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TELEX 89-463  
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441: 681-1616 FAX: 441-626-7987

8 SHENTON WAY  
SINGAPORE 0106  
65: 224-5000 FAX: 65-224-0530

**ASSOCIATED OFFICE:**

HASHIDATE LAW OFFICE  
IMPERIAL TOWER, 7TH FLOOR  
1-1, UCHISAIWAJCHO 1-CHOME  
CHIYODA-KU, TOKYO 100 JAPAN  
03-504-3800 FAX: 03-504-1009

Michael A. Nemeroff  
(202) 429-4235


July 30, 1990

N. Bradley Litchfield, Esq.  
Associate General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Brad:

Enclosed are some articles concerning a dispute over the use of 900 service by United States Senate candidate Hugh Parmer who is challenging Senator Phil Gramm. The service is provided by Digital Corrections Corporation and by AT&T which provides the phone lines for Digital. I am not sure that these stories have any impact on the Commission's consideration of AT&T's Advisory Opinion request because there appear to be no allegations of campaign finance law violations. However, we wanted the Commission to be made aware of these events.

Very truly yours,

  
Michael A. Nemeroff

Enclosure

90 JUL 31 AM 9:22  
FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

Requestor Comment  
to AOR 1990-14

# Parmer, firm may sue Bell in phone flap

## To bill or not to bill question on 900 number

BY MICHAEL CINELLI  
POST POLITICAL REPORTER

Hugh Parmer's campaign for U.S. Senate and a Florida-based communications company could file legal action next week against Southwestern Bell for refusing to bill telephone customers \$10 for calling the Texas Democrat's 900 number.

Representatives from Southwestern Bell and AT&T met by phone Friday in an attempt to resolve the controversy. The talks are scheduled to resume Monday.

On Friday, The Houston Post reported Southwestern Bell stopped charging for the calls to the Parmer campaign phone line to protect the company's image.

Mike Kelly, a spokesman for the Parmer campaign in Austin, said Friday, "We are meeting with our attorneys, hearing what our options are because this covers several areas of law — communications, campaign and constitutional."

"I don't know if we've endured any hardship," he said. "We just want them to do what they said they were going to do."

Digital Corrections Corp., a communications company based in

Riviera, Fla., signed a service agreement in June with AT&T to establish Parmer's 900 number. AT&T has a standing contract with Southwestern Bell to bill and collect on the phone service.

Parmer, who is challenging Republican Sen. Phil Gramm, began advertising the phone line on television about three weeks ago.

When an unidentified candidate called Southwestern Bell this week and asked for the same service, Southwestern Bell officials reviewed Parmer's recorded message and determined it constituted a pitch for political contributions.

Although Parmer's telephone fund-raising effort has been put on

hold, the Harris County Democratic Party's "Party Line" passed muster Friday.

Ken Brasel, a spokesman for Southwestern Bell, said the message on the county party's 900 number "seems to fall within the guidelines of information service, which is what 900 numbers are designed to do. It doesn't appear to be a political contribution."

Parmer makes no requests for funds in his statement. At the end of the recording, however, a second voice asks the caller to stay on the line "so we can send you a receipt for this call and additional information on the campaign."

The Democrats' phone line, which costs \$2.50 for the first minute and \$1 for each subsequent minute, lists upcoming events. There is no request for contributions, although all proceeds do benefit the county party.

Brasel pointed to the last line of Parmer's message as the differ-

ence.

"We have listened to both," he said. "One is a political contribu-

tion for which we will not bill and collect. That's the way we interpret the two messages."

Company officials apparently used the same interpretation on two 900 numbers Gramm's campaign operated for about three weeks prior to a Dec. 7 fund-raising dinner he held in Houston. Callers were charged either \$25 or \$50, depending on which line they dialed.

Larry Neal, a spokesman for the senator in Washington, said he wasn't aware of any billing problems with Southwestern Bell. "They (the phone lines) were designed for a specific event, and when that event ended we shut them down," he said.

The Post learned Friday, however, that Southwestern Bell stopped billing for the Gramm lines when the company learned of their existence.

The Gramm 900-number operation was run through the Home Shopping Network in St. Petersburg, Fla., by PM Marketing of Washington, D.C.

Home Shopping Network signed a service agreement with MCI, another long-distance telephone company, to set up the two 900 numbers. MCI has a billing and collection agreement with Southwestern Bell for 900 services.

Brasel said when Southwestern Bell learned of Gramm's 900 numbers, phone company officials listened to the messages and notified MCI to tell Home Shopping Network that Southwestern Bell would not bill for those calls.

"We handled them the same way we handled the Parmer campaign," he said.

Officials of Home Shopping Network didn't respond.

Bell South, based in Atlanta, also refuses to bill and collect for political contribution 900 numbers, a spokesman for that regional phone company said Friday.

The Post learned that a U.S. congressional candidate in Florida is running a 900 number to raise funds, and Bell South is billing and collecting \$25 for each call. It has been operating for at least two months.

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# Bell's decision probed

## Parmer campaign loses 900 service

By Anne Marie Kilday  
*Austin Bureau of The Dallas Morning News*

AUSTIN — The Texas Public Utility Commission wants to know why Southwestern Bell pulled the plug on Democratic U.S. Senate candidate Hugh Parmer's attempt to raise campaign funds by phone.

Citing "policy," the phone company has refused to bill its customers for calls to a long-distance 900 number aimed at raising money for Mr. Parmer's campaign to unseat U.S. Sen. Phil Gramm, R-Texas.

Bell's refusal to perform billing services for Mr. Parmer's campaign will be added as an emergency item to the PUC's weekly meeting Wednesday, PUC staffers said.

Mr. Parmer's campaign and the company providing the fund-raising service say they are considering legal action.

Mr. Parmer is using the new and increasingly popular method of political fund-raising in three state-wide TV commercials. Viewers are asked to call the phone number, which has the area code 900, and make a \$10 contribution to his campaign.

The 900 technology previously has been used in Texas to raise funds by Republicans, including Mr. Gramm and GOP gubernatorial hopeful Kent Hance.

When Mr. Gramm used a 900

number to sell tickets and raise contributions for a \$2.4 million fund raiser in the Astrodome last year, callers were directly billed by the long-distance carrier MCI Communications.

Southwestern Bell provided billing and collection services earlier this year for each \$5.95 call to a fund-raising arm of Mr. Hance's unsuccessful gubernatorial campaign.

Charles Smaistria, an attorney for PUC chairman Paul Meek, said the commission will direct its staff to investigate Southwestern Bell's refusal to bill callers to Mr. Parmer's number.

"We don't want this to be perceived as something of a partisan nature. It is strictly telephone business, and what is going on," Mr. Smaistria said.

Commissioner Jo Campbell, the lone Democrat on the PUC, criticized the telephone company's action.

"Southwestern Bell is playing censor in violation of the First Amendment rights of any person in this country," Ms. Campbell said.

Cindy Brinkley, a spokeswoman for Southwestern Bell, said the telephone company's policy and routine contracts for 900 service do not permit political fund raising.

She said the billing services for Mr. Hance's campaign were "inadvertently" performed by the company.

"Our policy is that we will not bill and collect for anything pertaining to campaign fund raising," Ms. Brinkley said.

Ms. Brinkley said that Bell does not routinely monitor 900 numbers and that it learned of Mr. Parmer's fund-raising method only when another political candidate inquired about setting up similar service.

Mike Kelly, a spokesman for Mr. Parmer, said Friday that those involved in the campaign hope Southwestern Bell will reverse its decision.

"I have no idea what the reasoning is behind this. It doesn't make any sense at all to me. And I feel certain that they will change their position," Mr. Kelly said.

"We have no reason to suspect that Mr. Gramm is behind this, although Sen. Gramm has received more \$6,090 from the Southwestern Bell political action committee since he took office," he said.

Campaign finance reports at the Texas secretary of state's office show that Mr. Gramm received \$2,930 this year from Southwestern Bell's political lobbying group and another \$1,000 from the Bell South

federal political action committee. He also received \$2,000 from the AT&T PAC.

A spokesman for Mr. Gramm, Larry Neal, said the senator did not complain or notify the phone company about Mr. Parmer's 900 number.

"Our feelings go in the other direction. We wish that Parmer's 900 service would be allowed to run for as long as he can pay for it. It's clearly an enormous financial drain," Mr. Neal said.

Under an agreement with Digital Corrections Corp. of Florida, Mr. Parmer would keep \$7 of each \$10 contribution, with the remaining \$3 split among Digital, AT&T Communications of the Southwest and Southwestern Bell.

Spokesmen for Digital and AT&T also complained Friday about the "unprecedented" action by Southwestern Bell.

"I consider the position of Southwestern Bell to be totally arrogant and a pure violation of the First Amendment," said Digital president Scott Roberts. He said his company is the only one sanctioned by the Federal Election Commission to provide fund-raising services for political candidates.

"We are pursuing legal recourse now," Mr. Roberts said.

AT&T spokesman Rick Morrison said the long-distance company is providing fund-raising services to political candidates nationwide.

Southwestern Bell is the first local phone company to refuse to bill its customers for 900 calls, he said.

"We believe that the billing contract we have with Southwestern Bell allows us to provide this type of service, and that is where we stand on it. I don't know what the legal outcomes will be if there are any," Mr. Morrison said.

The 900 phone number was not operating late Friday afternoon, and no one at any of the phone companies professed to know why.

Ms. Brinkley said she was not aware that calls to the number were not being completed and said she could not explain the cessation of service.

Said Mr. Morrison: "We have certainly not authorized it to be taken down. It must be a technical problem."

Mike McCurry, a spokesman for the Democratic National Committee, said the use of 900 telephone numbers for campaign contributions "is becoming a widely accepted fund-raising tool."

Southwestern Bell's refusal to bill for the service "is a troubling development," he said. "The 900 number technology is very important, because it gets regular voters involved in helping candidates. It's a good way of reaching out to average folks and reducing reliance on the fat cats' money."

Staff writer Karen Adams in Austin contributed to this report.

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## PUC to hear controversy over Parmer's 900 listing

BY MICHAEL CINELLI  
POST POLITICAL REPORTER

Hugh Parmer's legal battle with Southwestern Bell will start with an emergency hearing Wednesday before the Public Utilities Commission in Austin, sources in the state capital told The Houston Post Sunday.

The hearing will focus on a First Amendment question, the sources said: whether Southwestern Bell can refuse to bill customers for calls placed to the Texas Democrat's 900 phone line touting his campaign against Republican incumbent U.S. Sen. Phil Gramm.

Parmer has to exhaust all administrative avenues of resolving the dispute before he can move to the court system, the sources said.

The Post reported last week that Southwestern Bell stopped billing customers on Thursday after determining the Parmer campaign's 900 line constituted a political contribution.

Southwestern Bell officials said they will not bill customers for calls to 900 political contribution numbers to protect its image, but often aren't aware that the numbers are operating since the service is sold by AT&T.

AT&T disagreed last week with Southwestern Bell's action. Today, officials of the two companies are scheduled to continue discussions started Friday in an attempt to resolve the problem.

Mike Kelly, a spokesman for the Parmer campaign, would neither confirm nor deny that a hearing is scheduled before the PUC this week.

Kelly said there will be a news conference at 2 p.m. today in front of Southwestern Bell's Austin headquarters to announce the Parmer campaign's plans for challenging the phone company's action last week.

But Walter E. Steimel Jr., an attorney for a Washington, D.C., firm that helped set up the 900 number line for the Parmer campaign, is scheduled to be in Austin this week, possibly as early as today.

Southwestern Bell spokesman Ken Brasel said late Sunday night he couldn't comment on the possibility of a PUC hearing.

As for the First Amendment argument, Brasel said, "We are fulfilling our First Amendment obligations by providing 900 service in a non-discriminatory manner to all people.

"There's no law of the land that says we must bill and collect for all people. In fact the law of the land is to the contrary."

## TEXAS ELECTIONS: CAMPAIGN ADS FOR U.S. SENATE

### HUGH PARMER AIRS THREE NEW TV ADS

By Anne Marie Kilday

Austin Bureau of The Dallas Morning News

Hugh Parmer, the Democratic nominee for the U.S. Senate, introduces himself to Texas voters as the challenger to Republican incumbent Phil Gramm in a series of new campaign commercials.

In the TV spots, Mr. Parmer, a Fort Worth lawyer, touts his accomplishments in the state Senate.

The ads are expected to reach about 70 percent of Texas voters, but campaign aides declined to discuss the amount they are spending or what markets the ads will appear in.

The three 30-second spots, produced by Mandate: Campaign Media of Dallas, are plain and simple.

Mr. Parmer, wearing a blue suit, white shirt and red tie, strides purposefully onto the screen before a white backdrop in all three commercials. In one spot, he uses a single prop — a slingshot — as he says that some people consider Mr. Gramm to be "Goliath."

He casually tosses away the weapon to symbolize his view that Mr. Gramm is not an unbeatable giant.

Each advertisement concludes with a narrator giving a long-distance telephone number for voters to donate \$10 to Mr. Parmer's campaign. The spots include a notice, in small letters: "A \$10 charge for each call will appear on your monthly telephone bill."

### TEXT OF THE ADS

#### Spot 1: "Goliath"

Voice of Hugh Parmer: "My name's Hugh Parmer. People tell me running against Phil Gramm is like taking on Goliath. Well, I disagree. Since Gramm's been in Washington, he's stopped thinking like a Texan. That's why he votes against things like Meals on Wheels. Hugh Parmer passed the Hunger Relief Act in Texas. Texans want a senator that knows the difference between being tough, and being a bully. And that's why I'll beat Phil Gramm."

#### Spot 2: "2 Issues"

Voice of Hugh Parmer: "I'm Hugh Parmer, the Democratic nominee for the United States Senate. People tell me they are tired of politicians — they want to talk about issues. Well, here are two: I'm in favor of the death penalty; I wrote the serial murderer death penalty law in Texas. Abortion? It's a private matter and the politicians ought to stay out of it. If you've been looking for a candidate that'll meet the tough issues head on, you've found him."

#### Spot 3: "Differences"

"There's a big difference between Hugh Parmer and Phil Gramm. As a senator, Gramm has voted against every penny for educating our kids. I vote for it. Gramm is so extreme that he votes against Meals on Wheels. Hugh Parmer passed the Hunger Relief Act. If you agree with me, I need your help."

### ANALYSIS

In all three commercials, Mr. Parmer plays up his role as the underdog challenger. He criticizes Mr. Gramm, by calling him a bully and charging that he has lost touch with Texans.

The three commercials already have run into opposition because of the Parmer campaign's use of a 900 telephone number to raise money. Each call to the number costs \$10, with \$7 going to the Parmer campaign and \$3 to the companies providing the recorded message, including a private vendor, AT&T and Southwestern Bell.

But Southwestern Bell last week informed the Parmer campaign that the phone company would not bill its customers for the \$10 "contribution" charge. The Parmer campaign is considering legal action against the phone company.

The "2 Issues spot" — in which Mr. Parmer says he wrote the Texas law that expanded the death penalty to include serial murderers — has been challenged by state Sen. Ike Harris, R-Dallas.

Mr. Harris has called the commercial "false advertising." When Mr. Harris sponsored a similar bill and allowed Mr. Parmer to sign on as co-sponsor, that bill was defeated. Mr. Parmer stands by the ad, however, because when the Legislature ultimately passed the death penalty for serial killers, he says lawmakers used language that he had written.

Mr. Parmer's claim that Mr. Gramm has voted "against every penny" of fed-

eral funds for education has been disputed by the senator's office. Spokesman Larry Neal said that Mr. Gramm recently voted for \$24 billion in education funding.



Hugh Parmer

Mr. Parmer recently voted in favor of a plan to equalize school funding in Texas, as well as a package of \$528 million in state tax and fee increases to pay for the education finance reform measure.

In the commercial pointing out the differences between him and Mr. Gramm, Mr. Parmer accurately states their widely divergent views on the abortion issue.

Mr. Parmer opposes further restrictions on abortion rights, and Mr. Gramm favors a constitutional amendment banning abortion, except when the life of the woman is in danger.

As for Mr. Parmer's contention that Mr. Gramm voted against funding for Meals on Wheels, records show that the Republican senator voted twice against federal budget transfers to increase funding for meals for elderly shut-ins.

Mr. Parmer sponsored the Texas Hunger Relief Act of 1985, which has provided \$13.8 million for meals for the elderly, emergency food stamps and the Women, Infants and Children food program.