had allowed customers a choice between free per-call and free per-line blocking. During January 1993, Oregon regulators permitted US West to charge a non-recurring fee of $8.00 from residential and $13 from business customers for line blocking. Customers were allowed to sign up for free if they chose line-blocking during an initial 90-day trial period or when a customer established new service, or during a designated one-month grace period that would recur every year for

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110 Karen Matson-Flaming, Chief, Telecommunications, Kansas Corp. Comm., interview July 2, 1993. However, automatic (presumptive) line-blocking for unlisted and unpublished subscribers was not approved.

111 After the 90-day window, per-line remains available upon request to law enforcement agencies, domestic/spouse abuse shelters and organizations with special needs. Mike Korber, Rate Analyst, Wyoming PSC, interview July 19, 1993.

112 Re: Caller ID, 133 PUR4th 168.
the following three years. In early April 1993, Southwestern Bell was permitted to offer CLID service in Missouri, with free per-call blocking to all customers and free per-line blocking to emergency services. On June 17, 1993, the Minnesota PUC permitted CLID with free per-call blocking to all residential customers. Free per-line blocking was to be offered to all residential customers during the first 90 days that service was available. After the first 90 days, a one-time charge was allowed. Business customers were allowed per-call blocking but only with a per-activation charge. No per-line blocking was available to businesses. On July 12, 1993, US West requested reconsideration of this order. During the same time, US West filed a CLID tariff in Utah, with plans to implement the service at the end of the second quarter of 1994. While the PSC has had no hearings or proceedings, technical and settlement conferences were held during mid-1993. Free per-call blocking for all customers and free per-line blocking for battered women's shelters and law enforcement agencies is proposed.

113 Telecommunications Reports, January 4, 1993, 45.
116 Ben Omorogbe, Senior Telecommunications Rate Analyst, interview, July 12, 1993.
In mid-1993, Governor Ann Richards of Texas signed name and number CLID into law.\textsuperscript{118} The new statutory provision removed state wiretap restrictions on CLID service and instructed the PUC to mandate blocking options to the public. These included free per-call blocking for all customers, and free per-line blocking for subscribers who submitted written requests to the PUC stating compelling need. The PUC was required to ensure that per-line blocking was made available to any request that was submitted.\textsuperscript{119} Regulators in Texas required a 90-day window during which customers were allowed time to learn of the available blocking options and to shift between blocking options without charge. Late in 1993, the Texas PUC staff, the Office of Public Utility Counsel and Southwestern Bell reached an agreement which allowed CLID at the second lowest price in the country—$4.95 per month.\textsuperscript{120} Free ACR was also required. Southwestern Bell was ordered to establish a per-call unblocking code that would enable customers with per-line blocking to disable the per-line block for the current call.\textsuperscript{121}

\begin{enumerate}
\item \textsuperscript{118} “Texas PUC announces services now available for telephone privacy,” \textit{NARUC Bulletin}, No. 30-1993, July 26, 1993, 6.
\item \textsuperscript{119} Senate bill 73, January -May 1993 legislative session, effective September 1, 1993. Following enactment, Southwestern Bell refiled a conforming tariff offering Caller ID with per-call blocking. Scott Smyth, Assistant General Counsel, Texas PUC, interview July 15, 1993.
\item \textsuperscript{120} “Texas PUC staff announces settlement reached in Caller ID case,” \textit{NARUC Bulletin}, No. 45-1993, November 8, 1993, 17-8. Nevada has the lowest priced Caller ID feature at $4.25 per month.
\item \textsuperscript{121} “Southwestern Bell Caller ID okayed,” \textit{State Telephone Regulation Report}, December 2, 1993, 11.
\end{enumerate}
In December 1993, the Wisconsin PSC incorporated statutory requirements for free per-call and per-line blocking for domestic violence shelters, law enforcement agencies and other "at-risk" customers, and authorized CLID with free per-call blocking for all and free per-line blocking for certain advocacy groups such as domestic abuse organizations. These organizations could request per-line blocking for victims of domestic violence. During this time, December 1993, the Indiana URC, which had been left with little authority over CLID filings after the state legislature passed a preemptive law in February 1992, approved a negotiated agreement between United Telephone and the Office of Consumer Counselor under which United Telephone would offer free per-call blocking to all customers. Non-published customers and law enforcement, crisis intervention, and social service agencies would be provided free per-line blocking.

On December 3, 1993, the Minnesota PUC issued an Order after Reconsideration that allowed free per-call blocking for businesses. The Order further required that in all areas where it was technically feasible, per-call unblocking on all blocked lines would be available. The Order also approved ACR but only in areas where per-call unblocking was also available. During

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mid-December 1993, a bill was introduced in the Michigan legislature that would prohibit transmission of an unlisted or non-published phone number to a CLID subscriber. Calls placed to emergency assistance services or police agencies were excluded from this prohibition.\footnote{HB-5208, "Bill would limit Caller ID," \textit{State Telephone Regulation Report}, December 16, 1993, 11.}

Later in 1993, two states that had decided the CLID issues early, during 1988 and 1989, reexamined their decisions and reversed themselves. The first of these reversals came on July 1, 1993, when the State Corporation Commission (SCC) in Virginia approved per-call blocking to the general public accompanied by ACR.\footnote{Bob Gillespie, Associate General Counsel, Virginia State Corp. Comm., interview July 2, 1993.} A second significant reversal occurred in New Jersey when the New Jersey chapter of the American Civil Liberties Union successfully petitioned to reopen the docket and have the BRC reconsider the issues. NJ Bell settled to provide free per-call blocking for the general public and per-line blocking for battered women's shelters. ACR would be offered concurrently.\footnote{Bill Furlong, Supervisor in Rates & Tariffs, Telecommunication, New Jersey Board of Regulatory Commissioners, interview June 29, 1993.} On October 26, 1993, the Board adopted a stipulation proposing these blocking arrangements.\footnote{\textit{New Jersey Coalition for Battered Women, et al. v. New Jersey Bell}, Docket TO92070699, stipulation filed July 8, 1993, adopted October 26, 1993.} Finally, in December 1993, Title 66 of the Pennsylvania Consolidated Statutes was amended to declare that CLID is a lawful service if it permitted a caller to withhold display of his/her telephone number and other identifying information from the called party on both a per-call and per-line
basis. Figure 3 presents a nationwide snapshot of state-level regulatory activity on CLID service during December 1993.

Of the 47 state jurisdictions where the CLID question has been decided, telephone customers in 45 jurisdictions are able to block their numbers from being transmitted. Two states, Tennessee and West Virginia, continue to allow unblocked CLID. Among blocking schemes, both per-call and per-line blocking is generally available to telephone subscribers in 18 states. This makes generally available per-call and per-line blocking the most popular blocking option chosen by state PUCs. However, most of these states established various conditions under which such blocking may be provided.

Generally, customers must affirmatively request the per-line feature to activate it. This affirmative request may involve making a written request to the telephone company or the PUC. In some cases, subscribers are required to explain their need for per-line blocking. In other cases, regulators have required that per-line blocking be provided following any such request. A number of jurisdictions have approved a window of time immediately after service becomes available when all customers can get line blocking upon request free of charge. During this window (e.g., lasting 90 days, six months) a customer is allowed to change his/her blocking option several times free of charge. Once the 90-day window closes, in some cases subscribers no longer have the per-line option available to them. In other cases, the option remains available, but with a


131 The authority to approve such requests lies with regulators in some cases and telephone companies in others.
Figure 3: Status of State Regulatory Actions on CLID Service in October 1993
charge for each change requested. In some cases, the window periodically reopens.

A second configuration allows CLID to remain blocked until a telephone user takes some action to unblock the transmittal of his/her number to the recipient of the call. This is referred to as presumptive line blocking. Nowhere in the U.S. is presumptive line blocking approved for the general public. In California, Colorado, and Iowa, this option is required exclusively for unlisted and unpublished customers. In California, Massachusetts, Minnesota, and Texas, these customers may enable transmission of their calling numbers on a per-call basis. In Arizona, Idaho, Ohio, Oregon, and South Carolina, line blocking was approved for the general public, but for a fee.

16 jurisdictions required per-call blocking for all customers and per-line blocking only for subscribers with special needs. "At-risk" agencies such as domestic violence centers, crisis intervention agencies, battered women and children shelters, agencies that provide confidential services, including hot-line services, have been offered per-line blocking by telephone companies in most jurisdictions. The majority of these line blocking options are free of charge but can be activated only upon requests stating compelling need (e.g., personal safety, health).

Eight states have required per-call blocking for all subscribers. In most of these cases, per-call blocking is configured so that subscribers are required to activate the blocking mechanism prior to making a call. Here the default

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132 Regulators in Kansas specifically rejected presumptive line blocking for unlisted and unpublished customers.
situation is unblocked CLID and some affirmative act is required on the part of users to activate the blocking option. In most cases, presumptive per-call blocking is available. In this arrangement, customers do not have to request the telephone company to have per-call blocking. The blocking option is technically available and needs to be activated by callers, typically by dialing a set of digits, e.g., *67, before placing each call. In three states blocking is required only to "at-risk" agencies. In this scenario, the general public is without any blocking. Although not as inequitable as no-block CLID, this option is closest to all number delivery because it fails to offer the majority of customers any alternatives to protect their calling information. Figure 4 provides a schematic overview of blocking options required by state regulators.

On March 8, 1994, the FCC announced its decision on CLID. Reiterating the need to establish a federal model for interstate delivery of calling party number, the FCC required that, effective April 12, 1995, "all common carriers using Common Channel SS7 and subscribing to or offering any service based on SS7 functionality must transmit the calling party number parameter and its associated privacy indicator on an interstate call to connecting carriers."\textsuperscript{133} The FCC required automatic per-call blocking for interstate callers. Terminating carriers providing CLID were required to honor the privacy indicator. Telephone subscribers had to be informed by providers about the release of their

47 have decided the CLID question

2 have not begun proceedings but market trials with blocking proposed and approved MT, RI

51 jurisdictions (50 states & Washington D.C.)

2 have all-number delivery TN, WV

3 require blocking only for 'at-risk' agencies IN, LA, MS

8 require only per-call blocking to all customers DC, IL, MD, MI, ND, OK, SD, VA

16 require per-call for all and per-line for special cases AL, AR, CT, DE, FL, KS, KY, ME, MO, NE, NJ, NM, TX, UT, VT, WI

18 require both per-call and per-line blocking for all AZ, CA, CO, GA, ID, IO, MA, MN, NC, NH, NV, NY, OH, OR, PA, SC, WA, WY

2 have not begun proceedings AK, HI

Figure 4: Schematic of CLID Blocking Options
Source: Appendix.
numbers to called parties through calling party based services, and the options available to them to avoid the release of their numbers.134

The FCC rules do not preempt any state rules governing intrastate CLID. However, state rules are preempted in the following respects:

(i) states may not prohibit automatic per call blocking for interstate calls,
(ii) states may not require a blocking alternative for interstate calls different from the one adopted by the FCC, and
(iii) states may not prohibit carriers from offering interstate CLID services.135

The FCC's CLID policies are not intended to affect state commission rules for intrastate service. State commissions may prohibit or restrict intrastate CLID offerings. However, interstate and intrastate CLID services are not easily separable. Interstate CLID service requires that originating and terminating local exchange carriers that are technically capable of offering SS7-based services transmit calling party information. Therefore, states cannot prohibit originating carriers from transmitting calling party information to interexchange carriers (IXCs) or IXCs from transmitting such information to terminating carriers. For all interstate traffic, transmission of calling information cannot be prohibited.

Further, while the FCC rules do not affect eight state jurisdictions that have mandated free per-call blocking to all subscribers, following the federal rules, customers in 18 jurisdictions who have chosen per-line blocking on intrastate CLID offerings no longer have that option available to them for


interstate calls. For instance, if a long-distance call is made by an individual with an intrastate per-line blocking option, when the call is routed to an IXC's switching facilities, and the IXC has the necessary technology to transmit calling number information, it is required to transmit calling party information to the terminating carrier. The calling party is not assured confidentiality of his/her calling information. Unless the calling party dials the appointed per-call *67 privacy indicator, the FCC rules do not require IXCs and terminating providers to transmit any privacy indicator. In other words, regardless of the intrastate blocking options available to subscribers, if callers do not dial the per-call blocking code when making interstate calls, they will have no privacy protection. Further, the FCC estimates that at the present time, "deployment of the necessary technology for interstate calling party based services is well underway."136

Callers, assuming greater levels of protection provided by state policies, may unknowingly allow disclosure of their calling information in interstate calls.

The FCC also decided that arguments for per-line blocking for certain groups with heightened privacy needs, e.g., non-profit, tax-exempt domestic violence agencies; home telephone numbers of staff members of such agencies; federal, state and local law enforcement; and individuals who have need for blocking to mitigate the risk of personal injury, as certified by a law enforcement agency, do not address how this mechanism would be implemented. The Commission Order asked,

Do certain types of law enforcement personnel have greater needs than others? Do domestic violence shelters have greater needs than

teenage runaway facilities? Do individuals who work for these organizations have needs? How would these individuals be identified? How would determinations be kept current? What appeal rights would be available?137

The FCC stated that per-line blocking for a special needs category as a federal model is not optimal because it would "unnecessarily increase the role of federal government or carriers in making privacy choices for subscribers."138 However, following the FCC's CLID rules, special "at-risk" organizations that were guaranteed free per-line blocking in 33 states would no longer have that choice available to them.

Trends in Regulatory Activity on CLID Services

Several observations may be made based on the foregoing narrative. First, shifts in regulators' willingness to address concerns over the privacy issues are seen by comparing Figures 1, 2, 3. The figures show that as time progressed, more commissions began to open investigations and solicited public comment on the issues. Initially, commissions addressed CLID issues in administrative orders or through public hearings and decided them with relative speed. But as state regulators became active, they began to recognize the privacy implications of CLID as significant public policy issues. CLID proceedings became highly contentious, and in many cases, long-drawn. Parties appealed to courts, and state legislatures enacted enabling or preemptive amendments. Over the course


of the seven-year regulatory experience with CLID, privacy issues grew in prominence on regulatory agendas nationwide.

The increase in state-level activity coincides with changes in policy decisions on CLID. At the outset, regulatory attention was focused on whether the issues involved were significant public policy concerns. Commissions were unconvinced that calling parties deserved privacy protection in their calling information or that the alleged privacy issues were worthy of much regulatory attention. However, by the end of the first full year after New Jersey Bell's tariff filing, the privacy implications of CLID service were acknowledged as a serious policy concern, and regulators began requesting more extensive investigation. By the beginning of 1990, regulatory attention shifted to the selection of number blocking schemes. Commissions evaluated various types of blocking, e.g., per-call or per-line, and various arrangements for blocking, e.g., free or cost-based, one-time or recurring charges, by default or upon affirmative request, additional or default options for "at-risk" entities.

As telephone companies in various jurisdictions proposed tariffs for the service, an increase is seen in privacy-protection options included in tariff proposals. Whereas early filings for CLID service, e.g., in New Jersey, Pennsylvania, West Virginia, Virginia, Maryland, and Tennessee, proposed no-block service, later filings incorporated blocking mechanisms. Providers that filed later either conceded that the service had significant privacy implications, or judging from the available state-level regulatory record on CLID, they estimated that no-block service would not win favor with regulators. To avoid regulatory delay, many providers began proposing blocking options in their initial filings.
Privacy concerns involving CLID service were first articulated by the New Jersey Public Advocate in 1988. Framing the issues within an individual-individual frame, the Public Advocate raised the issue of balancing calling and called party interests. Further, the Public Advocate articulated the consequences of corporate entities using CLID to accumulate lists of personal information. Based on Samarajiva and Shields, this second concern is framed within the individual-organization frame. This frame portrays the user as disadvantaged in comparison to the organization. Organizations are perceived as more powerful and wielding control over the activities and choices of individuals. This frame provides justification for "protecting" consumers from organizations. It guides decision makers to choose the "rights" of consumers over economic interests of businesses and the interests of government. From the outset, regulators favored the individual-individual frame. Although some policy opinions, e.g., those of the ALJ in Pennsylvania, and Commissioner Long from the D.C. PSC, urged acknowledgment of the issues within the individual-organization frame, this frame did not attract the attention of regulators to the same extent as the individual-individual frame.

Commissions that included the issues on their agendas soon after the New Jersey proceeding inherited the frames and descriptions of the issues presented in that proceeding. Particularly for regulators in Pennsylvania and West Virginia, the record in New Jersey served as a compelling model. However, some contemporary initiatives were significantly different. The California state

139 Samarajiva and Shields, "Emergent institutions of the 'intelligent network: . . .'," 402-04.
140 Samarajiva and Shields, "Emergent institutions of the 'intelligent network: . . .'," 402-04.
legislature explored technical means to block transmission of calling party information, and required per-call blocking. This legislative provision for per-call blocking came soon after the ALJ's recommendation in Pennsylvania that callers be given the ability to block transmission of their numbers. Despite the rush among state regulators to allow no-block CLID, California lawmakers and the ALJ in Pennsylvania sought an alternative.

CLID blocking as presented by the California legislature and by the ALJ in Pennsylvania did not immediately become a serious consideration in other jurisdictions. Regulators in Maryland, Virginia and Tennessee followed the New Jersey BRC's lead and allowed no-block tariffs a few weeks after the California law was enacted and the ALJ had issued his decision. In Pennsylvania, the PUC rejected its ALJ's recommendation. These regulators did not revisit or reframe the problems posed by CLID. They assumed that CLID offered many benefits to business and residential customers, and any privacy implications that had been alleged by opponents of the service did not need extensive investigation. As the New Jersey BRC had done, these commissions assumed that the privacy of calling parties did not face any grave consequences and did not warrant any protective schemes. Additionally, the cost of deploying blocking options served as a significant disincentive.

When the Commonwealth Court in Pennsylvania stayed the PA PUC's no-block decision, the principal contested issue was a criminal matter—whether CLID violated state wiretap law. Although the privacy implications of CLID had been raised and argued by the New Jersey Public Advocate and the Consumer Advocate in Pennsylvania, these issues were not the focus of the court proceeding. This is significant because the Court's stay was the first instance
where objections to no-block CLID were sustained. However, although the privacy implications on their own merit had not spurred the court proceeding, the Commonwealth Court provided the first forum where the privacy implications of CLID were extensively addressed.

In a brief period following the court's decision, several other states held that CLID violated wiretap laws. In some jurisdictions, regulators stayed their decisions for further investigation. Consumer advocates in some states gained confidence and began concerted action to have CLID investigated fully. Providers too began conceding their no-block policies and began proposing tariffs that incorporated some form of blocking. A number of state legislatures proposed statutory amendments to exclude CLID from wiretap restrictions. These actions were effective in transforming the perception of CLID from an unproblematic offering to one that involved serious policy concerns, worthy of regulatory attention and action.

Acknowledgment that CLID involved serious privacy issues led regulators to explore blocking schemes. The alternatives presented by the California legislature and the ALJ in Pennsylvania served as compelling models. During the latter half of 1990, per-call blocking rapidly became the most popular form of blocking. However, state regulators soon began to examine other blocking schemes. In August 1990, the Nevada commission required that free per-line and per-call blocking should be made available to all customers. Arguments for a special group of "at-risk" customers with a compelling need for protection of their calling number information received support from a growing number of commissions. In November 1990, the Iowa Utilities Board required per-call blocking for all subscribers and free per-line blocking for "at-risk"
entities. During the following two years, these two blocking schemes, i.e., (i) free per-call and per-line to all; and (ii) per-call to all, per-line to "at-risk" entities, gained significant popularity. By the end of 1993, CLID offerings in 33 states provided one of these two schemes.

These blocking arrangements may be ranked based on the level of protection they offer. CLID policies that incorporate a wide range of blocking options for all subscribers rank high. Policies that offer fewer choices and those that provide choices only to a small group of subscribers rank lower. State policies that achieve greater privacy protection rank higher than those that provide less protection. Significant factors include whether or not blocking is per-call or per-line, if it is available free of charge, if one-time or recurring charges are assessed for blocking, if customers are allowed to shift from one blocking option to another without charge, if such shifting is permitted at any time or only during appointed windows of time, if customers are required to affirmatively request blocking, if customers are required to show compelling need for blocking, or if customers have the option of blocking without request, i.e., by default.

Based on these factors, no-block CLID is ranked lowest because it provides no options or protection to calling parties who do not wish to disclose their numbers. Blocking arrangements that provide both free per-call and free per-line blocking to all customers, and allow customers to shift without charge from one type of blocking scheme to another are ranked highest. Court rulings that prohibited CLID are ranked equal to the highest blocking option. However, in the following figure, these rulings appear above all other blocking schemes for aesthetic reasons. Figure 5 situates CLID decisions from fifty-one state
Figure 5: Migrations in State Regulatory Decisions on CLID Service Across Time

Source: Appendix.
jurisdictions across time based on the privacy protection their decisions incorporate. Generally, final PUC decisions are reflected in the figure. Where a commission has not reached a decision, no decision is shown. Where two providers in a state are subject to different blocking rules, both blocking options are depicted. Where a commission reopened its investigation after a rule had been announced, and issued a second decision on CLID blocking, both decisions are shown. Where preemptive legislation reversed or changed PUC rules, both decisions are shown. Where a court ruling reversed or changed PUC rules, both decisions are shown.

Figure 5 is instructive about trends that developed across time. Four points may be made. First, when CLID was initially proposed, state commissions were hesitant to extend their regulatory responsibilities and order investigations into customer calling information privacy. The issues were relatively unfamiliar and did not appear worthy of regulatory attention and action.

Second, when a state PUC decided to extend its mandate and required privacy protection mechanisms with CLID, other state PUCs emulated that decision. For instance, in 1990 the state of Nevada mandated an unprecedented privacy protective arrangement when it approved per-call and per-line blocking for all subscribers. Focusing on the horizontal time-line following Nevada, Figure 5 suggests that the popularity of this privacy-protective arrangement increased rapidly. In 1991, seven jurisdictions followed Nevada and by 1992, eight others followed suit. In 1993, Minnesota and Wyoming, both having opened CLID inquiries that year, followed with per-call and per-line blocking for all. In Pennsylvania, where CLID service had been prohibited since 1989, a 1993 statutory amendment declared that CLID could be lawfully offered in the state if
callers were permitted to withhold display of calling information on both a per-call and per-line bases.\textsuperscript{141}

Figure 5 also shows that the per-call option was first presented by Pennsylvania and California in 1989. While these jurisdictions migrated to more protective arrangements in 1990 and 1991 respectively, they provided a model for other state PUCs. Seven commissions in 1990 and three more in 1991 chose the per-call only option. In 1990, the Iowa Utilities Board (UB) approved CLID with per-call blocking for all and per-line blocking for agencies and individuals who were placed at risk by the service. The Iowa UB's decision followed Pennsylvania and Nevada where these blocking options had already been proposed. However, when the Iowa UB emulated blocking policies in Pennsylvania and Nevada, both those states had moved to policies with stronger protections. At the time it was issued, the Iowa UB's decision was notable in its concern for "at-risk" entities. While potential problems faced by these organizations and individuals were raised in 1988 in the New Jersey hearing, Iowa was the first jurisdiction that established protective protocols for these "at-risk" individuals. After the decision in Iowa, per-call for all and per-line for "at-risk" agencies became a relatively popular option.

Third, the level of privacy protection afforded by a decision is related to its place in time. No decisions are located in the upper left and lower right corners of Figure 5. This suggests that early in the regulatory history of CLID, no commission approved highly-protective schemes. It also suggests that towards the end of 1993, commissions did not approve CLID decisions without privacy protections.

protection arrangements. The bulk of PUC decisions are located diagonally across the figure. The earlier a decision was made, the less privacy protection it afforded. The later a PUC decided the issues, the greater the privacy protection it provided. Figure 5 suggests that state PUCs that entered the fray late, i.e. commissions that initiated investigations during late 1992 and in 1993, are located in the top right corner—with the most protective blocking options. In states where service has not yet been proposed or offered, all proposed market trials include blocking options.142

Fourth, as state commissions emulated decisions from other jurisdictions, a gradual process of learning among commissions is perceptible. As commissions grew aware of the implications of CLID, they changed their positions. Figure 5 shows that PUCs shifted their positions considerably from 1988 through 1993. The figure shows that, as a group, regulators shifted from early decisions that permitted the service without blocking to policies for per-call blocking and then to more protective options. The extent of choice provided to customers increased as well. In 1993, at the end of the regulatory experience with CLID, a large majority of commissions chose automatic per-call and per-request per-line blocking for all subscribers.

Some state PUCs that decided the issues early (e.g., New Jersey and Virginia), later reopened the case and reversed themselves with more protective decisions. Therefore, although the final decision of the Virginia SCC in 1993 is not significantly protective when compared with contemporaneous decisions of

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142 NET is proposing Caller ID service in Rhode Island with free per-call but not per-line blocking. NET currently offers the service in Maine and New Hampshire, and has been required to provide several blocking options.
other PUCs, the SCC’s decision to approve per-call blocking for all subscribers is significantly more protective than its long-standing preference for no-block CLID. Figure 5 connects earlier and later decisions from individual PUCs to track migrations among commissions in their decisions on the issues.\textsuperscript{143} As time progressed, several commissions traveled from less protective to more protective policies. The only exception is the case of Indiana where the state legislature mandated a less protective policy. Even in that instance, although state law restricts the commission’s ability to place heavy blocking requirements, United Telephone agreed to a stipulation and is offering free per-call to all customers and free per-line to "at-risk" entities.

A significant contradiction in the trends identified in CLID decisions is the FCC’s preference for per-call blocking as late as March 1994. When the FCC initiated its CLID proceeding during October 1991, per-call blocking was the preferred blocking option among state commissions. Therefore, as Samarajiva states, it is no surprise that at that time, the FCC held that per-call blocking would adequately serve the privacy concerns of calling parties.\textsuperscript{144} However, by 1994, the majority of state commissions had shifted to a preference for both per-call and per-line blocking, but the FCC reiterated its 1991 preference for per-call blocking.

The FCC’s preference for per-call blocking is contrary to the dominant trend in state commission decisions in 1994. The last instance of a state

\begin{itemize}
  \item \wefont[143]{Only commissioner-signed policies, statutory enactments or court rulings are depicted in this figure.}
  \item \wefont[144]{Samarajiva, R., Comments in the Matter of Rules and Policies Regarding Calling Number Identification Service, CC Docket 91-281, May 1994, 4.}
\end{itemize}
commission choosing per-call blocking was in 1993, when the Virginia SCC migrated from its no-block stance and permitted blocking for the first time. If the FCC sought support from the state level for its per-call preference, it would have been from eight state commissions that had previously approved per-call blocking. However, during 1994, state commissions were approving far more protective blocking options, but these decisions did not influence the FCC.

Explanation for the FCC’s dissonance may be found in two factors. First, since 1990, federal lawmakers have proposed per-call blocking as a condition for CLID approval. During August 1990, Senator Kohl (D-WI) and Representative Kastenmeier (D-WI) introduced companion bills in the Senate and the House entitled the *Telephone Privacy Act*.145 During March 1991, Representative Markey (D-MA) sponsored the *Telecommunications Privacy Consumer Protection Act*.146 These proposals argued that the per-call blocking mechanism was the preferred solution to the concerns raised by CLID, in protecting privacy interests while avoiding unduly burdensome regulation. Senator Kohl (D-WI) reintroduced a modified bill proposing per-call blocking with Senator Leahy (D-VT) during June 1991,147 and Representatives Synar (D-OK) and Edwards (D-CA) introduced a companion measure in the House.148 Again in 1993, Representative Markey

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145 SB 2030 and HR 4340 101st Congress, 2d session, introduced August/September 1990.

146 HR 1305, introduced March 1991.


148 HR 1449, introduced June 1991.
(D-MA) proposed that the FCC would mandate per-call blocking with CLID service.\textsuperscript{149}

Since the time the FCC initiated its rulemaking, therefore, federal lawmakers have repeatedly signaled a preference for per-call blocking. This suggests that consistent external signals from political sources are significant factors on regulatory behavior. The FCC's preference for per-call blocking is instructive about differences between the regulatory process at the federal and state levels. At the state level, the CLID proceedings involved 51 different jurisdictions and in every proceeding, several new intervenors. Although the policy frame changed little over seven-years, and parties took support from arguments made before other state commissions, every proceeding allowed for restatement of the arguments and reassessment of policy alternatives. The possibilities for restatement and reassessment were much greater at the state level than at the federal level where the same set of intervenors and decision-makers meet repeatedly. The FCC's decision to require per-call blocking is also explained by distinguishing the predominant state policy discourse from conventional wisdom at the federal level. At a more macro level, this suggests the existence of multiple, embattled domains of discourse, each privileging particular versions of the issues and particular alternatives.

Summary

This chapter traced the seven-year state regulatory experience with telecommunication privacy issues in CLID proceedings. Four trends were identified in the nationwide record on these initiatives. First, when CLID was initially proposed, state commissions were hesitant to extend their regulatory responsibilities and order investigations into customer calling information privacy. The issues were relatively unfamiliar and did not appear worthy of regulatory attention and action. Second, when a state PUC decided to extend its mandate and required privacy protection mechanisms with CLID, other state PUCs emulated that decision. Third, the level of privacy protection afforded by a decision is related to its place in time. Fourth, as state commissions emulated decisions from other jurisdictions, a gradual process of learning among commissions is perceptible. As commissions grew aware of the implications of CLID, they changed their positions. The decision of the FCC, dissonant with the state policy discourse of 1994, attests to the compelling influence of external signals and points to the existence of multiple domains of discourse. The following chapter revisits theoretical perspectives explicated in previous chapters, and presents explanations for these trends in the nationwide record on CLID services.
Overview

This dissertation examined the recent increase in regulatory attention on telecommunication privacy issues as they were raised in proceedings on CLID services. These initiatives indicate changes in regulatory awareness and concern over privacy issues. Therefore, the state-level CLID proceedings highlight the complex dynamics of regulatory agenda-setting and policy diffusion. The dissertation set out to identify and explain these regulatory initiatives. This chapter reviews trends in the regulatory experience with CLID services. Next, it offers explanations for these movements in the regulatory status of CLID services and telecommunication privacy issues. In conclusion, the chapter articulates the influence that regulatory treatment of CLID issues could have on telecommunication privacy policies in the future.

Conclusions from the Case of CLID Services

A study of the treatment of telecommunication privacy issues within CLID proceedings was conducted. Actions by utility commissions in 51 state jurisdictions (50 states and Washington D.C.) on CLID services were detailed. Actions were situated in time, and changes in the regulatory treatment of telecommunications privacy issues were documented. Changes in the level of
concern for these issues and the diffusion of this concern across jurisdictions were described. Migrations in state commissions' positions on the implications of CLID were traced. The dissertation identified trends in policy decisions across time.

The nationwide record on CLID services shows four trends. First, when CLID was initially proposed, state commissions were hesitant to extend their regulatory responsibilities and order investigations into customer calling information privacy. The issues were relatively unfamiliar and did not appear worthy of regulatory attention and action. Second, when a state PUC decided to extend its mandate and required privacy protection mechanisms with CLID, other state PUCs emulated that decision. Shifts in regulatory attitudes towards the implications of CLID spurred increases in the agenda-prominence of telecommunication privacy issues. State public utility commissions (PUCs) shifted between viewing CLID services as a relatively unproblematic service to one that had serious privacy implications. Various policy responses gained and lost favor among regulators. Third, the level of privacy protection afforded by a decision was related to its place in time. Over time, state PUCs migrated toward stronger protections against disclosures made possible by CLID services. Fourth, as state commissions emulated decisions from other jurisdictions, a gradual process of learning among commissions was perceptible. Regulatory concern over telecommunication privacy issues rose from July 1987 through May 1994. Over time, most commissions chose greater protections through blocking mechanisms.
(i) Initial Hesitancy of Regulators

When CLID was first proposed, state commissions were hesitant to extend their regulatory responsibilities and order investigations into customer calling information privacy. The issues were relatively unfamiliar and did not appear worthy of regulatory attention and action. The commonly-used trade name, "Caller ID," although a misnomer, portrayed CLID service as enhancing individual control over inflows into the home, e.g., deterring obscene, harassing and unwanted calls. This marketing strategy served well in that it readily fit the intent of existing law providing protections against such callers, and responded to high levels of political concern over inflows issues. Most states also had rules that limited wiretapping and telephone eavesdropping. Within the terms and frames of existing precedent, CLID was viewed as protective of privacy and as providing clear benefits to a large number of telephone subscribers. Therefore, at the start of the regulatory experience with CLID, the issues were taken as unproblematic and not considered worthy of extended investigation.

However, CLID enables the systematic release of information generated by telephone usage, and transactions related to telephone service. McManus referred to this information as telecommunication transaction generated

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information (TTGI).\(^2\) When the first CLID tariff proposals were filed, little, if any, legal or regulatory precedent was available recognizing the privacy implications of TTGI or protecting TTGI privacy. Further, the outflows implications of CLID i.e., the effect that the new service had in reducing individuals' control over disclosures of information, did not readily fit legal and regulatory precedent. Calling information did not traditionally have the presumption of confidentiality. Callers typically identified themselves immediately after their calls were received. CLID merely appeared to facilitate this process of identification by transmitting calling information before calls were received. This allowed early commissions unfamiliar with the seriousness of the privacy implications of CLID to treat them as unproblematic. Arguments about the implications of CLID on outflows were not immediately acknowledged.

The hesitancy of early commissions to treat CLID issues as worthy of sustained regulatory attention and action is also explained by long-established regulatory practices and priorities. Traditional communication utility regulation follows the common carrier principle. Regulatory agencies are required by legislative mandate to ensure that local exchange companies (LECs) provide adequate service to all who request it, at just and reasonable rates.\(^3\) The protection of consumer privacy, and further TTGI privacy is not included within the traditional regulatory mandate. State commissions, constrained by limited


budgetary and personnel resources, were hesitant to extend their regulatory responsibilities and order investigations into customer calling information privacy.

Wittrock and Wagner suggest that beyond "standard operating procedures for making and shaping policies in institutional terms, there are . . . also more or less predominant, more or less embattled domains of discourse that serve as tacit backdrops for every such policy process and course of action. The rules of this domain of discourse define the field of policy intervention and the range of proper policies. They are both enabling and constraining and decisively delineate the range of options open for policy agents at any time. . . .4 Unfamiliar with the seriousness of the issues, without recognizing them as compelling public policy concerns, and with limited resources and mandates, state commissions remained within the dominant domain of discourse and the course of action it privileged.

(ii) External Signals of Salience

Based on existing conceptions of privacy, and institutional and administrative limitations on agencies' capacities to act, CLID should have been viewed as privacy-protective, and as addressing long-standing concerns over unrestricted inflows. However, the state regulatory record from mid-1987 to mid-1994 suggests a series of turning points that focused regulatory attention on

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the outflows implications of CLID, and the salience of providing broader protections. These shifts constitute a significant change in regulatory attitudes towards privacy issues generally. They suggest that during the CLID proceedings, state regulators encountered relatively unfamiliar outflows concerns, and responded innovatively. Further, they suggest that perceptions of the public interest are dynamic.

Previous chapters argued that regulators act on issues that are perceived to be in the public interest. The first commissions extended their mandates and decided to investigate CLID issues as a result of indications that these actions were in the public interest. This suggests that regulators are not guided by a well-defined, consistent public interest. Rather, the public interest is perceived through a process of interpretation. It involves signals and messages from various sources, and the interpretation of those messages in particular ways. The external signals hypothesis states that regulators rely on the responses of other institutions (e.g., the courts, elected political officials (including congressional committees that decide upon the budget and legislative program of the agency), and the general public (including the press, all other agencies and constituent interest groups)) to their policies as proxy indicators of the public interest. Conceptions of the public interest change as regulators attempt to match their policies to perceived preferences of external entities.

Regulatory perceptions of the public interest are influenced by signals from various sources. Commissions evaluate the salience of issues based on inferences from the existing political culture and identifiable public opinion as well. In many cases, external signals are contradictory, and indicate several, discrete "public" interests. The legitimacy and credibility of sources influence the
effect of signals. In some cases, signals from highly legitimate sources overwhelm other less articulate signals from less legitimate sources. The FCC's decision on CLID is a case in point. Despite the dominant trend among state commissions to require both per-call and per-line blocking, Congress clearly indicated a preference for per-call blocking. External signals from federal lawmakers were more compelling indicators of the preferred course of action than conventional wisdom at the state level.

External indicators of the public interest are also eclipsed by actual directives from other political entities. External signals are distinguishable from these direct inducements. In some instances, state regulators received and evaluated "streams of policy-related information and directives"\(^5\) from state legislatures and courts. Based on Goggin et al., state regulatory decisions are influenced by the content, form, and salience of inducements and constraints. Inducements are factors, conditions and actions, that stimulate initiatives; constraints have the opposite effect.\(^6\) Kingdon, and Derthick and Quirk posit similar influences from visible participants, e.g., the president, his high-level appointees, prominent members of Congress, the media, sanctions and rewards from influential institutions.\(^7\) Where a visible cluster of actors argues for the inclusion of a particular issue on a regulatory agenda, that subject is pushed into agenda prominence. For Ikenberry, direct, external political pressure provides


incentives or inducements (ranging from overt coercion to the loose structuring of incentives and sanctions) that lead others to adopt a preferred policy.

Over the course of the seven-year regulatory record, state legislatures in California, Indiana, Maine, Michigan, North Dakota, Oklahoma, Pennsylvania, Texas, Washington, and Wisconsin enacted amendments affecting CLID service. Courts in Pennsylvania and South Carolina stayed commission proceedings and overruled regulators when complaints were brought to them. These initiatives constitute direct inducements and constraints

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8 Assembly Bill 1446, CA Public Utility Code, § 2893, signed on September 15, 1989.

9 1992 Ind. SEA 222, § 2. IC 8-1-2.9, Chapter 2.9.: Telephone Caller Identification Services, passed February 27, 1992.

10 Legislative Document 1643 creating an Act to Protect Telephone Customer Privacy [Chapter 654], approved by the Governor March 9, 1992. 5-A MRSA, § 7102, 1992 Me. ALS 654; 1992 Me. Laws 654; 1992 Me. HP 1118.


12 HB-1556, Telecommunication Reports, August 20, 1990, 19.


15 Senate Bill 73, January-May 1993 legislative session, effective September 1, 1993.


upon policymakers that effectively induced particular policy responses to CLID issues.

When the Indiana URC issued its decision for per-call and per-line blocking, it was not alone. Eight other state PUCs had previously required identical blocking arrangements. Therefore, following signals from eight other state commissions, the Indiana URC held that the protection of calling party privacy was in the public interest. At the time of the Indiana URC's decision, CLID issues were highly-publicized. CLID had become a popular media item. Consumer advocates were extremely vocal about the implications of the service. Courts in a number of jurisdictions were involved in interpreting the legality of the service. Congressional representatives at the federal level\textsuperscript{20} and within states had decided to act on some of the issues. Other state PUCs were reopening CLID dockets and reversing themselves. As the external signals theory suggests, regulators in Indiana and eight other states had perceived a considerable public concern over disclosures through CLID. However, due to the high level of public and elite awareness of the issues, telecommunications privacy issues involving CLID service were poised for direct inducements from political entities. Therefore signals from other states that supported highly-protective mechanisms were overwhelmed by contradictory directives from the state legislature. Although this does not suggest that the Indiana URC changed its conception of the public interest following state legislative action, it underscores the point that the public interest may be construed in various ways by various entities.

\textsuperscript{20} Sen. Herbert Kohl (D-WI) began proposing federal legislation to mandate privacy-protective blocking arrangements with Caller ID in 1989. \textit{The Telephone Privacy Act}, Senate Bill 652.
According to Goggin et al., regulatory perceptions of the public interest reflect the contextual environment, e.g., the political culture, public opinion, or media attention attracted by an issue, within which the agency functions. Several cross-sectional analyses of public concern with privacy indicate high levels of concern over the intrusiveness of various telephone services. Figure 6 presents the results of a survey conducted by Cambridge Reports during Winter 1988. Responses were solicited from a weighted random sample of households. Adult Americans identified the telephone as the single largest source of privacy invasions. 28.5% of the total responses cited telephone-related incidents as the worst offenders. Within this set, 14% referred to telephone tapping, 12% to telemarketing, 1.7% to obscene telephone calls and 0.7% to wrong numbers as being the most offensive intrusion.

The category of information distribution (involving concerns over the disclosure of calling party information), received 12.8% of the total responses. Only 3.6% of the responses identified "companies giving out personal information" as an example of personal privacy invasion. Therefore, in 1988, individuals were less concerned with the distribution of information about themselves than they were with telephone taps and intrusions by telemarketers. These surveys indicate why regulators have treated concerns over outflows and those over inflows dissimilarly. CLID involves both inflows and outflows issues. Proponents of no-block service assume that CLID without any blocking enhances

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Figure 6: Public Concern Over Various Types of Privacy Invasions

* The larger category of "Telephony" is divided into:
  Telephone tapping 14%, Telemarketing 12%,
  Obscene telephone calls 1.7%, Wrong numbers 0.7%

the control of called parties over inflows into their homes. Opponents of no-block CLID have argued that, far from enhancing control over inflows, CLID facilitates outflows from calling parties.

However, "[c]oncerns over inflows have generated significantly more voluminous regulation and legislation than outflows issues. . . . "23

Issues concerning inflows to customers stand apart from action on outflows issues. Generally regulators have tended to treat inflows as intrusions into people's homes and therefore as necessarily involving questions of privacy. These intrusions are more readily perceptible and have demanded vigorous protection. In contrast, outflows of customer information tend to be systemic and therefore relatively transparent to customers and regulators alike. . . .24

In a meta-analysis of public opinion surveys conducted between 1979 and 1989, Katz and Tassone assert that while the percentage of Americans willing to yield some privacy-sensitive information in exchange for tangible benefits (e.g., discounts, sale announcements) appears to be increasing, a substantial percentage also refuse to provide complete information on themselves and are aware that they are the subject of computer files being put together for purposes unknown to them.25 Three surveys conducted by Louis Harris Associates et al., corroborate increasing levels of sensitivity among individuals with regard to

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information concerning their telephone activities.\textsuperscript{26} This indicates increasing public awareness of outflows issues. However, during the seven-year regulatory experience with CLID, regulators remained more concerned with inflows issues than outflows issues. Here again the influence of the discursive domain and the structure of policy frames is evidenced.

This dissertation has argued that domains of discourse serve as overarching and pervasive frameworks for knowledge, and structure and define available courses of action. Ultimately, they influence which issues come to be issues on the governmental agenda, how the alternatives from which decision makers choose are generated, and why some potential issues and some likely alternatives never come to be the focus of serious attention. Within the limitations delineated by the existing domain of discourse, every policy decision that opposed the dominant trend may indicate a contradiction or dissension.

A number of events over the seven-year period stand out as having significantly altered the perceived salience of the issues. These events include the Commonwealth Court's decision in Pennsylvania in 1990, the amendment of state law in California establishing per-call blocking as a viable mechanism to balance called and calling party interests, the Nevada PUC's decision to require both per-call and per-line blocking in Centel's CLID tariff, Pacific Bell's decision

volunteering to provide free per-call blocking to all subscribers, and the Hearing Examiner's order in Illinois recommending free per-call and per-line blocking with per-call unblocking.

CLID implications were first scrutinized and discussed in detail during adjudicatory proceedings in Pennsylvania. These proceedings mainly raised a criminal issue—whether or not CLID violated state wiretap laws. Although court proceedings in Pennsylvania significantly influenced the perceived salience of CLID implications, they do not reflect a discursive shift. The parties' arguments and the court's ruling remained within the traditional framework of wiretap issues for the most part. In proceedings that were spurred by the Court's decision, parties continued to frame the issues within an individual-individual frame, which illuminated some questions, and as a result, favored particular responses and repressed others.

Similarly, regulatory attitudes towards CLID services were influenced by the state legislature in California. These legislative proceedings constitute a significant innovation in the treatment of telecommunication privacy concerns. However, the state of California has a well-established tradition of privacy protection and would have been well prepared to address the concerns raised by CLID. By 1989, in California, "the statutory protections [were] far more extensive, more so than in any other state. They [covered] arrest records, bank records, cable television records, credit reports, state agency files, insurance records, medical information and AIDS information, store dressing rooms, student records, automated telemarketing devices, electronic eavesdropping and

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27 Assembly Bill 1446, CA Public Utility Code, § 2893, signed on September 15, 1989.
misappropriation of a person's likeness.\textsuperscript{28} Lawmakers in California had the advantage of an extensive repertoire of policy and procedural techniques to address the privacy implications of CLID. Building on this record, they framed the issues within an individual-individual frame, as had been done previously by providers and consumer advocates in New Jersey. But this time the decision makers required protection for calling parties.

These instances suggest changes in the salience of CLID issues and the need for blocking. They also suggest that opponents of CLID did not significantly deviate from the frames and central issues that were presented in the New Jersey Public Advocate's testimony in 1987. As suggested by Giddens' notion of "structure," the individual-individual frame proposed in 1987 effectively framed the issues as involving the rights of called and calling parties. Parties and regulators alike were constrained by this frame. Its structure privileged particular alternatives and enabled individual action in pursuit of those alternatives. The predominant contest for the bulk of the seven-year regulatory history of CLID services was over alternatives that aimed to balance the rights of called and calling parties. Other potential issues and likely alternatives (that may have emerged through the individual-organization frame, for instance) did not come to be the focus of serious attention.

Over the course of the CLID proceedings, arguments remained within the individual-individual frame, but while they had received little support in early proceedings, they were treated seriously later in the seven-year period. In some

\textsuperscript{28} Proposed decision of ALJ Lemke, \textit{In the matter of the application of Pacific Bell for approval of COMMSTAR Features, et al.}, Application 90-11-011 et al., issued February 20, 1992, 28-9.
cases highly-publicized events influenced awareness of the issues, and altered regulatory behavior. In other cases, state commissions made changes in their decisions after several others had preceded them. These phenomena reflect emulation among commissions and policy diffusion.

(iii) Emulation and Learning Among Regulators

When several state PUCs decided to extend their mandates and establish privacy protective mechanisms, other state PUCs accepted that course of action, and emulated it. An important question here is, under what circumstances did other commissions emulate each other? The seven-year nationwide regulatory record on CLID issues supports the constitution of a policy subsystem full of messages, messengers, channels, and targets—a broad communication system—which privileged particular policy options, and foreclosed others.29 Such a communication system is influenced by "broad, stable, normative standards"30 as well as a process of gradual accumulation of knowledge and perspectives among relatively hidden participants (e.g., academic specialists, career bureaucrats, congressional staff) in a given policy area, and the generation of policy proposals by such participants. Each PUC decision contributed to the communicative subsystem, highlighting some course of action and foreclosing others.

Such a communication system is further induced and constrained by "political language." As Edelman suggested, political language does not simply

29 Goggin, Bowman, Lester and Toole, Implementation Theory and Practice... , 33.
describe events but itself is part of the events, shaping their meaning and helping to shape the political roles officials and the general public play.\textsuperscript{31} Each policy proceeding, commission decision, legislative proposal, and court ruling concerning CLID incorporated "symbolic elements" that communicated values and intentions, and distributed symbolic rewards as well as altered behavior.\textsuperscript{32} If, as Edelman believes, some regulatory agencies engaged in "ritualized spectacle" when they initiated proceedings on CLID issues, these initiatives ultimately had a compelling symbolic impact upon elite and mass attitudes.

The CLID record shows that several state commissions retracted decisions, changed their views, and identified alternative policy outcomes. These movements were not haphazard. They show a growing awareness of and concern with the privacy implications of CLID. These trends suggest that PUC decisions had a cumulative effect. Earlier decisions were less accepting of privacy protective arrangements. Later orders were significantly more protective.

Increases in the agenda-prominence of CLID issues were affected by the means by which regulators learned about its implications, and the ways in which those implications became defined as policy problems.\textsuperscript{33} In some instances, direct, external inducements from visible participants had a significant influence.


\textsuperscript{33} Kingdon, \textit{Agendas, Alternatives and Public Policies}, 18.
Regulatory perceptions about the implications of CLID were also influenced by other state PUCs. In the bulk of cases, state commissions changed in their treatment of the issues when other state PUCs presented innovative alternatives to resolve the issues. State PUC initiatives on CLID show that at particular points in time particular policies gained favor with a number of commissions, and diffused among them. Taken together, PUC decisions had a strong cumulative effect on other regulators.

For emulation to occur, at the very least, state regulators need to be aware of actions in other jurisdictions. In some instances, state regulators acquired new ideas by studying situations similar to their own in other states. As Bennett has suggested, this may occur when regulators, having no readily available solution within the existing repertoire of policy and procedural techniques, and faced with pressures to conform in an insecure and tentative policy-making climate, looked abroad, to see how other states have responded, to share ideas, and to bring foreign evidence to bear on the domestic decision-making process.34

However, as Gray suggested, the diffusion of policies across jurisdictions depends upon interactions and exchanges among state commissions.35 Bennett states that state regulators may gain new ideas as a result of consensus among members of a "policy community" or "issue network" from various state jurisdictions--relatively coherent and enduring networks of elites bound by

34 Bennett, *Regulating Privacy*, 4-5.

expertise on a issue and a common concern for the resolution of issues. Policy diffusion/convergence in CLID proceedings indicates policy networks and communities ranging from formal alliances to diffuse processes of learning. As Ikenberry, Meny and Wright suggested, state PUCs were influenced to varying extents by "policy communities" that guided policy action towards reconciling called and calling party interests.

Some policy communities are formal organizations. The National Association of Regulatory Utility Commissioners (NARUC) is such a policy community, and serves to educate state regulators about current issues, as a clearinghouse of policy research, and as an advocate for state interests at the federal level. Other formal policy communities include the National Association of State Utility Consumer Advocates (NASUCA) which coordinates interventions in policy proceedings through NASUCA member organizations at the state level.

There are also numerous regional consortia of state regulators that range from irregular, informal joint meetings on subjects of multi-state concern to Congressionally approved interstate compacts. The seven Regional Holding Companies (RHCs) provide logical parameters for regional consortia, although regional conferences do not necessarily mirror RHC territories. Several state commissions are affiliated in more than one regional conference, and some of


these regional consortia are affiliated with NARUC. These national and regional organizations arrange annual meetings and educational conferences for commission staff. Examples include the NARUC Annual Regulatory Studies Program and the annual Williamsburg Conference, both jointly organized by NARUC and the Institute of Public Utilities at Michigan State University. These meetings provide a forum for exchange among state regulators and mutual lesson-drawing.

The diffusion of policies among state commissions concerning the implications of CLID services is not explained by the existence of formal policy communities alone. The CLID proceedings suggest that as time progressed, regulators learned from a shared fund of knowledge among social and political elites about the implications of technological change and effective policy. While in 1988, privacy-protection arguments did not enjoy overwhelming favor with regulators, by 1993, the same arguments influenced highly protective orders. Movement by state commissions on CLID policies is indicative of the effects of gradual learning. Such learning effectively reshaped the privacy implications of CLID on the part of the general public and policymakers. This learning also opened up new avenues of action, presenting alternatives to no-block CLID, and urging the election of blocking schemes, while foreclosing others.39

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39 Wittrock and Wagner, "Policy constitution through discourse. . .," 227.
Theoretical Conclusions

Traditional theories of regulation and regulatory behavior do not provide adequate explanations for regulatory behavior in the case of CLID proceedings. Traditional public interest theories espouse a technocratic, problem-solving model, where regulators, removed from the arena of conflicts, aim to maximize social welfare or serve "the public interest." The CLID proceedings oppose the hypothesis that regulatory agenda-setting occurs on the basis of pre-determined, well-established standards of improvement. Instead the study suggested that regulatory perceptions of the public interest are dynamic and changing. Agencies come to perceive the public interest through external signals from various sources. Further, the CLID proceedings point to several instances where regulatory decisions were overruled by direct inducements from visible political actors. This underscores the point that the public interest is construed in various ways by various entities.

As Giddens suggests, the state is neither an autonomous actor with complete control over the policy process nor purely the arena for contending interests. The state is not, as capture/cartel theories suggest, an instrument of capitalist interests. Although telephone providers may have the greatest access to resources, that alone does not determine control over the policy process. As the CLID proceedings suggest, the policy arena consists of numerous interests, each with incomplete control over regulatory agendas and decisions. Neither regulators nor regulated interests nor any other parties have complete control over agendas. Further, following capture/cartel theories, state PUCs should have remained firm in their approval of no-block CLID service as had been proposed by telephone companies. Contests over the privacy implications of
outflows and blocking mechanisms between regulators and telephone providers contradict the presumptions of capture/cartel theories.

Similarly, arguments that regulators are driven primarily by incentives for personal gain, i.e., ensuring personal income, or that agencies are focused on maximizing their budgets neither explain the initial hesitancy of state PUCs to undertake extensive investigations of CLID issues, nor their insistence upon such inquiries later in the seven-year period. The behavior of state PUCs did not conform to budget-maximizing hypotheses. Further, in opposition to traditional interest group theories, the CLID study suggests that policy agendas do not reflect the contest of interests alone. Institutional factors, normative and ideological dimensions, and existing policy imperatives play important roles as well.

Beyond these shortcomings, traditional theories of regulation do not acknowledge the communicative nature of regulation. As a result, they ignore the interpretive process through which the public interest is perceived, the normative and ideological dimensions of political decision-making, the hegemonic clothing of self-interests in terms of a "universal" public interest, the role of policy frames as structures—enabling particular outcomes and repressing others, the effect of communication subsystems—full of messages and evolving knowledge in structuring the policy process, the role of formal and informal policy communities that enable exchange, emulation and mutual lesson-drawing, and the effect of the temporal dimension of regulation. The foregoing perspectives enable a view of the regulatory process across time, and constitute communication-centered theories of regulation.
Trends in the nationwide record on CLID services are best explained by theories that conceptualize the policy process as communicative. Several communicative processes and phenomena are identified in the progression of CLID proceedings. The framing and construction of policy issues driven by policy participants' ideologies, interests, and level of information, the role of persuasion in the hegemonic political process, the symbolic effect of policy decisions, and the tacit influence of the predominant discourse suggest that the policy process is fundamentally communicative. Further, CLID proceedings highlight the phenomena of inducements, emulation and ultimately, policy diffusion across jurisdictions. These processes are illuminated through communication-centered theories of regulation, but typically ignored in other analyses.

Precedent from CLID

The privacy issues involving CLID are "in some ways a proxy for larger social concerns about privacy." The nationwide debate over the implications of CLID has both illuminated and obscured privacy issues, and will provide compelling precedent for policy decisions on privacy in the future. State regulatory responses to CLID issues exemplify the "states as laboratories" phenomenon. These proceedings have yielded a "rich base of knowledge and a

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range of solutions, [and] qualify as a superb experiment conducted in this laboratory."\(^{42}\) This nationwide experiment has spurred awareness about the issues, and is currently highlighting privacy concerns in other proceedings.\(^{43}\)

A growing body of literature has documented the privacy implications of innovations in communication and information technologies and evolutions in social and entrepreneurial practices.\(^{44}\) These writings indicate that communication technologies enable unprecedented and frequent intrusions into the personal affairs of individuals. The bulk of these intrusions involve unauthorized disclosures of personal information that are transparent to individuals. McManus referred to this personal information as transaction generated information (TGI).\(^{45}\) Transactions among businesses, government and people usually generate some sort of a record for the parties involved. These records could "convey pictures of personal consumption habits, finances,

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\(^{43}\) State commissions show an increase in awareness and willingness to address privacy issues in other proceedings involving disclosures of utility customer information and control over personal information in utility records. See, Burns, R.E., R. Samarajiva and R. Mukherjee, *Utility Customer Information: Privacy and Competitive Implications*, Columbus, OH: National Regulatory Research Institute, #92-11, September 1992.


whereabouts, political and recreational preferences and other potentially sensitive information." The primary purpose of the transaction is generally not the production of information. TGI is produced in the course of a transaction.

McManus continued, telecommunication transaction generated information (TTGI) is the information generated by telephone usage, and transactions related to telephone service. Katz noted that it is "the fact itself that the communication was made. . . . who uses which service, when and with whom." Utilities--gas, electric, water and telecommunications companies--characteristically have continuous business relationships with their customers. It is necessary for these companies to maintain detailed records of individual customers' usage for billing and collection purposes. Therefore, utilities also have continuous informational relationships with their customers.

Further, many local telephone utilities function as "natural monopolies." The monopolistic market structure along with the "essential" nature of their services ensure that almost all users within a service area are customers of a single local exchange company. Therefore, local TTGI consists of near-census quality data regarding the usage and preferences of telephone subscribers. Unrestricted disclosure of these data has significant privacy implications. Local


47 McManus, Telephone Transaction -Generated Information . . . , 6, 43.


TTGI enables predicting demand by census rather than sampling and statistical tools. If businesses can make use of projections from utility usage patterns, get access to utility data they "won't have to guess. They'll know." However, customer information collected by utilities is useful to businesses only if they can logically make projections about demand from the utility's customer records. It may make little business sense for a florist to indiscriminately buy records of individuals' telephone usage. However, to a business that sells subscriptions to TV Guide or other entertainment weeklies, an individual whose telephone records reveal repeated calls to a information service listing daily television shows, would be a particularly attractive direct-mail target. Such a business could make excellent use of TTGI on that customer's use of that information service.

Many monopoly telephone providers compete in ancillary markets through separate subsidiaries. If a parent utility allows its subsidiaries preferred access to its near-census quality TTGI, those subsidiaries may gain an unfair advantage over their competitors. These disclosures could be tantamount to cross-subsidies from a firm's monopoly business to its competitive activities. However, cross-subsidies through TTGI are particularly difficult to monitor and prevent. Third parties competing with utility subsidiaries are dependent on the local exchange bottleneck to reach their customers. These companies face additional disadvantages with respect to their access to TTGI. The escalating trend toward individualized mass marketing has created strong economic incentives to ensure access to TTGI. The competitive incentive for ensuring

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equitable access to these data is in opposition to the privacy implications of disclosures of TTGI.51

A number of scholars also suggest that, at best, the law provides very limited means of constraining such intrusions or ensuring public knowledge about them. Little, if any, regulatory effort has been made to protect the privacy interests of corporate clients and the general public. In most cases, customers are oblivious to the extent of TGI collection. In exchange for discounts and other deals, they often decide to relinquish some personal information. Although nationwide surveys have documented increasing levels of public awareness about these disclosures, it is possible that many customers who disclose personal details in such situations are ignorant of the ease with which businesses can trade or transfer customer data. The privacy implications of CLID constitute the proverbial tip of the iceberg. Economic incentives to gain access to TTGI are reducing individual control over personal information. Innovations in communication and information technologies continue to "hard-wire" disclosures into the design of advanced networks and new services. The resultant routinization of disclosures is dramatically altering what is being disclosed, to whom, and in what manner.

Beyond the capitalist incentives for collection, storage and manipulation of TGI about individuals, some scholars have argued that organized state and corporate structures operate under strong surveillance incentives. Theorists such as Rule and Beniger have situated the question of informational privacy or

individual control of personal information within the larger frame of social control. Rule elaborates,

For many organizations, both public and private, an essential 'product' or output is some form of treatment of people. Such organizations use personal information to shape these treatments. A key task is to administer the 'correct' action to each of what may be millions of individuals, in light of the full detail of relevant facts on each separate case. The quest for discrimination in treatment requires development of, and attention to, written or computerized records.

Beniger states that guided by the need to predict and prevent, information technologies serve as control technologies that reduce the costs of uncertainty by establishing routines that efficiently "preprocess" and classify individuals and thereby help to rationalize various activities in the environments of complex, interconnected systems.

Reichman suggests that insurance-based systems of social control built into the rhythms of social life offer an alternative to the crises facing contemporary welfare states which can no longer rely on direct coercion to ensure their legitimation and regulation. Such insurance-based systems rely crucially upon the collection and analysis of personal data on the behavior of all individuals, not just those under suspicion. This systemic demand for more extensive and intensive information has given rise to new agents of surveillance.

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53 Rule, "Data wars...", 10.

which have resulted in social control becoming embedded in social interaction and organization. According to Gandy, the phenomenon of bureaucratic (state and private) surveillance serves a "triage" function. Bureaucratic institutions are engaged in a "discriminatory process that sorts individuals [including citizens, employees, and consumers] on the basis of their estimated value or worth. . . ." This discriminatory process is referred to as the "panoptic sort," and is viewed as a "kind of high-tech, cybernetic triage through which individuals and groups of people are being sorted according to their presumed economic or political value. . . ."

Developing systems of surveillance "matter enormously in what happens to individuals. They govern whether someone will be promoted or dismissed, accorded welfare payments or denied them, kept under surveillance or favored with benign neglect." Gandy cautions that this "sorting mechanism cannot help but exacerbate the massive and destructive inequalities that characterize the U.S. political economy as it moves toward the 'information age.'" The operation of the panoptic sort increases the ability of organized interests, whether they are selling shoes, toothpaste, or political platforms, to identify, isolate, and

57 Gandy, The Panoptic Sort, 1.
58 Rule, "Data wars . . .", 10.
59 Gandy, The Panoptic Sort, 2.
communicate differentially with individuals in order to increase their influence over how consumers select from among their options. Social theorists such as Anthony Giddens and Michel Foucault connect these surveillance incentives to the sustenance of the power of the state itself. For Giddens, the incentive to surveil is explained by the fact that surveillance is fundamentally tied to control over others. Giddens states that state and business bureaucracies in modern states surveil through two closely related modes—direct, physical observation; and the collation and integration of information put to administrative purposes. Surveillance, in both modes, is not undertaken for its own sake but because it constitutes the basis for "administrative power."

Administrative power is the core of domination generated by authoritative resources. These are the means of dominion over the activities of human beings themselves. It is control over the timing and spacing of human activities. . . . Administrative power is based upon the regulation and coordination of human conduct through the manipulation of the settings in which it takes place. Surveillance as the coding of information is an essential element of such power. . . . But administrative power can only become established if the coding of information is actually applied in a direct way to the supervision of human activities. . 

This collation and coding of information concerning individuals by state and private bureaucracies and its application towards direct supervision, are tied to the very sustenance of state and business clusters. As state and private

60 Gandy, The Panoptic Sort, 1-3.


bureaucracies seek to control the social environment in which they function, they must plan the behavior of the people within them as well.\(^6^3\)

For Foucault, the disciplinary power of a state has its source in the state's "panoptic" capabilities.\(^6^4\) He explains the power of the state by analogizing it to "the Panopticon," a nineteenth century prison designed by Jeremy Bentham. The Panopticon facilitated the efficient observation of prisoners by guards who might periodically occupy a central tower. Panopticism, in this conception, is a technology of power realized through the practice of disciplinary classification and conscious and permanently visible surveillance. The panoptic technology was not limited to surveillance alone but included the classification and isolation of subjects by category and type. Panopticism, therefore, serves as a powerful metaphorical resource for representing the contemporary technology of segmentation and targeting. According to Robins and Webster, new communication and information technologies provide the "same dissemination of power and control, but freed from the architectural constraints of Bentham's stone and brick prototype."\(^6^5\) According to these authors, "the social totality comes to function as the hierarchical and disciplinary Panoptic machine."\(^6^6\)

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66 Robins and Webster, "Cybernetic capitalism. . .," 45.
The regulatory experience with CLID may appear far removed from the foregoing description of systemic incentives for building and maintaining large-scale systems of personal records about individuals, and developing disciplinary mechanisms. However, privacy concerns in the future are likely to be increasingly focused on the technologies and capabilities of the telecommunications network. Regulatory commissions, therefore, are likely to play a significant role in structuring the treatment of telecommunications privacy concerns in the future.

Further, this dissertation has argued that the regulatory treatment of telecommunication privacy issues followed emulative patterns suggesting that state commissions learned from each others' decisions. The nationwide record on CLID may, similarly, guide policy initiatives that attempt to address the developing "panoptic machine." Frames and solutions selected in response to CLID services will serve as compelling models for future telecommunications contests. Individual autonomy in interactions with these developing system-wide surveillance mechanisms, built into the rhythms of modern social life, will be minuscule. The manner in which privacy issues have been addressed in fairly unsophisticated technologies of disclosure, such as CLID services, will influence the frames for future privacy contests, the salience of those privacy proceedings and preferences among policy alternatives.

Summary

During the seven year period from July 1987 to May 1994, a large majority of state regulatory agencies addressed concerns over telecommunication privacy raised by Calling Line Identification (CLID) services. Regulatory attention and
action on these issues provide a unique exemplar for the phenomena of agenda-setting and policy diffusion. The dissertation identified trends in the regulatory treatment of CLID services in an effort to illuminate the circumstances of regulation. The nationwide record on CLID showed progressions in the issue-status and agenda-prominence of privacy issues. As state commissions grew aware of the privacy implications of CLID services, regulatory activity increased, as did the privacy protectiveness of decisions.

Several communicative processes and phenomena were identified in this progression. The interpretive process through which various public interests are identified and policy frames constructed; the phenomena of frames as structures enabling particular outcomes and repressing others; the effect of participants' ideologies, interests, and information upon their policy positions; the role of persuasion in the hegemonic political process; the symbolic effect of policy decisions; the role of communication subsystems and evolving knowledge in structuring the policy process; the role of formal and informal policy communities that enable exchange, emulation and mutual lesson-drawing; and the tacit influence of the predominant discourse suggest that regulation is fundamentally communicative. Further, CLID proceedings highlight the phenomena of inducements, emulation and ultimately, policy diffusion across jurisdictions.

Traditional theories of regulatory behavior are inattentive to the communicative processes and phenomena of regulation. They theorize the state either as an autonomous actor in the pursuit of the "universal" public interest or as an instrument of vested capitalist interests. Moreover, they espouse untenable conceptions of the relative autonomy of structures and agents. The seven-year
record on CLID services is best explained by theories that focus on the communicative processes and phenomena of regulation. Communication-centered theories of regulation illuminate the policy process across time, and provide insights that are typically ignored by traditional theories of regulation.
APPENDIX

Status of CLID Service in the United States, May 1994
### Status of CLID Service in the United States, May 1994

<table>
<thead>
<tr>
<th>State</th>
<th>Details</th>
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<tbody>
<tr>
<td><strong>ALABAMA</strong></td>
<td>On Nov. 4, 1991 the PSC approved CLID as offered by South Central Bell on trial on a state-wide basis. (Docket 21592, Order issued Nov. 4, 1991. Cathy Quinn, Rate Analyst, AL PSC, interview July 1, 1993.) Free per-call blocking would be available to all and per-line blocking was required for at-risk customers. (TR, Nov. 18, 1991, 37.) Blocking available to domestic violence intervention agencies, state and county human resource shelters and other agencies where it could be certified that the personal safety of employees would be jeopardized without blocking. (AL PSC Docket 21592, Order dated Dec. 4, 1990.) GTE South was permitted to offer a one-year trial beginning July 1, 1992. (Telecommunications Reports (TR), Nov. 18, 1991, 37.) There was no per-line blocking for the general public in the GTE South trial. (GTE South, 132 PUR 4th 553.)</td>
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<tr>
<td><strong>ALASKA</strong></td>
<td>No provider has proposed CLID service yet. No regulatory action on CLID. (Lori Kenyon, Common Carrier Specialist, AKPUC, interview July 12, 1993.)</td>
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<tr>
<td>ARKANSAS</td>
<td>PSC approved a one-year limited area trial proposed by Southwestern Bell during December 1992. Trial ended Jan. 11, 1994. Free per-call blocking to all customers and free per-line blocking to law enforcement agencies and domestic violence shelters. (Docket # 92-230-TF, Order # 4, dated Dec. 15, 1992.)</td>
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</table>
**CALIFORNIA**

PUC approved Calling Number ID on a two-year interim basis on June 17, 1992. (134 PUR 4th 184, June 17, 1992. "Two-year trial: Cal. regulators approve strong blocking rules with Caller ID," Communications Daily -Electronic newsmagazine,"V. 12, No. 118, June 18, 1992, 3.) Customers assured choice of three blocking options. (i) Universal, free per-call blocking (required by CA law), (ii) presumptive per-line blocking for non-published customers and optional per-line blocking for published customers, and (iii) per-line blocking with per-call enabling capability. Customers who fail to specify an option will be assigned blocking as follows: unlisted subscribers and emergency service providers will get per-line blocking with per-call unblocking. All other residential customers will get per-call blocking. (Pacific Bell [Commstar], Order Modifying Decision, 92-06-065, Decision 92-11-062, issued Nov. 23, 1992.) PacBell has neither withdrawn tariffs nor has it offered any service yet. (M.J. Purcell, CA PUC, interview July 12, 1993.)

**COLORADO**

| CONNECTICUT | The Public Utilities Control Authority permitted Southern New England Telephone (SNET) to offer a package of services that includes CLID. ("Regulators clear way for caller identification," Hartford Courant, June 18, 1992, b1.) Other features of the package are selective forward, repeat dial, auto call return, selective blocking, distinctive ring and call trace. (State Telephone Regulation Report (STRR), Feb. 27, 1992, 4.) SNET was required to provide per-call blocking free to all customers. Free per-line blocking was required to all social service agencies and professionals, e.g., law enforcement agencies, domestic violence shelters and non-profit crisis intervention centers and help lines, and at all coin-operated telephones, and to all those individuals who self-certify that CLID would pose a risk to their personal safety. (Re: SNET, 134 PUR 4th 124, issued June 17, 1992.) |
| DELAWARE | Bell Atlantic's Diamond State Tel. Co. was allowed to offer CLID with free per-call blocking. (PSC Docket 90-6T, Opinion dated Dec. 21, 1990. 1990 Del. PSC Lexis 31.) State legislature passed legislation during June/July 1992 mandating free per-line blocking for domestic violence shelters and victims of domestic violence under court order protection who request it. Diamond State has provided per-line to these subscribers since Sept. 1992. (Debra M. Berry, Director Regulatory Affairs, Diamond State Telephone Co., interview July 13 1993.) |
| DISTRICT OF COLUMBIA | Bell Atlantic's C&P Tel. Co.'s CLID tariff was authorized in July 1990. (Opinion and Order, Formal Case No. 891, *In the Matter of the Application of the Chesapeake and Potomac Telephone Company to Offer Return Call and Caller ID Within the District of Columbia*, Order No. 9506, July 20, 1990.) Free per-call but no per-line blocking required. (STRR, July 11, 1991, 3.) Office of People's Counsel (OPC) brought action (Case No. 891) requesting reconsideration of PSC decision, and arguing for per-line blocking. (TR, March 11, 1991, 41.) PSC reaffirmed decision for per-call and against per-line blocking. (TR, Sept. 9, 1991, 11.) |
| GEORGIA | PSC permitted Southern Bell's CLID tariff as a permanent offering on a statewide basis. (PSC Docket 3924-U, Order dated April 6, 1992.) Bell would provide per-call blocking as it did in its one-year trial. (Amendatory Order, dated July 16, 1991.) On April 6, 1992 the PSC required per-line blocking upon request from any customer without charge. Free blocking would have to be provided to law enforcement agencies, domestic violence shelters, battered women's shelters, crisis intervention centers and volunteers working at these organizations. Bell would certify which agencies were entitled to such blocking. Customers had to be advised of the availability of per-line blocking. (PSC Docket 3924-U, 2nd Amendatory Order dated April 6, 1992. Harriet VanNorte, Director, Consumer Affairs and Public Information, GA PSC interview July 7, 1993.) |
| HAWAII | Hawaiian Tel. Co. has not filed any tariffs but has plans to do so approximately in late 1994. (Dean Matsuura, Staff Administrator, Regulatory Affairs, Hawaiian Telephone Co., interview July 13, 1993.) |
| IDAHO | US West's 8-month name/number trial in Boise, ended Oct. 25, 1991. Currently, six CLASS features including name and number CLID are permanent offerings in the largest of US West's three LATAs in the state. (Birdele Brown, Telecommunications Analyst, ID PUC, interview July 13, 1993. Investigation into the Provision of Caller ID by US West Communications, Order No. 23860, Aug. 27, 1991.) Per-call and per-line blocking are available to all customers. (TR, Nov. 4, 1991, 12.) The Commission found that there should be no charge for per-call blocking while per-line blocking may be offered for a fee: $1/month for residential customers and $2/month for businesses. (US West Communications, 125 PUR 4th 225.) |
| ILLINOIS | Illinois Bell, Centel and GTE-North offer CLID service (along with other CLASS offerings) in main metropolitan areas within the state. (STRR, Jan. 16, 1992, 1-3.) GTE does not provide Call Trace. Free per-call blocking to all single-line business and residential users is available. No per-line blocking is available. (Central Telephone Company of Illinois, Proposed Establishment of Customer Calling II Service referred to as CLIDentification Service, Docket 90-0465, and Illinois Bell Telephone Company, Proposed Establishment of Customer Calling Service referred to as Caller ID, Docket 90-0466, Illinois Commerce Commission Order dated October 3, 1991. Liz Wisniewski, Section Chief of Rates, Telecommunications Dept. interview July 12, 1993.) |
INDIANA

On Dec. 31, 1991, the IURC approved CLID with free per-call blocking for all and optional per-line blocking for all who request, free during an initial period and cost-based thereafter. (In the Matter of the Application of Indiana Bell Tel. Co. for Authority to Offer Caller ID Service in Certain of its Exchanges, Cause No. 38970, Approved Dec. 31, 1991.) In Feb. 1992, Senate Enrolled Act No. 222 required that the Commission approve any petition for approval of Caller ID service, prohibiting CLID blocking except for "at-risk" agencies. The Commission may not require that service be provided with blocking, except for per-call or per-line blocking for law enforcement and crisis intervention agencies that are certified by the Commission. (1992 Ind. SEA 222, Sec 2. IC 8-1-2.9, Chapter 2.9. Telephone Caller Identification Services, passed February 27, 1992.) Indiana Bell will offer CLID with no generally available blocking. In January 1993, the IURC approved a settlement agreement between GTE and the Office of Utility Consumer Counselor that established free per-call blocking for the general public (wherever technically feasible) including crisis intervention agencies, and free per-line blocking for law enforcement agencies. (In the Matter of the Application of GTE North and Contel of IN, d/b/a GTE IN for Authority to Offer Calling Number ID Service in Certain of its Exchanges, Cause No. 39544, Approved Jan. 13, 1993, 1993 Ind. PUC LEXIS 15.) In Dec. 1993, the IURC approved a negotiated agreement between United Tel. and the state Office of Consumer Counselor under which United will offer free per-call blocking to all customers. Non-published customers and law enforcement, crisis intervention, and social service agencies would be provided free per-line blocking. (STRR, Dec. 2, 1993, 9.)
<p>| IOWA | On Oct. 11, 1991, the IO Utilities Board found that CLID with per-line blocking to all customers upon request, free for the first 6 months and with a monthly charge thereafter. <em>(In Re: US West Communications, Final Decision and Order, Docket No. RPU-91-3 (TF-91-280), issued Oct. 11, 1991.)</em> US West requested rehearings and a stay of this Order on Oct. 31, 1991. In Jan. 1992, the Board decided that US West would offer CLID service with three blocking provisions. (i) Free per-call blocking to all customers. (ii) Free per-line blocking to all residential customers who request it for privacy or endangerment reasons and unlisted and unpublished customers. These customers agree that emergency service providers who use CLID will not receive their numbers. No per-call unblocking capability is available to these subscribers. (iii) All other residential customers may request per-line blocking at $1/month and businesses for $2/month. Businesses are not permitted free per-line blocking under any circumstances. <em>(Phyllis Finn, Senior Utility Analyst, Telecommunications, interview July 14, 1993. Docket No. RPU 91-3, Jan. 1992.)</em> In October 1993, similar rules were made applicable to GTE. <em>(NARUC Memorandum, May 13, 1994.)</em> |
| KANSAS | KS Corp. Commission approved Southwestern Bell's CLID service in mid Dec. 1992. Per-call blocking was approved for the general public. Commission required per-line blocking for law enforcement agencies, domestic violence shelters and individuals working at these agencies who request line blocking on their home phones based on the potential for personal harm by disclosure. Automatic (presumptive) line-blocking for unlisted and unpublished subscribers was not approved. <em>(Karen Matson-Flaming, Chief, Telecommunications, KS Corp. Comm., interview July 2, 1993.)</em> |
| KENTUCKY | On Oct. 8, 1990, the PSC approved GTE South's tariff requiring free per-call blocking. <em>(In the Matter of the Tariff Filing of GTE South to Establish Custom Local Area Signaling Service, Case No. 90-096, Order dated Oct. 8, 1990.)</em> On Dec. 4, 1991, the PSC approved South Central Bell's (SCB) CLID tariff with free per-call and per-line blocking to all customers. GTE South was required to revise its tariffs to conform to these requirements. <em>(In the Matter of the Tariff Filing of South Central Bell Tel. Co. to Introduce Caller ID, Case No. 91-218, Order dated Dec. 4, 1991.)</em> Both providers filed motions for rehearing. In an interim order dated January 9, 1992, SCB was permitted to offer service in accordance with the PSC's GTE South Order of Oct. 8, 1990. The parties reached a settlement on April 6, 1992. The PSC approved the settlement on June 29, 1992. Both GTE South and SCB agreed to free per-call blocking for all customers, and free per-line blocking to spouse abuse centers and law enforcement agencies. <em>(In the Matter of the Tariff Filing of South Central Bell Tel. Co. to Introduce Caller ID, Case No. 91-218, Order dated June 29, 1992. Steve Gilley, Financial Analyst, Telecommunications, interview July 13, 1993.)</em> |
| LOUISIANA | LA PUC approved South Central Bell's tariff effective May 27, 1991 with per-line blocking available to agencies providing confidential services. <em>(NARUC Memorandum, May 13, 1994.)</em> |</p>
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<tr>
<th>STATE</th>
<th>SERVICES AND REGULATORY ACTIONS</th>
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<tr>
<td><strong>MAINE</strong></td>
<td>CLID and CLASS services, except Call Return, approved during March 1992. (Joel Shifman, Senior Telecommunications Advisor, interview July 13, 1993.) CLID services are subject to the following restrictions: (i) Free per-call blocking to all subscribers at least two months prior to introduction of service. (ii) Per-line blocking to individuals, agencies and groups that request it in writing asserting a specific need based on health and safety. There will be no charge for the first request for per-line blocking or unblocking. Except as otherwise authorized by law or to confirm that a subscriber has made a valid request, telephone utilities may not disclose information concerning the request for per-line blocking submitted by a subscriber. (State House Proposal 1118 creating an Act to Protect Telephone Customer Privacy [Chapter 654], approved by the Governor on March 9, 1992. 5-A MRSA, Sec. 7102, 1992 Me. ALS 654; 1992 Me. Laws 654; 1992 Me. HP 1118.)</td>
</tr>
<tr>
<td><strong>MARYLAND</strong></td>
<td>C&amp;P Tel’s no-block CLID tariffs were accepted for filing by the Commission in its Administrative Meeting on Aug. 31, 1989 with an effective date of Oct. 1, 1989. (STRR, May 17, 1990, 7.) C&amp;P proposed Special Identification Arrangements (SIAs) which prevent disclosure of certain telephone numbers (domestic violence shelters and social service agencies) by CLID to be effective July 2, 1990. On July 9, 1990 the PSC issued Order No. 68858 instituting a proceeding to evaluate the privacy and safety issues surrounding CLID. On Nov. 20, 1990, the PSC ordered per-call blocking service as a condition for the continuation of CLID telephone service. (Re: Chesapeake and Potomac Tel Co. of Maryland, Case No. 8283, Order No. 69021, Nov. 20, 1990, 118 PUR 4th 464). C&amp;P’s petition for rehearing of the order requiring per-call blocking was denied. (PSC Case 8283, Order 69056, dated Dec. 21, 1990.)</td>
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</tbody>
</table>
### MASSACHUSETTS

Department of Public Utilities issued an order approving CLID on Oct. 9, 1991 for NET's PHONE SMART services. Call Return and Repeat Dialing were approved as submitted. Call Trace was approved at $3.25/activation rather than a monthly subscription charge. CLID was approved with per-call (as proposed by NET) and per-line blocking for all customers. No charge would apply to an initial request for per-line blocking but a tariffed service order charge would apply for additional requests to implement or remove per-line blocking. Customers with per-line blocking may selectively unblock their line on a per-call basis. (Open Docket DPU-91-64, Order issued Oct. 9, 1991. STRR, Jan. 1992, 5. Paul Vasington, Acting Director, Telecommunications, interview July 12, 1993.)

### MICHIGAN

Parts of MI have had CLID since March 1992 along with the other CLASS features on a non-regulated basis. To avoid regulatory action, Michigan Bell proposed per-call blocking. (STRR, Jan. 16, 1992, 1-3. Telecom-Digest (Electronic Newsmagazine) Vol.12, No. 123, Feb. 8, 1992. Howard Bradshaw, Communications Engineer, MIPSC, interview July 13, 1993.) In Dec. 1993, a bill was introduced that would prohibit transmission of an unlisted or non-published phone number to a CLID subscriber. Calls placed to emergency assistance services or police agencies are excluded from this prohibition. (HB-5208, STRR, Dec. 16, 1993, 11.)
<p>| MINNESOTA | CLID was permitted with free per-call blocking to all residential customers. Free per-line blocking to all residential customers during the first 90 days that service is available. After the first 90 days, a one-time charge is allowed. Business customers are allowed per-call blocking with a per-activation charge. No per-line blocking is available to businesses. When a business requests per-call blocking, it is provided at a per-call fee. (<em>Order Establishing Conditions for the Provision of Custom Local Area Signaling Services</em>, Docket P-999/CI-92-992, June 17, 1993.) US West requested reconsideration of this order on July 12, 1993. (Ben Omorogbe, Senior Telecommunications Rate Analyst, interview, July 12, 1993.) On Dec. 3, 1993, the PUC issued an <em>Order after Reconsideration</em> that allowed free per-call blocking for businesses. The Order further required that in all areas where it was technically feasible, per-call unblocking on all blocked lines would be available. The Order approved Anonymous Call Rejection but only in areas where per-call unblocking was also available. (<em>Order after Reconsideration</em>, Docket P-999/CI-92-992, Dec. 3, 1993.) |
| MISSISSIPPI | South Central Bell's CLID tariff was approved Aug. 1991. Bell offers free blocking for agencies providing confidential services and unblockable service to all others. (Randy Tew, Telecommunications Specialist, interview July 12, 1993. STRR, July 11, 1991, 3.) |
| MISSOURI | Southwestern Bell was permitted to offer CLID service with free per-call blocking to all customers and free per-line blocking to emergency services. (File # 9300106, Order effective April 1, 1993. Randy Flowers, Engineer, Rates and Tariffs, interview July 13, 1993.) |
| MONTANA | A trial was scheduled to begin May 1994 with free per-call and per-line for residential customers at $2.75/month and for businesses at $3.60/month. Social agencies would have free per-line blocking. (<em>NARUC Memorandum</em>, May 13, 1994. Will Rosquist, Rate Analyst, interview July 12, 1993.) |</p>
<table>
<thead>
<tr>
<th>State</th>
<th>CLID Approval and Terms</th>
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<tbody>
<tr>
<td>NEBRASKA</td>
<td>US West tariffed CLID on June 18, 1991. 10 days after a tariff is filed, the service can be made available to the public. Free per-call blocking and per-line at $1/month for residential customers and $2/month for businesses are available. Free per-line blocking for emergency agencies is available. (NARUC Memorandum, May 13, 1994. John Burvainis, Accountant, Telecommunications, interview Nov. 18, 1991.)</td>
</tr>
<tr>
<td>NEVADA</td>
<td>NV PSC approved Central Tel. Co.'s (Centel) CLID tariff during Aug. 1990 to be offered with free per-line and free per-call blocking for all subscribers for 3 months. (NARUC Bull., No. 37-1990, Sept. 10, 1990, 11-12. STRR, July 11, 1991, 3.) Pacific Bell’s tariff was approved during June 1992 with free per-call and free per-line during the first 120 days for all. (NARUC Memorandum, May 13, 1994.) The Commission decided against per-call unblocking for callers ordering per-line blocking. (STRR, Jan. 1992, 4.) All customers will have free per-call blocking, except for those who request per-line blocking within the specified time period and pay phones that have no blocking. Special blocking arrangements will be provided free of charge to hotlines and crisis centers. (NARUC Bull. No. 37-1990, Sept. 10, 1990, 12.) Blocked call rejection or block-the-blocker feature that automatically rejects anonymous calls was approved. (STRR, Jan. 1992, 4.)</td>
</tr>
<tr>
<td>NEW HAMPSHIRE</td>
<td>CLID was approved with free per-call blocking to all. PUC ordered free per-line blocking to unpublished and unlisted customers and to customers who believe their health or safety would be threatened. All customers have a 90-day promotional period to decide if they want per-line blocking. (&quot;New Hampshire chooses per-line blocking, Bell unhappy,&quot; Communications Daily (Electronic Newsmagazine), V.12, No. 116, June 16, 1992, 4.)</td>
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<td><strong>NEW MEXICO</strong></td>
<td>US West proposed CLASS services with per-call blocking in March 1992. (Communications Daily-Electronic Newsmagazine, V.12, No.67, April 7, 1992, 6.) During October 1992, US West was required to provide free per-call and free per-line for all during the first 90 days of service. (NARUC Memorandum, May 13, 1994.)</td>
</tr>
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<td>NEW YORK</td>
<td>Commission permitted New York Telephone to introduce CLID throughout its service territory at $6.50/month for residential customers and $8.50/month for businesses. All customers should be permitted to elect, at no charge, per-call blocking or per-line blocking; a customer making no election should be provided per-call blocking. A customer may change his or her blocking option twice at no charge during the first 6 months the service is offered in any area, and any new telephone customer may do so twice during the first 6 months that customer takes telephone service. Thereafter, the company may charge $5/change. <em>(Proceeding on Motion of the Commission to Investigate New York Telephone Company's Proposal to Institute Caller ID Service, Case 91-C-0428, Opinion No. 92-5, 132 PUR 4th 525, issued April 9, 1992.)</em> Service has been available since Dec. 1, 1992. <em>(Doug Sieg, Associate Systems Planner, Communications Division, NYPUC, interview July 2, 1993.)</em></td>
</tr>
<tr>
<td>NORTH CAROLINA</td>
<td>Utilities Commission approved Southern Bell tariff for intrastate SS7 access including Call Trace requiring free per-line and per-call blocking in a May 31, 1991 order. To obtain per-line blocking, a subscriber needs to notify the telephone company of his/her desire for blocking. <em>(STRR, July 11, 1991, 3. TR, June 3, 1991, 6-7. NARUC Bull. June 10, 1991, 24.)</em> Bell agreed to provide per-line blocking option to all certified &quot;at-risk&quot; customers only. Bell will offer service on experimental basis for 2 years (until June 1993). <em>(TR, June 3, 1991, 6.)</em> Centel's tariff has been suspended until data is provided on lines where blocking is technically infeasible. <em>(STRR, July 11, 1991, 2.)</em></td>
</tr>
<tr>
<td>NORTH DAKOTA</td>
<td>State legislature passed a bill (HB 1556) that authorizes CLID with free per-call blocking. US West completed name/number trial in Grand Forks, Dec. 1989 - July 1990. <em>(TR, Aug. 20, 1990, 19.)</em> No service is available currently. <em>(Patrick Fahn, Chief Engineer, Public Utility Division, interview July 12, 1993.)</em></td>
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</tbody>
</table>
**OHIO**

The PUCO required (i) Free universal per-call blocking to all subscribers, (ii) For those customers who subscribe to non-published number service, both current and future, per-line blocking is automatically provided free, or the customer may affirmatively choose to have free per-call blocking after being fully informed of the availability of per-line and per-call blocking, (iii) Subscription per-line blocking must be made available for published customers at $1.10/month (same as non-published number service rate), and that Call Trace and Call Reject must be offered at the same time as CLID.  

( Opinion and Order, Case No. 90-467-TP-ATA (90-467), dated March 26, 1992. Opinion: Entry on rehearing," Cases 90-467-TP-ATA; 90-471-TP-ATA, 1992 Ohio PUC LEXIS 354, May 21, 1992.) The PUCO approved Cincinnati Bell's plan for CLID without hearings with the same blocking requirements it placed on Ohio Bell. (STRR, Nov. 19, 1992, 5-6, 10-11.) The Ohio Consumer's Counsel applied for reconsideration (STRR, Nov. 19, 1992, 5-6, 10-11.) and was denied by the Supreme Court without opinion on Nov. 10, 1992.  

(David C. Bergmann, Telecommunications Counsel, Ohio Consumer's Counsel, interview July 2, 1993.)

**OKLAHOMA**

The OK legislature enacted HB1568 which excludes CLID from trap and trace provisions of the state's wiretap act.  


(Sherre King, Rate Analyst, interview Nov. 18, 1991. Telephone News, Feb. 25, 1991, 5-6.) In April 1992, service was made permanent after a one-year trial. Blocking was available at $6.50/month for residential customers and $8.50 for businesses along with installation fees ($6.00 for res, $26.50 for bus).  

(STRR, Sept. 10, 1992, 12.)
<p>| OREGON | PUC ruled on May 6, 1992 allowing customers to choose between free per-call and free per-line blocking. *(Re: Caller ID, 133 PUR 4th 168. &quot;Two-year trial: Cal. regulators approve strong blocking rules with CLID,&quot; Communications Daily - Electronic newsmagazine,&quot;V. 12, No. 118, June 18, 1992, 3.) Distinctive call ringing was incorporated into a privacy option with one number being released and the other withheld. During early 1993, the PUC modified its order and allowed US West to charge a non-recurring $8 fee to residential customers and $13 to businesses for line-blocking. Exceptions to the line-blocking charge: if line-blocking is selected during an initial 90-day trial period, or when a customer establishes new service, or during a designated one-month grace period that recurs every year for the next three years. *(TR, Jan. 4, 1993, 45.) |
| PENNSYLVANIA | The Supreme Court ruled that non-blockable CLID violated the state wiretap Act, and could not be offered in Pennsylvania. *(Penn. Public Utility Commission v. The Bell Telephone Company of Penn., 1992 Pa. LEXIS 242, Argued on Oct. 24, 1991, Filed on March 18, 1992. 130 PUR 4th 280.) Previously, the Commonwealth Court had ruled that CLID, with or without blocking, violated state wiretap law. *(David M. Barasch et. al., v. Penn. PUC, Commonwealth Court Case Nos. 2270, 2268, 2234, 2371 C.D. 1989, Argued Feb. 7, 1990, filed May 30, 1990.) In December 1993, Title 66 of the Pennsylvania Consolidated Statutes was amended to declare that CLID is a lawful service if it permitted a caller to withhold display of his/her telephone number and other identifying information from the called party on both a per-call and per-line basis. *(66 PA. Cons. Stat. §2906 (1993).) Bell has not refiled CLID tariffs. *(Diane Dusman, Assistant Consumer Advocate, Office of Consumer Advocates, interview June 29, 1993.) |</p>
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<th>STATE</th>
<th>INFORMATION</th>
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<td>RHODE ISLAND</td>
<td>NET's tariff is pending. NET planned to offer service with free per-call blocking in 1992. (TR, Sept. 17, 1990, 34. TR, March 18, 1991, 11.) Blocking may be disabled, but for witness protection and social agencies, per-call blocking is available without disable feature. (NARUC Memorandum, May 14, 1994.)</td>
</tr>
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<td>SOUTH CAROLINA</td>
<td>On Oct. 7, 1991, the SC Supreme Court ruled that CLID neither violated state wiretap laws, nor state or federal Constitutions. (Southern Bell v. Hamm, No. 23488, Supreme Court of South Carolina 1991 S.C. LEXIS 208, Heard May 20, 1991, Filed Oct. 7, 1991.) Although this ruling made it permissible for Southern Bell to offer no-block CLID, as the PSC had previously ordered, during March 1992, the PSC reversed itself and ordered free per-call blocking with per-line blocking available at $2/month. (Docket 89638-C, 132 PUR 4th 145. Enhanced Services Outlook, March 1992, 11-12.) Free per-call blocking as proposed by Chesnee Tel (TR, Mar. 18, 1991, 10) was rejected by the latest PSC ruling requiring both per-call and per-line blocking. (STRR, Feb. 27, 1991, 3.) Service has been available since Feb. 1992. (NARUC Memorandum, May 14, 1994. Joe Rogers, Rate Analyst, Telecommunications, interview Nov. 18, 1991.)</td>
</tr>
<tr>
<td>SOUTH DAKOTA</td>
<td>US West which serves 80% of all access lines in the state has not proposed CLID yet. However a number of unregulated co-ops have approached the Commission and have proposed free per-call blocking. The Commission held that free per-call blocking will be available to all customers when US West files. (Charlie Bolle, Telecommunications Policy Analyst, interview July 13, 1993.)</td>
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<tr>
<td>TENNESSEE</td>
<td>South Central Bell's tariff approved with administrative hearing, no orders issued. (Francis, 1991.) CLID has been available in Nashville since Sept. 1989 and in Memphis since early 1990. (STRR, May 17, 1990, 7.) Per-call and per-line are available to unlisted subscribers, free per-line is available to some groups. (NARUC Memorandum, May 14, 1994.) United Tel. has offered unrestricted CLID since Aug. 1990. (NARUC Memorandum, May 14, 1994.)</td>
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<td>TEXAS</td>
<td>On Feb. 8, 1993, the TX PUC rejected the ALJ's recommendations and held that CLID violated state wiretap law. The PUC dismissed Southwestern Bell's tariff. (Application of Southwestern Bell Tel. Co. to Introduce Caller ID Services, Opinion and Order, Docket 11362, 141 PUR 4th 104, Feb. 8, 1993.) During mid-1993, the state legislature passed a bill removing state wiretap restrictions on CLID service and instructing the PUC to mandate blocking options to the public. Free per-call blocking for all customers and free per-line blocking to subscribers who submit written requests to the PUC stating compelling need. The PUC is required to ensure per-line blocking to any request that is submitted. (Senate Bill 73, Jan.-May 1993 session, effective Sept. 1, 1993. Scott Smyth, Assistant General Counsel, interview July 15, 1993.) In Nov. 1993, the PUC approved a settlement agreement (Docket 12118) that allowed Southwestern Bell to offer service at $4.95/month for residential customers and $7.50/month for businesses. Free anonymous call rejection will also be available. Bell was ordered to provide a per-call unblocking code that would enable customers with per-line blocking to disable the per-line block for the current call. (NARUC Bull., No. 45-1993, Nov. 8, 1993, 17-8. STRR, Dec. 2, 1993, 11.) In Jan. 1994, Staff sought to reopen the case on grounds that Bell was failing to comply with the agreed upon blocking safeguards. (NARUC Bull., No. 2-1994, Jan. 10, 1994, 17.)</td>
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<tr>
<td>State</td>
<td>Information</td>
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<td>UTAH</td>
<td>US West filed a CLID tariff but may not implement service until mid-1994. The PSC has held no hearings or proceedings. Some technical and settlement conferences have occurred. Free per-call blocking for all customers and free per-line blocking for battered women's shelters and law enforcement agencies will be available. (Joe Dunlope, Telecommunications Analyst, interview July 14, 1993.)</td>
</tr>
<tr>
<td>VERMONT</td>
<td>Although CLID itself cannot be regulated under Vermont's social contract system, the Board retained jurisdiction over blocking policy. (STRR, Dec. 12, 1991, 3-5.) NET was required to make free per-call blocking available to all subscribers. Free per-line blocking will be required for all subscribers with unlisted telephone numbers. Free per-line blocking will also be required for all subscribers who have &quot;a legitimate concern that it would be unsafe to transmit&quot; their telephone numbers, including clients, volunteers and staff associated with domestic violence and sexual assault agencies. These subscribers would be entitled to per-line blocking through a &quot;simple declaration.&quot; (Re: New England Tel., 131 PUR 4th 341, issued Feb. 12 1992. STRR, Dec. 12, 1991, 3-5.)</td>
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<tr>
<td>VIRGINIA</td>
<td>CLID available (typically only calling number displayed). (STRR, May 17, 1990, 7.) Although initially offered with no blocking policy (STRR, July 11, 1991, 3.), on July 1, 1993 the Commission approved per-call blocking to the general public along with Automatic Call Rejection (block-the-blocker service). This is currently available to telephone users in northern Virginia alone. By the year-end, C&amp;P will deploy both per-call blocking and ACR in all service areas in Virginia. (Bob Gillespie, Associate General Counsel, VA State Corp. Comm., interview July 2, 1993.) Customers of GTE's CLID service will also have these blocking options. (VA SCC Press Release, June 29, 1993.) United Tel. has offered service since Oct. 1989 without blocking. (NARUC Memorandum, May 14, 1994.)</td>
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</tbody>
</table>
**WASHINGTON**

During Nov. 1990, the WUTC held that CLID violated state privacy law and that free blocking would have to be available if the service were authorized. (STRR, Nov. 15, 1990, 12.) The state privacy statute was amended with House Resolution 1489 during the 1990-91 session allowing CLID and requiring three blocking options: (i) free per-call blocking for all customers, (ii) free per-line blocking to all customers during a 90-day window after service is first offered and during an annually recurring 30-day sign-up window, (iii) free per-line blocking at any time for abuse shelters. Following this amendment, the WUTC issued a rule requiring per-call or per-line blocking without any recurring charges except for the delivery of caller numbers, names, or locations to a 911 or enhanced 911 service, or other emergency service, or a customer originated trace. *(Order Adopting Rule Permanently; In the Matter of Adopting WAC 480-80-049 Relating to Caller Identification Service Provided by a Telecommunications Company, Docket No. UT-920162, General Order No. R-371, 1992 Wash. UTC LEXIS 55, effective March 30, 1992.)* The WUTC approved Pacific Telecom's trial service in Apr. 1992, US West's tariff on Dec. 16, 1992, United Tel's tariff on May 5, 1993 and GTE's tariff on May 26, 1993. *(WUTC Fact Sheet: Caller ID, issued July 1993.)* Other CLASS offerings, Call Trace, Call Return, Call Reject, etc., are available as well. *(Roger Kouchi, Utility Services Examiner, WUTC, interview July 26, 1993.)*

**WEST VIRGINIA**

CLID has been available in limited parts of the state pursuant to C&P's tariff filing since May 1989. *(STRR, May 17, 1990, 7.)* Blocking is not available. *(Dannie Walker, Telecommunications Engineer, WVPSC, interview, July 2, 1993. STRR, July 11, 1991, 3.)*
| WISCONSIN | PSC authorized CLID with free per-call blocking for all and free per-line blocking for certain advocacy groups such as domestic abuse organizations. These organizations may request per-line blocking for victims of domestic violence. *(PSC in Brief, Update published by the WI PSC, Vol.2, No.12, Dec. 1993.)* Previously, on April 28, 1992 the state legislature enacted a new law that required free per-call blocking plus free per-line blocking for domestic violence shelters, law enforcement agencies and other "at-risk" customers. *(§196.207, Wisconsin Statutes, STRR, Dec. 3, 1992, 7.)* |
| WYOMING | On Dec. 8, 1992, the PSC approved a stipulation and agreement between PSC Staff and US West that name and number CLID service would be offered with free per-call blocking for all customers and free per-line blocking for a 90-day period to all customers. After the 90-day window, per-line remains available upon request to law enforcement agencies, domestic/spouse abuse shelters and organizations with special needs. *(In the Matter of the Filing of US West Comm. for Authority to Introduce Custom Local Area Signaling Service Features, Docket No. 70000-TT-92-105, Findings, Conclusions and Order Approving Stipulation and Agreement, issued Dec. 8, 1992. Mike Korber, Rate Analyst, interview July 19, 1993.)* |
LIST OF REFERENCES


"Corporate clout: Long arm of Cincinnati law reaches too far," Columbus Dispatch, 9 August 1991, 6A.


"Gene map may lead to job, insurance dead end," *Columbus Dispatch*, 21 July 1991, 1A.


*Idaho Commission rules concerning the privacy of telephone subscriber records and disclosure of records to third parties by telephone utilities*, Case No. 31.D-89-1, Gen Order No. 181, effective September 1, 1990.


In the matter of an investigation into the customer data collection practices of Minnesota utilities, including telephone companies, Docket No. U-999/CI-89-943, Order initiating investigation and establishing study group dated November 8, 1989; 1989 Minn. PUC LEXIS 208.


Irwin, M. R., "The demise of state telecommunication regulation?" 
*Telecommunications*, December 1986, 70-77.


"Phone calls may follow us around: Person could not be reached unless special code is used," Columbus Dispatch, 5 January 1992, 7A.


Political Science and Public Policy, A. Ranney, ed., Chicago, IL: Markham, 1968.


Radding, A., "Banks use PC-based systems to tap CIF (customer information files), boost sales and develop relationships," Magazine of Bank Administration, Vol. 65, November 1989, 60.


Roberson v. Rochester Folding Box Co. 171 N.Y. 538, 64 N.E. 442 (1902).


Samarajiva, R., Telecommunication Privacy and the Public Interest: An Investigation at the Frontier of State Utility Regulation, Grant proposal for the Ameritech Faculty Fellowship, April 1991.

Samarajiva, R., Testimony on behalf of the Manitoba Association of Women's Shelters, the Manitoba Society of Seniors, and the Consumers Association of Canada (Manitoba), Hearing on the Call Management Services Trial before the Public Utilities Board of Manitoba, 1991.


Schuyler v. Curtis, 147 N.Y. 434, 42 N.E. 22 (1895).


Shakespeare, W., Othello, Act III, Scene iii, Line 155, 1604-1605.


Smith, G.C., "We've got your number! (Is it constitutional to give it out?): Caller identification technology and the right to informational privacy," UCLA Law Review, Vol. 37, No. 139, 1989, 145-224.


Smolowe, J., "Read This!!!!!!! Some call it direct mail, others know it as junk, but Americans love this paper flood washing over them as much as they hate it," Time, 26 November 1990, 62-7+.


Viswanath, K. and R. Samaratjiva, News Coverage as a Factor in State Regulation of Telecommunication Privacy: A Content Analysis of Specialized and General News Media in Relation to Early Caller ID Hearings, Grant Proposal for the Ameritech Faculty Fellowship, 1992-93 submitted to the Ameritech Advisory Committee at the Graduate School of the Ohio State University, April 1992.


