

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SOUTH CENTRAL BELL TELEPHONE COMPANY'S)
GENERAL SUBSCRIBER SERVICES TARIFF,) CASE NO. 10274
INFORMATION DELIVERY SERVICES, "976" SERVICE)

O R D E R

On February 16, 1988, South Central Bell Telephone Company ("South Central Bell") filed proposed revised tariff pages for Section A13 of the utility's General Subscriber Services Tariff ("GSST"). The proposed changes relate particularly to Section A13.18 which contains tariff provisions relating to information delivery services. Such information delivery services have become commonly known as "976" or "Dial-It" services. South Central Bell states that the proposed changes are designed to improve administrative controls over "976" service, and to reduce public complaints and bill adjustments related to the services.

According to South Central Bell, the proposed revisions will make clear that:

1. "976" service may not be used directly or indirectly for live voice connections, nor shall messages from callers be recorded;
2. "976" service may not be connected to live bridging arrangements, nor may "976" callers be referred to non-"976" numbers which may or may not be connected to a live bridge;

3. The company will not bill any "976" per call charges on behalf of the subscriber that exceed a maximum of \$5.00;

4. "976" service is not to be used as a collection device for other goods or services, nor to solicit contributions, i.e. charitable, political, etc.;

5. Vendors shall not require "976" callers to prove that a call was made, such as [by] mailing in copies of their telephone bill, nor a program-provided Personal Identification Number ("PIN"), as a condition of receiving any services, goods, or prizes;

6. South Central Bell may refuse or discontinue service to any vendor who provides "976" programs containing information that South Central Bell may choose not to be associated with due to its need to protect its corporate image. Also, excessive nuisance to South Central Bell and the public and/or the level of complaints and adjustments may be considered by South Central Bell when determining whether service will be continued or provided.

In addition, the proposed tariff changes include controls over vendor advertising.

Notice of the proposed tariff changes was given to all "976" vendors currently subscribing to South Central Bell's information services tariff. On March 7, 1988, Omnicall, Inc. ("Omnicall"), filed with the Commission a Motion for Full Intervention, Suspension of Tariff and Informal Conference.

Two services currently provided by Omnicall, "976-GABB" and "976-LIVE," involve the use of "976" numbers and PINs to refer callers to other non-"976" numbers. Omnicall apparently desires

to use "976" numbers only for the billing capability associated with such numbers.

Omnical's "conferencing" services are provided through non-"976" numbers. In other words, a person interested in participating in a "group conference" must complete one phone call in addition to his/her original call to the "976" number. The "conferencing" service is provided during this second call, made to a standard telephone number, or to an "800" number. Omnicall claims that it uses South Central Bell's "Dial-It" Service "primarily to provide automatic announcements explaining to callers how to access its group conferencing services." (Omnicall brief at pp. 2-3) During such calls, a unique PIN is provided, which is later used, during the second call, as proof that the group conference service desired has been paid for in advance (i.e. the call which generated the PIN also triggered the billing mechanism). While Omnicall claims that callers are paying for "instructions on how to access a group conference" or "information" (i.e. the program provided PIN), it is clear to the Commission that callers are actually being charged, in advance, for the group conferencing service ultimately to be provided. We observe that South Central Bell is no way involved in, and cannot ensure the provision of, the group conferencing service to be provided, even though billing will take place in a situation where the second, non-"976" call, is either not initiated, or otherwise not completed.

Notably, South Central Bell's currently effective "Dial-It" tariff does not provide for live services. Omnicall's live "group

conference" services cannot be provided directly through any "976" number assigned pursuant to the current "Dial-It" tariff, because the current tariff permits only recorded services. South Central Bell's proposal would, of course, prohibit Omnicall from subscribing to "Dial-It" for the purpose of referring callers to other numbers while billing, through the "976" number, for the service ultimately provided. South Central Bell's proposal would in no way affect what is now the second call, which is made to a non-"976" number.

On March 11, 1988, South Central Bell, by letter, stated its willingness to withhold implementing its tariff proposal, which was scheduled to become effective on March 16, 1988 until an informal conference with Omnicall and the Commission Staff was held. On March 31, 1988, a meeting between South Central Bell, Omnicall, and the Commission Staff was held. The Attorney General was also represented. At the meeting Omnicall described the nature of its "976" service offerings and described its own proposals for eliminating the concerns of South Central Bell, such concerns apparently having led to the proposed tariff revision. Evidently, South Central Bell's concerns have not been placated, for South Central Bell has not withdrawn or otherwise altered its proposal of February 16, 1988.

On April 14, 1988, Omnicall filed a brief in support of its previously described motion. Omnicall claims that South Central Bell's proposal is unlawful in that it: 1) violates the First Amendment of the United States Constitution; 2) violates the Modified Final Judgment; 3) constitutes impermissible regulation

of "Enhanced Services;" 4) violates Federal Antitrust law; and 5) violates Kentucky law.

The Commission, given the scope of our enabling statute, KRS Chapter 278, is interested in whether South Central Bell's proposal is consistent with Kentucky public utility law. The Commission lacks jurisdiction to rule on Omnicall's federal law claims. Nevertheless, we observe that the various federal claims raised by Omnicall do not persuade us that South Central Bell's proposal is unlawful.

We fail to see how this proposal of South Central Bell, a private business, is violative of the First Amendment. We further note that, with respect to all federal issues raised by Omnicall, South Central Bell does not propose to deny Omnicall access to the public switched network. South Central Bell's proposal will not prevent Omnicall from offering "group conference" services. The proposal will cause Omnicall to choose some other method to collect payment for its "group conference" services. With the narrow scope of the proposal in mind, we confine ourselves to the question for the Commission: Is South Central Bell's proposal reasonable and otherwise consistent with KRS Chapter 278?

Omnicall argues that South Central Bell's proposal is violative of KRS 278.170(1), in that it "discriminates" against providers of group conferencing. This argument must be rejected. The proposal does not discriminate against any person or identifiable class of persons. The proposal does prohibit certain practices, which could be engaged in by persons other than

"providers of group conferencing."¹ Additionally, the proposal appears to apply equally to all information providers. The fact that Omnicall's service is different from other types of "976" services does not support the idea that South Central Bell's proposal is, therefore, discriminatory against Omnicall.

KRS 278.030(2) provides, "Every utility . . . may establish reasonable rules governing the conduct of its business and the conditions under which it shall be required to render service." Also, KRS 278.030(3) provides, "Every utility may employ in the conduct of its business suitable and reasonable classifications of its service, patrons and rates. The classifications may, in any proper case, take into account the nature of the use . . . the purpose for which used, and any other reasonable consideration." (Emphasis supplied.) We feel that South Central Bell's proposal is a reasonable approach to clarifying the purpose and intent of its Dial-It tariff, is consistent with KRS 278.030, and may eliminate South Central Bell's concerns associated with "976"

¹ For example, the proposal would prevent a book dealer from using a "976" telephone number as the billing device for books ultimately shipped pursuant to delivery instructions obtained from a caller during a second telephone call, to a telephone number given out, along with a unique PIN, during the original call to the "976" number, e.g., "976-Book."

service, while still permitting the use of the service for the provision of recorded announcements.²

South Central Bell's proposal obviously reflects a business decision to alter one service offering in order to reduce customer complaints and bill adjustments.³ South Central Bell also has an

² Omnicall asserts that its current use of South Central Bell "976" numbers to provide PINs and referrals to non-"976" numbers is expressly permitted by Section A13.18.1.A.1 of the currently effective tariff. We disagree. Omnicall concedes that "announcement and recorded program services" are not defined by the tariff. (Omnicall brief at p. 6). We must interpret the quoted language by making reference to the "Dial-It" tariff as a whole. Were we to accept the interpretation urged by Omnicall, the tariff would "expressly permit" the use of "announcement and recorded program services" to obtain payment for virtually all types of goods or services. This could not be what South Central Bell contemplated when the original tariff was filed, and is certainly not what the Commission expected. The fact that Omnicall's "group conference" services are provided via telephone is not material to the interpretation of Section A13.18.1.A.1. The terms "announcement and recorded program services" are not defined by the tariff, but the tariff as a whole seems to contemplate a single transaction (i.e. the call to the "976" number generates all of the information a caller seeks and is willing to pay for). In any case, South Central Bell's proposed changes clarify the purpose and intent of the tariff, obviating the need for us to determine precisely the limits of the original version of Section A13.18.1.A.1.

³ In its brief, Omnicall suggests that the Commission require South Central Bell to establish a "pilot program" which would include the provision of free blocking of access to "976" services. (Omnicall brief, p. 21.) South Central Bell asserts that "approval of the tariffs proposed by South Central Bell should displace any need for an optional exchange access line blocking program." (South Central Bell brief, p. 16.) As stated earlier, our focus is on the reasonableness of South Central Bell's proposal, which does not include an optional blocking program. However, the Commission intends to monitor the level of customer complaints, and, if necessary, may investigate the need for optional blocking, at some future time.

