ALBANY, NEW YORK

January 29, 1996

3:02 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S.

THE PRESIDENT: The Senate will come to order.

Would everyone please rise and repeat with me the Pledge of Allegiance.

(The assemblage repeated the Pledge of Allegiance to the Flag.)

The invocation today will be given by the Reverend Peter Young.

REVEREND PETER G. YOUNG: Let us pray, and all the Senators pray for the hungry, the homeless, those who are denied dignity and those who have no hope, that this legislative body will improve their condition and that our compassionate effort will remove the causes of their suffering. We ask you this in Your name, now and forever. Amen.

THE PRESIDENT: The reading of the Journal, please.

THE SECRETARY: In Senate, Friday, January 26th. The Senate met pursuant to adjournment, Senator Bruno in the Chair. The Journal of Thursday, January 25th, was read and

approved. On motion, Senate adjourned.

THE PRESIDENT: Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Please recognize Senator Farley, please.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On behalf of Senator Stafford, please place a sponsor's star on Calendar Number 61.

On behalf of Senator Bruno, Madam President, on page 6, I offer the following amendments to Calendar 63, Senate Print 5711,

and I ask that that bill retain its place on the Third Reading Calendar.

On behalf of Senator Maltese, Madam President, on page 10, I offer the following amendments to Calendar Number 107, Senate Print 34 -- 3240, and I ask that that bill retain its place on the Third Reading Calendar.

Madam President, on behalf of Senator Stafford, on page 15, I offer the following amendments to Calendar 79, Senate Print 624-A, and I ask that that bill retain its place on the Third Reading Calendar.

THE PRESIDENT: Thank you, Senator Farley. The first bill is starred and the amendments are received on the other bills.

Senator Skelos.

SENATOR SKELOS: Yes, Madam President.

There will be an immediate meeting of the Rules Committee in Room 332 of the Capitol.

THE PRESIDENT: There is an

immediate meeting of the Rules Committee in Room 332.

Senator Skelos, are you ready for the calendar?

SENATOR SKELOS: Yes, at this time, if we could take up the non-controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 78, by Senator Stafford, Senate Print 621-A, an act to amend the Real Property Tax Law, in relation to the assessment of private forest lands.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 3. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 35.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 84, by Senator Larkin, Senate Print -

SENATOR LARKIN: Lay it aside for the day.

THE PRESIDENT: Lay aside.

THE SECRETARY: Calendar Number 94, by Senator Sears, Senate Print Number 3790, an act to amend the General Business Law, in relation to penalties for violation thereof.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 35.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 95, by Senator Sears, Senate Print 3839-A, an act to amend the General Business Law, in relation to false price comparisons.

SENATOR LEICHTER: Lay aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 97, by Senator Seward, Senate Print 1626, an act to amend the Public Service Law, in relation to telephone blocking services.

SENATOR LEICHTER: Explanation.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 98, by Senator Seward, Senate Print 2014, an act to amend the Public Service Law, in relation to restricting access to telephone messages.

SENATOR SMITH: Lay it aside, please.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 99, by Senator Seward, Senate Print 3422, an act to amend the Public Service Law, in relation to extending the period of time for the Public Service Commission.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 39.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 101, by Senator Farley, Senate Print Number 568, an act to amend the Education Law, in relation to efficiency study grants.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 39.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

102, by Senator Cook, Senate Print Number 1303, an act to amend the Education Law, in relation to defining non-residents of a district for purposes of admission.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of September.

THE PRESIDENT: Call the roll.

(The Secretary called the roll. )

THE PRESIDENT: The bill is -

THE SECRETARY: Ayes 39.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 104, by Senator Cook, Senate Print 5435-B, an act to amend the Education Law and the Local Finance Law, in relation to annual meetings.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 26. This act shall take effect on the 30th day.

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll. )

THE SECRETARY: Ayes 39.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 109, by Senator Maziarz, Senate Print 4435-B, an act to amend the Vehicle and Traffic Law, in relation to fees received by county clerks.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll. )

THE SECRETARY: Ayes 39.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Oh, Senator Hoblock.

SENATOR HOBLOCK: Madam

President, please take up the controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 95, by Senator Sears, Senate Print 3839-A, an act to amend the General Business Law, in relation to false price comparisons.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 4. This act shall take effect on the 30th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 39.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 97, by Senator Seward, Senate Print 1626, an act to amend the Public Service Law, in relation to telephone blocking services.

THE PRESIDENT: Read the last section.

SENATOR DOLLINGER: Madam President.

THE PRESIDENT: Oh, sorry. Senator Dollinger.

SENATOR DOLLINGER: I just have a couple quick questions about a couple issues raised by NYNEX on this bill, and I don't see Senator Seward in the house.

THE PRESIDENT: We're looking for him, if you could just hold on for a minute.

SENATOR DOLLINGER: I'd be glad to.

SENATOR HOBLOCK: Madam President.

THE PRESIDENT: Yes, Senator Hoblock.

SENATOR HOBLOCK: Can we lay that bill aside temporarily, please.

THE PRESIDENT: Yes, lay it aside.

The Secretary will read.

THE SECRETARY: Calendar Number 98, by Senator Seward, Senate Print Number 2014,

an act to amend the Public Service Law, in relation to restricting access to telephone messages.

THE PRESIDENT: Read the last section.

SENATOR HOBLOCK: Madam President, can you lay that bill aside temporarily, please.

THE PRESIDENT: Lay it aside, please.

Senator Hoblock.

SENATOR HOBLOCK: Madam President, could we return to standing committees please, reports of standing committees. I believe there's a Rules Committee report up there.

THE PRESIDENT: The Secretary - the Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bill directly to third reading: Senate Print 5943, by Senator Seward, an act authorizing the extension of time for the

payment of real property taxes without interest or penalty in certain counties in 1996 as a result of the flood emergency in such counties.

THE PRESIDENT: Senator Hoblock.

SENATOR HOBLOCK: Move the adoption of the report, Madam President.

THE PRESIDENT: All those in favor of accepting the report of the Rules Committee signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response. )

The report is accepted.

Senator Hoblock.

SENATOR HOBLOCK: Madam President, could we go back to Calendar Number 97, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 97, by Senator Seward, Senate Print 1626, an act to amend the Public Service Law, in relation to telephone blocking services.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Right. Yes, Madam President, I have a couple questions for the chairman of the Energy and Telecommunications Committee, which have come up after our committee's deliberation on this bill, and they relate to NYNEX' position statement and I just thought you might clarify those if you - if the chairman could.

SENATOR SEWARD: Yes. I'd be happy to -

THE PRESIDENT: Take your time.

SENATOR SEWARD: -- answer the questions.

SENATOR DOLLINGER: And I'll apologize to my committee chairman because I didn't get a chance to read this memo until about an hour ago before we went into confer ence, and I agree with the concept of this bill as we've discussed it in committee a number of times, as I do with the next piece of legislation.

My question is, NYNEX in their memo suggested that doing it the way it's laid out in this bill is not only financially difficult for NYNEX to do because they won't be reimbursed for what they see as a significant cost, but, number two, it suggests that there are already steps that they have gone beyond what this bill -- the particular methodology that this bill employs, and my only question is whether, in the restructuring or preparation of this bill, you've had an opportunity to talk to NYNEX and see whether their concerns can be brought into this bill, so that we end up with something that I think our largest telephone carrier will be at least comfortable with.

I don't believe there's any objection here about their shared goal, as I share it with you, of restricting access to these services, but they talk about the -- the danger of a pre-recorded message for 20 seconds and whether that blocks their mass -- their message to the rest of their audience, and I'm just wondering, it sounds very technical to me,

whether you've had a chance to talk to them about their objections.

THE PRESIDENT: Senator Seward.

SENATOR SEWARD: Well, yes, Madam President. I am aware of the NYNEX memo, and I would summarize their position as having some concerns about the fact that -- that some of the options will prevent the PSC from instituting blocking options as the technology advances, and I would also point out that the idea behind this legislation, it is true that NYNEX has, in fact, been offering this type of blocking option to their customers as a result of settlements with the PSC and certain tariff determinations previously.

Now, this may not be a problem in the NYNEX territory because of that fact. What we're attempting to do under this legislation is to provide a means of protecting consumers from such services, to make it more a consistent standard throughout the state so that all telephone customers, no matter in what service territory they may reside would, in fact, have

the availability of these blocking services.

Senator, I believe that the bill is sufficiently broad enough in terms of allowing the Commission to make adjustments as technology advances in the future. The point is well taken, but I think the fact that the Commission would have the option of promulgating rules and regulations as changes warrant, that's where we ought to be on this issue, and I think this bill addresses that.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam Pres ident, I'm going to support this bill as I did in committee, and I appreciate the chairman's clarification. It just -- it seemed to me that the NYNEX discussion raised technical issues about timing of the message and some other things that may create a technical problem to get the goal -- shared goal of encouraging the use of these services and giving the public the use of these services that I don't -- I just didn't want to run into a technology problem

where it appeared though that this bill may be behind what NYNEX is already doing.

I agree that the message sent to the other telephone companies, the other carriers in this state, is that we're going to require them to implement some restriction on these -- access to these types of messages. So I think it's just something that we've got to keep our eye on and make sure the PSC keeps its eye on this issue, and I'm sure this is an issue that we will revisit even if this statute becomes law as ways around the different approaches to these kinds of objectionable messages, whether they go on computers or televisions or telephones, make sure we keep our eye on the ball and keep up with -- in conson ance with the carriers and the latest technology, and I know that that's the chairman's intent, and that's one I share.

SENATOR SEWARD: Last section.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Thank you.

Senator Seward, would you yield, please?

SENATOR SEWARD: Yes, certainly.

SENATOR LEICHTER: Senator, I confess to not having looked into this issue, but one thought that came to me, and I tried to read your bill quickly to see how it's dealt with, but maybe you could address it in response to my question.

Suppose the phone company comes up and says, O.K., sure we can do it, but it's going to cost a very large sum of money. Now, under your bill, they can't charge the residential user, so it means it becomes part of their overall cost, and it's passed on to all the customers.

I'm trying to see what, if any, provision you have in there which would deal with that concern.

THE PRESIDENT: Senator Seward.

SENATOR SEWARD: Senator, in Section 6 of the bill, it covers the -- that matter and, in fact, the expenses involved would fall back to the information provider as a cost

of doing business.

SENATOR LEICHTER: So that the only -- if you'll yield, Senator.

SENATOR SEWARD: Certainly.

SENATOR LEICHTER: So they can not pass those charges on to the -- to their customers or at least the -- let's say the residential users. That has to be part of whatever they charge the information providers; is that -- is that right?

SENATOR SEWARD: That is correct.

SENATOR LEICHTER: Thank you.

THE PRESIDENT: Thank you. Read the last section, please.

THE SECRETARY: Section 5. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

98, by Senator Seward, Senate Print 2014, an act to amend the Public Service Law, in relation to restricting access to telephone messages.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Paterson, did you ask for an explanation?

SENATOR PATERSON: Yes.

THE PRESIDENT: Senator Seward.

SENATOR SEWARD: Yes, Madam President.

This bill that has passed the Senate on previous occasions several times in fact, this bill would authorize the PSC to promulgate rules and regulations to prohibit access to phone messages that are deemed harmful to minors. Persons wishing to access these messages must first request a personal identification number, so-called PIN number, at which time they must prove that they are 18 years of age or older, and the bill -- that's the main thrust of the legislation.

The bill also requires that the billing and collection practices of the phone

companies be a matter of a contractual agreement between the information provider and the phone company and, once again, this is -- this is another effort -- approaches in a different way, but the same goal in mind as the bill that we just passed.

This is an effort to establish on a statewide basis standards for the access by adults to these messages which are deemed to be harmful to minors, and the bill will help to ensure that we have a consistent standard for such access while granting to the telephone customers more control over the use of their own telephones.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

If Senator Seward would yield for a question.

THE PRESIDENT: Senator Seward.

SENATOR SEWARD: Certainly.

SENATOR PATERSON: Senator, I

agree with the premise. My question is that, in constructing this legislation have you considered any other possibilities such as, for instance, the fact that there are a lot of 900 numbers, maybe they aren't as harmful or maybe they're not harmful at all, but they do require that the caller be over age 18. So would it not be more effective to establish PIN numbers for everyone that has a telephone number of and in itself, who is over 18, thereby establishing what would be a pool of which, if you can't prove that you're in the pool, then you wouldn't be able to call the 900 number because, as it stands now, one of my anxieties about voting for this legislation -- and I voted for it in the past, but it's beginning to overcome me -- is the fact that there is really no privacy here and we've had at least two hearings for the nomination of Supreme Court justices, that of Mr. Bork and also Judge Thomas, in which the issue of what they did with their privacy became discussed in the hearing or at least was discussed in the preamble to the hearings, and

not that any American deserves to have their privacy violated to that point when the intent of your legislation is to accomplish a far greater goal, which is not to have children to be harmed by this obviously harmful type of phone numbers that they could be dialing.

SENATOR SEWARD: Well, Senator, I would respond in this way. What I'm attempting to do here in this legislation is to deal with the specific type of telephone message, the so-called harmful to minors as set forth in the Penal Law, very specific targeted approach to that particular problem, and I personally would feel that it would be a bit excessive to require the PIN number for the broader array of these so-called information services that are available through the telephone.

I'm looking at this as a particular issue, a particular problem that we're dealing with under this legislation and not looking at the broad array of all the other information services that are available, and I would say that I share your concern about the

confidentiality of those persons who request a PIN number to listen to these more sexually explicit messages over the telephone which adults are perfectly free to do so, and they would continue to do so under this legislation.

The confidentiality is covered under the bill that I wouldn't expect that information that someone has applied for such a PIN number, that's not information that would be distributed specifically declared confidential except as outlined on -- beginning on line 19 of the second page of the bill where we're dealing with only law enforcement officials who may be investigating the violation of this law.

So it's a very -- very, very specific in terms of having this information stay confidential except for law enforcement officials who are, in fact, investigating a violation of this leg... of this law.

ACTING PRESIDENT FARLEY: Senator Paterson.

SENATOR PATERSON: Mr. President. Thank you very much, Mr. President.

I don't have a problem with law enforcement officials examining that material if it becomes evidentiary, and I don't have a problem of law enforcement officials examining it at all. I thank Senator Seward for his answer, and I am persuaded by his answer that perhaps my suggestion relating to a more expansive PIN number might be excessive.

I'm not persuaded, however, that the confidentiality can be enforced with respect to those who are employed with the various telephone systems and companies who have that kind of access. Certainly, the aim of the legislation is quite justifiable, and I guess I will vote for this bill this year again in spite of the fact that I would like to put on the record that there is this concern because we have seen violation of this confidentiality before, and it has had great ramifications to the individuals who are affected.

This would be criminal behavior if the material on these 900 numbers is presented to children. It is not a crime for it

to be presented to adults, but there certainly is at times certainly a stigma that the individual would receive from the society if it becomes well known or publicized, and the individual has not violated any law.

I'm hoping that, in the future, we might be able to find a solution. I wasn't able to suggest an effective one today, but I hope that Senator Seward will continue to look into it as well.

ACTING PRESIDENT FARLEY: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I rise in support of this bill. I commend Senator Seward for bringing it out even at this stage because -- and I just address the point that's made by Senator Paterson.

I guess we'll find out how -- how Clarence Thomas -- what he thinks about this bill, because he's going to get a chance in a case that's currently pending before the Court to find out whether the Federal Communications Commission can require the cable industry to

pre-screen the delivery of leased access programs and determine whether or not they're harmful to children or indecent or obscene and then require that they be set up on a pre-subscriber basis. A case pending before the United States Supreme Court called the Alliance for Community Media against the FCC is going to test the exact principle that's raised in this case, whether you can pre-screen, only on a pre-subscriber, pre-identified basis. The Court of Appeals sitting en bloc in the District of Columbia Circuit ruled that the government could do that, the FCC had the power to do that, and I believe if the Supreme Court upholds this they will uphold this statute as well, which simply says that, if you want these kinds of messages -- and I agree with Senator Paterson if you're an adult you may make that choice, but you simply have to subscribe for them in advance much like you do for any of the other subscription services that are available through the television system, whether it's the HBO or Cinemax or the Playboy channel, you pay for

those in advance; you subscribe to them.

As adults, you can watch whatever you want to watch on TV, but when we have children involved, the kind of blocking procedures that are encompassed in this bill, I think, is a step in the right direction. It sends a message that these types of messages on our telephones or on our televisions are objectionable, and the community can say that they're objectionable.

Adults can watch them. Our whole Penal Law is built on the notion that certain types of materials in the hands of infants, it's a crime. It's a crime to put infants in certain types of pictures. We can continue to draw those lines as a society, and I think that this bill is a step in that direction, to send a message about that type of speech which is harmful to children and what we as a society can do to discourage it from being actually given to children.

So I support this bill and commend the chairman of the committee for

bringing it out.

ACTING PRESIDENT FARLEY: Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President. I'm grateful to Senators Paterson and Dollinger for debating it because, frankly, it got me thinking about the bill. I've supported it in the past because I certainly support the aim of trying to protect people who are minors from the type of what seems blatantly obscene messages and services that you seem to get over the telephone. So I think we all agree on the aim and the goal.

I think the question that's been raised and that got me thinking about this is whether this bill is the best manner and process to achieve that aim. There are two concerns I have, Senator Seward, as far as the mechanism and system you set up if you'd be so good as to yield to some questions.

ACTING PRESIDENT FARLEY: Senator Seward, would you yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT FARLEY: Yes, he will.

SENATOR LEICHTER: Senator, I believe I'm correct, but please confirm it for me, that there's hundreds and hundreds of these particular messages, I guess they come through 900 numbers if you can -- that you can listen to or access through your telephone at this time; is that correct?

SENATOR SEWARD: I couldn't tell you exactly how many. There's -- there's a goodly number.

SENATOR LEICHTER: O.K. We're talking probably well over a hundred, right?

SENATOR SEWARD: I -- I honestly do not -- cannot give you a number.

SENATOR LEICHTER: No, I'm sure that you haven't researched it, listened to everyone but it's just that occasionally I'm amazed you'll see an advertisement and there'll be 40 or 50 listed just in one advertisement.

SENATOR SEWARD: I'm sure you're accurate, Senator.

SENATOR LEICHTER: O.K. Now, under your bill, am I correct that there's somebody, I guess at the Public Service Commission, that will have to make a determination as to each and every one of these, whether they are harmful to minors?

SENATOR SEWARD: That is correct, Senator, under the strict and the specific criteria that's under Section 235 -- within 235 of the Penal Law, as being described.

SENATOR LEICHTER: Well, let me say it's the first aspect that worries me because, as we all know, this is a somewhat difficult criteria to apply. I mean it's not the sort of thing that's clear to somebody, Oh, wait. This is something that's harmful to infants. Doesn't come on a neon light that says it's harmful to infants. Requires a judgment ordinarily, and eventually these are done by courts of law. I assume that any particular, whatever they're called, the people that provide these messages can take their case to court and say, no, they shouldn't have found, but I -- it

bothers me somewhat that you're going to have somebody at the Public Service Commission make these very subjective determinations.

I don't know whether they're qualified to do that.

SENATOR SEWARD: Well, that's a determination each of us would have to make, Senator, but I -- I believe that the legislation is giving the power to -- in the hands of the right state agency here to -- that is dealing with the regulation of the telephone companies and it -- rather than setting up a whole new bureaucracy that it is appropriate to have them promulgate the rules and regulations to implement the broad guidelines that are outlined in this legislation.

SENATOR LEICHTER: Senator, I don't know about a new -- setting up a new bureaucracy. We're going to have a bureaucracy on determining whether something is obscene or not. I don't know that anybody suggests that, though if a bureaucracy is required it's your bill that seems to make that necessary, but I

have a little trouble accepting your characterization of the Public Service Commission as well qualified to do this.

They're qualified to make technical decisions on providing phone service and not what's harmful to children or not. You might give it to a judge of the Family Court or somebody works with children. I think you'd have to agree that these would be people who are better qualified to determine what is harmful to children than a technician or an economist at the Public Service Commission.

But let me ask you this question because that really comes down to what bothers me about this bill, and I want to see if there's an answer to it. I'm sorry. Before that I have to ask you one other question.

Under your bill, will you need to subscribe for a PIN number or once you get a PIN number, are you O.K. for any programs that are considered, quote, "harmful to children" or for each special 900 number, do you have to get another PIN number?

SENATOR SEWARD: No, the one PIN number would -- would cover the array of messages. The importance of the PIN number, Senator, is to obtain the number one would have to prove that they -- provide proof that they're 18 years of age or older.

Once that proof has been rendered, once someone has their PIN number, that would be it. They would not -- you would not have to repeat that process, right.

SENATOR LEICHTER: Now, let me ask you, and I don't know enough about phone service to be able to answer it, but would it be possible for the phone company, at the request of any subscriber -- I'm a parent and could I call the phone company and say, Please eliminate any 900 numbers -- now, it's true I may get myself in the same -- in the same boat that I was charging you with, because then I -- if I say that it would be harmful to children, well, then the phone company would be making that determination. However, I may be asking them, if I agree to let the phone company make that

determination.

My point is, does the technology exist where the phone company says, O.K., subscriber, residential subscriber Leichter called, cut him off of all the 900 numbers that we consider to give sexual messages. Could the phone company do that?

SENATOR SEWARD: Yes, they could and, matter of fact, that is the thrust of the previous bill that we just passed. What these two bills as a package address the same problem and that is giving the parents and the adults in the household, so to speak, the ability to control what minors living in that household may be listening to over the telephone.

The first bill, the so-called blocking bill, would do as you suggest. This second bill approaches the same problem in a different -- in a different way, so the answer is yes. The first bill addresses that. The phone company can install a blocking device in terms of your telephone line.

SENATOR LEICHTER: Well, Senator,

if that's so, then we have a much simpler way and one that doesn't skirt some of the constitutional issues that Senator Dollinger addressed our attention to. Let's make the phone company to put in, I don't know, once a year in every bill saying, if you wish to have your phone blocked from 900 numbers, if you will call, that blocking will go in effect, isn't that -- isn't that a fairer way and raises - doesn't raise these constitutional issues, than by requiring everybody who wants to listen to go in a certain sense, identify themselves, get a PIN number? Why do you -- why not proceed that way?

SENATOR SEWARD: Well, Senator, I -- I would have these concerns about not going the route of obtaining a PIN number and that is what would prevent a minor from accessing a pay telephone or any other phone that may not -- not have been blocked? It seems to me that the - while the blocking option is a good one, and it does address a part of the problem, I believe that the PIN number approach as outlined in the

second piece of legislation is a much more comprehensive approach. That's my reading.

SENATOR LEICHTER: I -- I accept that answer. But one -- I know we just did the -- the blockage one. Will -- will that -- will that be implemented in such a way that every residential subscriber will be informed of the ability to block all messages or the sexual messages that a parent may consider offensive to his or her children?

SENATOR SEWARD: Correct, Senator. The telephone company would be required to notify the customers of that option.

SENATOR LEICHTER: All right. So the first bill will do that which I was - thought would be a way of dealing with it. Your answer is, while that may not cover everything because there's pay phones, they'll go use a neighbor's phone, so yours certainly makes it less likely or more difficult for children that are determined to try to get this offensive - these offensive messages, but it carries with it

the identification or forcing people to identify themselves, getting a PIN number which may raise constitutional grounds; and secondly, we're now leaving it up to a Public Service employee to determine what is harmful to children.

I guess that's the issue. Thank you.

ACTING PRESIDENT FARLEY: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, just to perhaps supplement the chairman's comments so that Senator Leichter will at least understand my position on the bill.

The issue of whether the blocking occurs in the home or whether it occurs at the point of the transmission of the message was the exact issue before the Court of Appeals for the D.C. Circuit in the Alliance for Community Media case.

Prior to 1992, the Federal Communications Act had provided that local leased access cable television programmers

simply had to make available to each home a blocking device that you could call and request to be installed on your TV, and then you could block the message -- your children from watching the message by electing to do it in your home.

In 1992, the Congress changed the Federal Communications Act and said, We want to provide greater protection for children and families and require instead that the cable operators exercise their discretion as to whether or not it should be pre-subscribed; that is, that you would have to call and actually ask for the program to be transmitted on your leased access television channel into your home. That was the issue before the court and it was an extensive argument made by the cable operators that blocking in the home was a sufficient - the least offensive constitutional way to preserve everyone's constitutional rights.

The D.C. Circuit found in an 8 to 4, or 7 to 4 opinion, that in fact the Congress did have the power to require the blocking to occur at the time of transmission and to require

exactly what this bill requires, that you pre-subscribe to a leased access cable channel that contained material that was, under the federal law, simply indecent which I think is a broader standard than the standard that Senator Seward's legislation selects which is the "harmful to children", a standard that in my opinion is a more tightly confined standard, but I admit -- Senator Leichter shakes his head - perhaps we don't have the best refined case law on, but in my opinion it is nonetheless a stricter standard to require this limitation of the right to transmit these messages on, in this case, your telephone line or in the case that's before the Supreme Court your leased access television, and I'd simply point out one other thing.

The confidentiality that you're concerned about, I think we're all concerned about, but frankly when your telephone bill is sent to your house, the call is listed on your telephone bill, the number that you called, the time that you called it and how long you were on

it. So to the extent that you are trying to preserve absolute confidentiality on the part of the recipient of these telephone messages, you lose part of that when you place the call because the call is logged on the telephone bill. It shows up on your telephone records and, as Senator Paterson pointed out, if you're ever some day in a public forum looking for an appointment to the Supreme Court, they could subpoena your telephone records and find out whether you ever dialed these numbers from your home.

So we don't have, even under the current system, sort of a complete confidentiality in the ability of people to access these services. It does show up in a record of a public telephone company, and it seems to me that the Supreme Court will give us guidance on this issue and, at least from my point of view, the balancing that this bill strikes between the rights of an individual to watch a program and our need to try to restrict these messages only to adults, this is a fair

balancing. This bill embodies a fair balancing and it should be passed.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 47.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, at this time, I'd like to take up Calendar Number 139, Senate 5943, which was just reported from the Rules Committee.

ACTING PRESIDENT FARLEY: Secretary will read it.

THE SECRETARY: Calendar Number 139, by Senator Seward, Senate Print 5943, an act authorizing the extension of the time for the payment of real property taxes without

interest or penalty.

ACTING PRESIDENT FARLEY: Senator Skelos.

SENATOR SKELOS: Yes. Mr. President, is there a message of necessity at the desk?

ACTING PRESIDENT FARLEY: Yes, there is.

SENATOR SKELOS: Move to accept the message.

ACTING PRESIDENT FARLEY: All in favor of accepting the message, say aye.

(Response of "Aye.")

Those opposed nay.

(There was no response. )

The message is accepted. You can read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 47.

ACTING PRESIDENT FARLEY: That bill is passed.

Senator Skelos.

SENATOR SKELOS: We're waiting for a motion but, before we do that, is there any other housekeeping at the desk?

ACTING PRESIDENT FARLEY: Is there any other motions, announcements from the floor? There's none, Senator Skelos.

SENATOR SKELOS: If we could just stand at ease for a moment.

ACTING PRESIDENT FARLEY: We'll just stand at ease. We're awaiting something that will be coming right in shortly.

Senator Skelos, I believe Senator Tully.

SENATOR SKELOS: Please recognize Senator Tully.

ACTING PRESIDENT FARLEY: Senator Tully.

SENATOR TULLY: Mr. President, may we return to motions and resolutions?

ACTING PRESIDENT FARLEY: We

certainly may.

SENATOR TULLY: Mr. President, on behalf of Senator Larkin, I move to amend his bill, Calendar Number 84, Senate Print 5803-A, by striking out the amendments made on January 23rd and restoring it to its original Print Number 5803.

ACTING PRESIDENT FARLEY: The amendments are struck, and the bill is returned to its original print number.

Senator Skelos.

SENATOR SKELOS: Could we read the last section on that bill?

ACTING PRESIDENT FARLEY: Read the last section. Secretary will read Senator Larkin's bill, which is Calendar Number 84.

THE SECRETARY: Calendar Number 84, by Senator Larkin, Senate Print Number 5803, an act to amend Chapter 708 of the Laws of 1992, amending the General Municipal Law.

ACTING PRESIDENT FARLEY: You can read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 47.

ACTING PRESIDENT FARLEY: That bill is passed.

I think that concludes -- is that it? Senator Skelos, I think that concludes our business, sir.

SENATOR SKELOS: Would you recognize Senator Paterson.

ACTING PRESIDENT FARLEY: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

There will be an immediate conference of the Minority at the close of session in the Minority Conference Room.

ACTING PRESIDENT FARLEY: There will be an immediate conference of the Minority in the Minority Conference Room following session.

Senator Skelos.

SENATOR SKELOS: On behalf of Senator Bruno, there being no further business, I move we adjourn until Tuesday, January 30th, 1996 at 3:00 p.m. sharp.

ACTING PRESIDENT FARLEY: The Senate will stand adjourned until tomorrow at 3:00 p.m. sharp.

(Whereupon at 3:50 p.m., the Senate adjourned. )