**Georgia State University Law Review**

Volume 3
Issue 2 *Spring/Summer 1987*

Article 35

3-1-1987

# PUBLIC UTILITIES AND PUBLIC TRANSPORTATION Automatic Telephone Dialing Equipment: Establish Regulations

M. Borowski

# PUBLIC UTILITIES AND PUBLIC TRANSPORTATION

## *Automatic Telephone Dialing Equipment: Establish Regulations*

| | |
|---|---|
| CODE SECTION: | O.C.G.A. § 46-5-23 (new) |
| BILL NUMBER: | HB 43 |
| ACT NUMBER: | 749 |
| SUMMARY: | The Act regulates the use of automatic telephone dialing and announcing equipment within the state. This equipment can be used only by permit-holders and when prior permission of the recipient is obtained, with certain exceptions, and only between certain hours. The caller must be identified and an automatic disconnection is required. The Public Service Commission is responsible for enforcement. |
| EFFECTIVE DATE: | June 1, 1987 |

### *History*

A bill to regulate telephone solicitation was first introduced in the General Assembly in the 1984 session. HB 1104, sponsored by Representative Bob Argo, added a new section to Title 16 of the Code making an unsolicited telephone call to a private residence "for the purpose of soliciting the purchase of goods or services or the making of charitable contributions unless some person residing therein has given prior consent a criminal invasion of privacy." An exemption was made if the caller had particularized knowledge that the person called was likely to make the solicited purchase or donation. Any violation was a misdemeanor. The bill, which never came to a vote, was assigned to a study committee which held hearings over the summers of 1984 and 1985.[1]

The first bill to regulate the use of automatic dialing and disseminating (ADAD) equipment was introduced by Representative Cathey W. Steinberg in 1985. HB 790 banned all computer dialed and recorded calls for commercial purposes, unless the computer call was in response to a previous request by the recipient of the computer call.[2] By amending the same section of the criminal code involving invasions of privacy as the original

1. Telephone interview with former Representative Bob Argo, House District No. 68 (Apr. 29, 1987). [hereinafter Argo Interview].
2. HB 790 § 1, 1985 Ga. Gen. Assem.

Argo bill,[3] HB 790 provided for both civil and criminal enforcement, placing enforcement with both local telephone companies and the attorney general. As amended by the House on January 27, 1986, HB 790 remained a provision to protect criminal invasions of privacy and added a number of specific exceptions to its original broad ban of computer phone calls for commercial purposes. Additionally, a number of requirements for any use of ADAD equipment were added, including provisions for a line operator to ask permission to play a computer generated message after the automatic dial. Identification requirements within the first 20 seconds of the call and again at the conclusion and an immediate disconnect at the end of the call were also added.[4] In addition, an entire section on severability was added.[5] This seems to have come from a fear that some portions of the bill may have been unconstitutional. All Georgia statutes are by law severable,[6] and thus an entire section outlining severability provisions is fairly unusual. This provision, however, does not appear in any subsequent versions of the legislation.

In January 1986, Representative Bob Argo introduced a somewhat different piece of legislation, HB 1218. The bill was introduced as an amendment to Georgia's Fair Business Practices Act of 1975 and amended sections of the Code dealing with business practices.[7] Originally, the bill defined automatic dialing and disseminating equipment as well as career consulting firms. In subsequent versions, the career consulting firms section was dropped,[8] and the bill concentrated on ADAD equipment. The bill labeled as an unfair business practice the use of ADAD equipment for commercial solicitation, conducting polls or soliciting information unless prior written consent had been given to receiving such calls. Specific exceptions were similar to those of HB 790, including calls in response to those initiated by the recipient, calls relating to goods or services previously ordered, calls to those with an already existing business relationship with the caller, and calls to a person who is a member of the same organization. Similar provisions of identification within the first fifteen seconds of the call and a fifteen second disconnect also were included.[9]

Both Representative Argo and Representative Steinberg specifically noted instances in which computer telephone calls were received in intensive care units of hospitals, nursing homes, fire and police departments.[10] A study committee of the House Rules Committee conducted meetings in the summer of 1984 and the fall of 1985 regarding the computer calling,

3. O.C.G.A. § 16-11-90 (1982).
4. HB 790 (HCS), 1985 Ga. Gen. Assem.
5. HB 790 § 2 (HCS), 1985 Ga. Gen. Assem.
6. O.C.G.A. § 1-1-3 (1982).
7. O.C.G.A. §§ 10-1-392 to -393 (Supp. 1987).
8. HB 1218 (SCSFA), 1986 Ga. Gen. Assem.
9. HB 1218 (HFA), 1986 Ga. Gen. Assem.
10. Argo Interview, *supra* note 1; telephone interview with Representative Cathey W. Steinberg, House District No. 46 (Mar. 18, 1987) [hereinafter Steinberg Interview].

and a subcommittee of the House Special Judiciary Committee held hearings on Steinberg's bill documenting numerous instances of abuse of ADAD equipment.[11] The Governor's Office of Consumer Affairs, which is responsible for enforcing Georgia's Fair Business Practices Act,[12] was involved in the drafting of HB 1218. Representative Argo felt that enforcement in Georgia should properly lie with Consumer Affairs rather than the attorney general, which he felt would be less efficient, or the telephone companies, which might have a conflict of interest.[13]

Both HB 790 and HB 1218 passed the House in 1986 and were sent to the Senate. The Senate passed a substitute to Argo's bill, HB 1218, which provided for the ban of all ADAD calls on Sunday. All consent requirements were deleted. The Senate substitute added a requirement of a $25 permit in order to use ADAD equipment, a ban on random or sequential dialing, and a requirement that such equipment have devices that would allow it to operate properly in case of electrical failure or lack of personnel.[14] This last provision, however, made the Senate version especially unacceptable to the House, because only one equipment manufacturer has the necessary equipment. The same purpose could have been accomplished with different wording and still not have precluded other manufacturers from providing equipment in Georgia.[15] Argo and Steinberg were within thirty minutes of getting the Senate to pass an acceptable bill, when the Senate abruptly adjourned in 1986.[16]

When the 1986 session ended without legislation addressing ADAD calls, the Public Service Commission (PSC) decided to consider regulation of these calls. The PSC had received numerous complaints from consumers, businesses and emergency care facilities on the disruptions and intrusions caused by ADAD use.[17] Commissioner Hammock of the PSC wrote the attorney general asking if the PSC had authority to ban "unsolicited computerized phone calls for commercial purposes."[18] Commissioner Hammock cited numerous problems caused by ADAD calls to businesses, emergency facilities, and the general public.[19] He also cited interference with the PSC's mission "to protect the public interest [and] guarantee [and] ensure compliance with our rules [and] Southern Bell's

11. *Id.*
12. O.C.G.A. §§ 10-1-390 to -407 (1982 & Supp. 1987).
13. Argo Interview, *supra* note 1.
14. HB 1218 (SCSFA), 1986 Ga. Gen. Assem.
15. Argo Interview, *supra* note 1.
16. *Id.*
17. Interview with Jon Grant, Public Information Officer, Georgia Public Service Commission, in Atlanta (Apr. 17, 1987).
18. Memorandum from Commissioner Jim Hammock to Attorney General Michael Bowers (Apr. 16, 1986) (requesting an opinion on the proposed PSC rule regarding computer calls).
19. *Id.*

tariffs as long as these calls continue."[20]

The response from the attorney general's office cited first amendment concerns with any outright ban of unsolicited commercial computerized phone calls as well as the jurisdictional authority of the PSC.

> In conclusion, the jurisdiction of the Public Service Commission's [sic] unlike that of the General Assembly which extends to all persons, is directed to public utilities. This advice does not address the question of whether the General Assembly may prohibit persons from utilizing these devices. The Public Service Commission may not *prohibit* unsolicited computerized phone calls for commercial purposes. The Commission may, however, regulate the interaction of the telephone system and this technology if it can assert a substantial regulatory interest. This interest may include the maintenance of the integrity of the telephone network and the regulatory principle of universal and reliable service at the least cost to the consumer. If enacted, such a rule or special order must directly advance a substantial regulatory interest and should be narrowly drawn so as not to be more extensive than is necessary to remedy the problem identified by the Commission.[21]

The PSC scheduled public hearings on the matter for May 5 and 6, 1986 in Atlanta. Fourteen people signed the roster as present, with most testifying. Three state legislators testified. The first, Cathey Steinberg, stated that the bill she had sponsored represented "a balance between the right of privacy of people and freedom of speech and freedom to solicit . . . ."[22] In explaining the purpose of her bill, she stated it was based on legislation from other states and had evolved as a consumer issue.[23]

The PSC was concerned with who would enforce the regulations. Noting the difference between enforcement with the attorney general in HB 790 and with the Office of Consumer Affairs in HB 1218, Representative Steinberg was asked why she had chosen the attorney general. Steinberg responded, "Actually we didn't think in terms of the PSC"[24] and indicated that she did not know enough about its enforcement capabilities, but would consider that possibility.[25]

Representative Johnny Isakson also testified. He was strongly in sup-

---

20. *Id.*

21. Letter from Michael J. Henry, Assistant Attorney General, to Jim Hammock, Commissioner (May 5, 1986) [hereinafter Henry letter].

22. Transcript of Public Service Commission hearings in Atlanta at 12 (No. 3577-U) (May 5, 1986).

23. *Id.* at 15.

24. *Id.* at 26.

25. *Id.* at 27.

port of the legislation and regulation for two basic reasons. First, he considered the computer phone calls "an invasion of privacy."[26] Second, he stated "it is unprofessional, it is indiscriminate, and it constitutes harassment."[27]

The third legislator to testify, Representative Joe Mack Wilson, found that this issue had generated more constituent response "than any other issue that has ever occurred in my 25 years in the General Assembly. . . . It was such a hot issue in my community that I petitioned the Governor to call a special session [after the legislature failed to act]."[28] Wilson also testified that the purpose of the legislation was to protect people from an "invasion of privacy."[29]

One citizen, Thomas Crim of Evans, Georgia, felt that regulation was needed to protect privacy because he found such calls a "gratuitous intrusion."[30] Herb Butler, testifying on behalf of the United Auto Workers, also sought to protect privacy.[31] William Beyers, representing the Cobb County clergy, spoke on behalf of using the equipment for faith ministry.[32]

The remainder of those who testified or submitted prepared statements were industry representatives.[33] All industry representatives spoke on behalf of regulation, but opposed an outright ban. They pointed out a number of beneficial uses for which the equipment is used, such as calling those who have previously ordered merchandise to let them know that it has arrived and confirming medical appointments.[34]

As a result of the hearings and the attorney general's opinion, which stated that the PSC had no authority to ban the calls outright,[35] "the Public Service Commission voted unanimously" on September 23, 1986, "to approve rules governing the use of automated dialing and announcing devices."[36] The purpose of the regulations was the same as that of both Representatives Steinberg's and Argo's legislation—"to protect the public from unwarranted and intrusive use of this technology."[37] The regulations, which became effective November 4, 1986, based on a final order unanimously adopted by the PSC on November 3, provided:

> Under tariffs, persons using automated dialing announce-

---

26. *Id.* at 31.
27. *Id.* at 32.
28. *Id.* at 43.
29. *Id.* at 44.
30. *Id.* at 48.
31. *Id.* at 59.
32. *Id.* at 58.
33. *Id.* at 1.
34. *Id.*
35. Henry letter, *supra* note 21.
36. Georgia Public Service Commission, *PSC Approves Tariff to Enforce Computer Calling Restrictions*, News Release, Nov. 3, 1986.
37. *Id.*

ment devices:

—must obtain a permit from the PSC;

—must have the message identify the calling party by name and telephone number;

—must not use the equipment to dial numbers sequentially;

—must not call organizations providing emergency services;

—must not make calls on Sunday or between 9 p.m and 9 a.m. Monday through Saturday;

—must use equipment that will disconnect from the telephone line within 10 seconds after the called party hangs up; and

—will be subject to service disconnection for failure to comply with the PSC's rules.[38]

These regulations, which were in effect until HB 43 became effective on June 1, 1987, led to the shutdown of one notorious user, LT & T.[39]

*HB 43*

Representative Steinberg, the sponsor of HB 790, introduced HB 43 on the first day of the 1987 session of the General Assembly.[40] HB 43 was basically the same bill as HB 790 of the 1986 session. As introduced, it banned computer calls for commercial solicitation and regulated other uses of such calls. It passed the House with few changes. The bill was modeled after a 1978 Florida statute but was less like the Florida statute than HB 790.[41] The Senate introduced many of the same amendments which had been introduced the previous year: moving the matter into the Fair Business Practices Act of 1975, requiring permits and consent in order to make the calls, and limiting the times and days on which the calls could be made.[42] The Conference Committee version, which was adopted by both houses and signed by the Governor, places the Act in the section of the Code relating to telephone services in general and places enforcement with the PSC.[43]

HB 43 adds a new section to the Code to regulate the use of ADAD equipment. It outlaws the use of this equipment for commercial purposes or for conducting polls unless the following conditions are met:

1. Prior consent to receive a computerized call must be given either to a line operator or in writing to the company making

38. *Id.*

39. Hesser, *Firm's Phone Service Disconnected after Computer Calls a Home 70 Times in 6 Hours*, Atlanta J., Jan. 13, 1987, at 1B, col. 4.

40. Representative Bob Argo retired after the 1986 session but continued to work to support the Steinberg effort. Argo Interview, *supra* note 1.

41. Steinberg Interview, *supra* note 10.

42. HB 43 (SCS), 1987 Ga. Gen. Assem.

43. HB SCS (AP), 1987 Ga. Gen. Assem.

the calls. The written consent must be kept on file and available for inspection by the Public Service Commission during normal business hours and on reasonable notice.[44]

2. Calls may be made only between the hours of 8 a.m. and 9 p.m.[45]

3. The equipment must operate in such a way that, in the event of a power failure, the equipment, which works using an automatic clock and calendar device, will not operate at the wrong time.[46]

4. Random or sequential dialing of telephone numbers is forbidden.[47]

5. No unlisted or emergency numbers, such as hospitals, police or fire departments, may be dialed.[48]

6. The recorded message must state the name and telephone number of the person making the call, both at the beginning and end of the recording.[49] This telephone number must be one which operates during normal business hours and is answered by that person or his or her agent.[50]

7. If the person called does not consent to receive the call or hangs up, the ADAD equipment must automatically disconnect within ten seconds.[51]

A violation of any of these provisions, as well as the permit provision discussed below, is a misdemeanor.[52]

The requirement of consent is waived for non-profit organizations when the calls are for non-commercial purposes.[53] Further, the consent requirement is waived for commercial organizations if the calls relate to the collection of lawful debts.[54] The requirement is also waived if the call relates to payment for, service of, or warranty coverage of previously ordered or purchased goods or services.[55]

A permit is required in order to use ADAD equipment. Permits may be obtained from the PSC upon application and payment of a fee and may be renewed biennially.[56] The PSC is charged with enforcing the non-crim-

---

44. O.C.G.A. §§ 46-5-23(a)(2)(A) and (a)(3)(A), (B) (Supp. 1987) (Code sections are paraphrased in text accompanying notes 44-51.).
45. O.C.G.A. § 46-5-23(a)(2)(B) (Supp. 1987).
46. O.C.G.A. § 46-5-23(a)(2)(C) (Supp. 1987).
47. O.C.G.A. § 46-5-23(a)(2)(D) (Supp. 1987).
48. O.C.G.A. § 46-5-23(a)(2)(H) (Supp. 1987).
49. O.C.G.A. § 46-5-23(a)(2)(G) (Supp. 1987).
50. O.C.G.A. § 46-5-23(a)(2)(E) (Supp. 1987).
51. O.C.G.A. § 46-5-23(a)(3)(F) (Supp. 1987).
52. O.C.G.A. § 46-5-23(e) (Supp. 1987).
53. O.C.G.A. § 46-5-23(b)(1) (Supp. 1987).
54. O.C.G.A. § 46-5-23(b)(3) (Supp. 1987).
55. O.C.G.A. § 46-5-23(b)(2) (Supp. 1987).
56. O.C.G.A. § 46-5-23(c) (Supp. 1987).

inal sanctions of this section through disconnection if the violation does not cease within ten days of notification.[57]

The public debate focused mainly on constitutional issues. The opponents of the bill believe that prohibition of computerized calls violates both the equal protection and free speech provisions of the U.S. Constitution.[58] Although opponents have suggested that a legal challenge might be mounted to the Act,[59] similar laws are on the books in some nineteen other states,[60] and the only legal challenge to date has been withdrawn.

In Michigan, a stronger law[61] was challenged as a violation of the first

---

57. O.C.G.A. § 46-5-23(d) (Supp. 1987).

58. Telephone interview with Richard Toal, Vice President of Marketing, Telecorp Systems Inc., and chief lobbyist against the bill (Mar. 18, 1987) [hereinafter Toal Interview].

59. Thurston, *House-Senate Panel Agrees on Limits for Computer Sales Calls*, Atlanta Const., Mar. 11, 1987, at 1C, col. 5. " 'It's not what Cathey Steinberg thinks that matters, it's what Thomas Jefferson and the U.S. Constitution think,' said Richard Wuenker, owner of Atlanta-based LT&T, Inc. 'Our intent is to go to court. It's a question of commercial free speech, which we think we will win.' " *Id.* at 7C, col. 1-2.

60. Hesser, *Legislator Wants to Call off Computer Phoning*, Atlanta Const., Nov. 23, 1986, at 1D, col. 2. *See also* Chaffin, *High Court Ruling May Affect Rules on Computer Phone Calls*, Fulton County Daily Rep., Jan. 23, 1987, at 1, col. 1. States with laws which regulate telephone commercial solicitation or ADAD equipment include: Alaska (ALASKA STAT. § 45.50.472 (1986)); Arkansas (ARK. STAT. ANN. §§ 41-4162 to -4164 (Supp. 1985)); California (CAL. BUS. & PROF. CODE § 17511 (West 1987)); Colorado (COLO. REV. STAT. § 18-9-311 (1986)); Connecticut (CONN. GEN. STAT. § 16-256(e) (Supp. 1987)); Florida (FLA. STAT. ANN. § 365.165 (West 1987)); Maryland (MD. BUS. REG. CODE ANN. § 78-55C (1978)); Michigan (MICH. COMP. LAWS § 484.125 (Supp. 1987)); Nebraska (NEB. REV. STAT. §§ 87-307 to -311 (1981)); North Carolina (N.C. GEN. STAT. § 75-30 (1985)); Oregon (OR. REV. STAT. § 165.555 (1985)); Virginia (VA. CODE ANN. § 18.2-425.1 (Supp. 1986)); Wisconsin (WIS. STAT. § 134.72 (Supp. 1986)). The Federal Communications Commission also has studied the matter of unsolicited commercial telephone calls. The inquiry, begun in 1978, officially ended in 1980 when the FCC "decided that it lacks jurisdiction to adopt an effective set of rules regulating unsolicited commercial, political, charitable and other soliciting or surveying telephone calls, including those dialed automatically." Federal Communications Commission, *Commission Ends Inquiry on Unsolicited Telephone Calls*, FCC News, Apr. 1980 (Rep. No. 15694, Docket No. 78-100). The FCC found that since 97% of the calls are intrastate, it lacked jurisdiction. It also cited first amendment concerns. *Id.* However, the Georgia law cannot regulate interstate activity; therefore, it is possible that calls made into Georgia by companies who have moved across the state line could create the same kind of harrassment. Telephone interview with Representative Cathey W. Steinberg, House District No. 46 (Aug. 17, 1987).

61. MICH. COMP. LAW ANN. § 484.125 (West 1985) provides in pertinent part:

> A caller shall not use a telephone line to contact a subscriber at the subscriber's residence to deliver a recorded message for the purpose of delivering commercial advertising to the subscriber, unless either of the following occurs:
>
> (a) The subscriber has knowingly and voluntarily requested, consented, permitted, or authorized the contact from the caller, (b) The subscriber

and fourteenth amendments.[62] The trial court held in ruling on a motion for summary judgment, that under the four-part test set forth in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*,[63] the government's interest in protecting the privacy of its citizens "sweeps much too broadly."[64] Further, the state's interest in preventing the various hazards of ADAD equipment, such as tying up the telephone lines, while substantial, was likewise too broad because equipment exists which will disconnect automatically when the recipient hangs up. Since the legislative intent was not apparent, the court reasoned that, while "the volume of such advertising may indeed rise to such a level as to be 'essentially intolerable' at that point, the governmental interest in stemming the tide would become substantial. To date, however, the worst fears have not been borne out."[65]

When the Attorney General of Michigan asked for a rehearing based on the state's right to protect the integrity of its telephone system from overload as well as the constitutional issues concerning privacy, the court vacated its previous order.[66] In vacating its order, the court noted not only previously overlooked issues of disputed facts, but also decided to examine more closely the ability of an individual householder to protect his or her own privacy interests.[67] When the judge set the case for trial, the plaintiffs dropped the suit.[68]

The Michigan case is the only case to date which deals with commercial

---

> has knowingly and voluntarily provided his or her telephone number to the caller.

*Id.*

The law further provides for damages to the subscriber of up to $250 plus attorney's fees as well as a fine of $1,000 or imprisonment of 10 days, or both.

62. Prospects Unlimited, Inc. v. Attorney Gen. No. 82-29490-CZ (Cir. Ct. Ingham County, Mich. July 3, 1984).

63. 447 U.S. 557 (1980). The four part test states:

> In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.

*Id.* at 566.

64. Prospects Unlimited at 7.

65. *Id.*

66. Prospects Unlimited, Inc. v. Attorney Gen. No. 82-29490-CZ (Cir. Ct. Ingham County, Mich., Mar. 8, 1985).

67. *Id.*

68. Chaffin, *High Court Ruling May Affect Rules on Computer Phone Calls*, Fulton County Daily Rep., Jan. 23, 1987, at 1, col. 1. *See also* letter from Don L. Keskey, Assistant Attorney General of Michigan, to Mickey Henry, Assistant Attorney General of Georgia (Apr. 18, 1986) (copy on file at *Georgia State University Law Review* office).

speech through the medium of the telephone.[69] Case law concerning commercial speech is of recent development and is particularized to the medium involved. In 1976, commercial speech was first recognized as deserving of first amendment protection, although limited, in *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council.*[70] The Supreme Court has made clear, however, that commercial speech is subject to regulation[71] and occasionally outright prohibition.[72] In analyzing the regulation or prohibition, the four part test of *Central Hudson* determines the validity of the restriction.[73] The Court has been careful to note that each medium of expression requires particularized analysis.[74] In *FCC v. Pacifica Foundation,*[75] which involved a challenge to offensive language on the radio, the Court noted that the radio confronts the listener "not only in public, but also in the privacy of the home, where the individual's right to be left alone plainly outweighs the first amendment rights of the intruder."[76] Thus, it would be improper to assume that because the Court has allowed unsolicited mail to be sent to the home,[77] unsolicited phone calls must also be allowed. The nature of the medium, and thus the intrusion, is different. As the Court stated in *Pacifica*:

> To say that one may avoid further offense by turning off the radio when he hears indecent language is like saying that the remedy for an assault is to run away after the first blow. One may hang up on an indecent phone call, but that option does not give the caller a constitutional immunity or avoid a harm that has already taken place.[78]

Thus, it may very well be that privacy in the home is the substantial interest the *Central Hudson* test requires to refuse the receipt of unwanted mail of any nature by informing the postmaster of that refusal.[79] The use of ADAD equipment, especially if it is used to dial numbers ran-

---

69. There are no reported cases. The Direct Marketing Association knows of no cases, reported or unreported. Telephone interview with Julie Crocker, Director, State Government Affairs, Direct Marketing Association (May 13, 1987).

70. 425 U.S. 748 (1976).

71. Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n, 447 U.S. 557 (1980).

72. Ohralik v. Ohio State Bar Ass'n, 436 U.S. 447 (1978).

73. *Central Hudson*, 447 U.S. at 566; *see supra* note 63.

74. FCC v. Pacifica Found., 438 U.S. 726 (1978).

75. 438 U.S. 726 (1978).

76. *Id.* at 748.

77. Bolger v. Youngs Drug Corp., 463 U.S. 60 (1983).

78. *Pacifica*, 438 U.S. at 748-49. For excellent discussions of the examination of the commercial speech doctrine applied to unsolicited telephone calls, see Luten, *Give Me a Home Where No Salesmen Phone: Telephone Solicitation and the First Amendment*, 7 HASTINGS CONST. L.Q. 129 (1979) and WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, REGULATION OF TELEPHONE SOLICITATION IN WASHINGTON STATE (Dec. 1985).

79. Rowan v. Post Office Dept., 397 U.S. 728 (1970).

domly or sequentially, would require regulation of a more stringent nature than that required for mail. If it is the ringing of the phone that the recipient wishes to stop, then only the prohibition of random or sequential dialing would suffice to accomplish that purpose. If it is only the unwelcomed solicitation that impinges on privacy, then the more narrow restriction of requiring an operator to ask permission would accomplish that purpose.

There has been some concern that Georgia's law will not withstand constitutional challenge.[80] Since the Court has not yet ruled on telephone solicitations, the closest analogy seems to be that of laws dealing with door-to-door solicitations. While in the past, laws in this area have been upheld, usually as time, place, and manner restrictions,[81] a recent summary affirmance by the Supreme Court[82] leaves this analogy in doubt. The Seventh Circuit had held that laws restricting the times that door-to-door solicitors may operate are not a valid exercise of time, place, and manner restrictions. On January 20, 1987, over the dissents of Justice White, Chief Justice Burger and Justice O'Connor, the Court affirmed that a city ordinance which restricted door-to-door solicitation to the hours between 9:00 a.m. and 5:00 p.m., Monday through Saturday, violated the first and fourteenth amendments.[83] This ruling raises some doubt about the power of government to regulate the time, place, and manner of commercial speech in the interest of protecting the privacy of the home. Perhaps, as one of the opponents of HB 43 stated, "If you've put a telephone in your home, you've given up the right of privacy."[84] It must be noted, however, that the Supreme Court only summarily affirmed the Seventh Circuit's ruling, the precedential value of which is slight.[85]

It appears that Georgia has proceeded cautiously in regulating computer telephone calls. Since 1984, the General Assembly has studied and documented the extent to which this technology has impinged upon privacy in the home, interfered with businesses, emergency and health care services, and impeded the PSC in carrying out its functions. The law that

---

80. Chaffin, *High Court Ruling May Affect Rules on Computer Phone Calls*, Fulton County Daily Rep., Jan. 23, 1987, at 1, col. 1.

81. Breard v. Alexandria, 341 U.S. 622 (1951).

82. City of Watseka v. Illinois Pub. Action Council, 107 S.Ct. 919 (1987).

83. *Id.*

84. Toal Interview, *supra* note 58.

85. Edelman v. Jordan, 415 U.S. 651, 671 (1984). As Chief Justice Burger explained in a decision vacating a lower court ruling based on a previous summary affirmance:

> When we summarily affirm, without opinion . . . we affirm the judgment but not necessarily the reasoning by which it was reached. An unexplicated summary affirmance settles the issues for the parties, and is not to be read as a renunciation by this Court of doctrines previously announced in our opinions after full argument.

Fusari v. Steinberg, 419 U.S. 379, 391-92 (1975) (footnote omitted).

has emerged protects several substantial governmental interests in the most narrow manner possible for the technology at issue. Computer dialing is allowed for commercial purposes when there is a prior business relationship with the caller. Additionally, computer recorded messages are allowed if the recipient consents to receive them. Alternative means of communication (such as mail, billboards, and print and electronic media) remain readily available to commercial advertisers. The four part test of *Central Hudson*, tailored to the specific idiosyncracies of ADAD equipment, appears fully satisfied.

One further concern remains with the Act as passed. Because of the technical requirements of the Act, most manufacturers of the equipment are foreclosed from selling their equipment in Georgia because their equipment will not be able to perform as required by the Act. This restriction could raise a restraint of trade problem.[86] This does not, however, seem to be a widely shared concern.

*M. Borowski*

86. Telephone interview with Bill Cloud, Spokesperson, Governor's Office of Consumer Affairs (Apr. 30, 1987).