COMMONWEALTH OF KENTUCKY

BEFORE THE UTILITY REGULATORY COMMISSION

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In the Matter of

THE REVISION OF TELEPHONE UTILITY TARIFFS LIMITING LIABILITY FOR DIRECTORY LISTING ERRORS AND OMISSIONS	))))	Administrative Case No. 222

O R D E R

On July 2, 1980, the Commission issued an order in this matter in which the Commission found that it was not in the public interest to allow telephone utilities to attempt to limit their liability for errors and omissions in their directory ("white pages") listings by including such limits in their tariffs. Accordingly, the Commission ordered that any current liability limitation in a telephone utility's tariff for directory listing errors and omissions was rescinded.

On July 21, 1980, General Telephone Company of Kentucky (General Telephone) requested a stay of the Commission's order of July 2, 1980 and petitioned the Commission for reconsideration of the matter. Cincinnati Bell, Inc., Continental Telephone Company of Kentucky, South Central Rural Telephone Cooperative Corporation, Inc., Echo Telephone Company, South Central Bell Telephone Company and West Kentucky Rural Telephone Cooperative Corporation also petitioned for rehearing. On August 5, 1980, the Commission granted the petitions and set the matter for hearing while reserving the right to affirm its order of July 2, 1980.

The hearing was held on August 28, 1980 at 1:30 p.m., in the Commission's offices at Frankfort, Kentucky and the Attorney General's Division of Consumer Intervention was

permitted to intervene.

At the hearing, Cincinnati Bell stated its belief that the Commission can authorize the subject tariffs since KRS 278.040(2) vests the URC with exclusive jurisdiction over rates and services of all non-energy utilities and the "white pages" directory is compiled as a result of the Commission's service requirements. However, the URC is nonetheless unable to award damages to a complainant for any failure of the phone companies in this regard. At best, the Commission can order the utility to take corrective action in accordance with 807 KAR 25:040(6). South Central Rural Telephone agreed with the Commission that the courts provide the proper forum for customers' claims for damages.

The telephone companies advocate the retention of liability limits as a means of minimizing their risk and keeping rates to a minimum. Insurance for this risk was discounted by the utilities, but none testified that they had explored the possibility.

Additionally, none of the utilities could state absolutely that their liabilities would increase as a result of deleting the liability limits from their tariffs. Most companies have had these tariffs for many years and it is reasonable to assume that this is the reason they did not present any hard data showing their experience in paying and settling claims before the liability limits were included in their tariffs and afterwards.

Since South Central Bell has never had and does not currently have such a tariff provision, South Central was able to furnish the Commission with information concerning its litigation and settlement experience in cases of directory listing errors and omissions. This information showed that South Central settled lawsuits in the years 1972-1977 for a total of approximately $10,000. However, the majority of these lawsuits pertained to errors or omissions in both "white" and "yellow" pages listings.

Even including the "yellow" pages settlements, the annual settlement rate was only about $1,700 per year. As for the claims information supplied, again the majority of the roughly $17,000 in settlements paid pertained to both "white" and "yellow" pages complaints. Including the "yellow" pages settlements, South Central only paid an average of $1,700 per year for the period 1971-1980. We cannot view the Company's paying $3,400 in settlements annually as impacting significantly on a company with revenues as large as South Central Bell's. Moreover, South Central's rates are not significantly higher than other telephone companies as a result of Bell's lack of a tariff limiting its liability in such cases. For this reason we do not believe that the removal of the liability limits in the other telephone utilities' tariffs will create a noticeable increase in customers' rates. Moreover, the companies all testified that their accuracy in publishing their directories is very high, thus further minimizing any impact on the company or its customers from elimination of such tariffs. South Central currently experiences only 1 error in 1,000 listings (T.E. 92), and Cincinnati Bell only has 49 errors out of 223,000 in its latest Kentucky directory (T.E. 40).

One witness testifying at the hearing stated that the reason the telephone utilities need the subject tariff provisions is because they have no defense to a claim where a customer alleges simple, ordinary negligence (T.E. 86). In light of this statement, it appears that the liability limits are currently operating as a deterrent to claims and lawsuits (T.E. 31). We do not believe it is a proper role for this Commission to assist in discouraging a customer from seeking appropriate redress for any injury.

The Attorney General advocates a liability limit which provides a 50% reduction in the customer's monthly exchange rate

until the problem is corrected so as to provide a uniform and nondiscriminatory compensation to all customers aggrieved. We agree that there is a lack of uniformity in the amount and type of settlement which the utilities are currently making under their tariffs. Such tariffs generally provide for an abatement of all or a portion of the monthly charges or additional fees paid by a subscriber as compensation for a directory error. However, the phone companies testified that they do not end their efforts to remedy directory errors or omissions with the tariff provision. Cincinnati Bell, for example, takes out a newspaper ad in a paper of general circulation to announce all corrections. Other companies agree in certain circumstances to provide corrective bill inserts or agree to provide other free service or a greater abatement of charges than their tariff liability limits specify. In this regard, the Commission find there is the potential for discriminatory treatment of individual customers if the disparity in remedial action taken by telephone companies is allowed to continue. Obviously, these liability limits are not perceived by the utilities as crucial to keeping rates low or they would strictly adhere to them. Likewise, we are not informed as to whether utilities in other jurisdictions consistently apply liability limits where they have been allowed to include them in their tariffs. We do note, however, that the Tennessee Public Service Commission has recently indicated its intent to deny a request by South Central Bell to include a similar liability limitation in their tariff.[1/]

We have noted the wealth of cases cited by the utilities in which such liability limits were upheld by courts in various jurisdictions, but find them unpersuasive in that the decisions either pertained to a limitation of liability clause in "yellow"

1/ Decision in Tennessee PSC Docket No. U-6896 announced orally at meeting held October 21, 1980 under Open Meetings statute.

pages contracts or involved cases where the tariff was challenged by a customer in court, rather than at the agency level. In the recent case of Louisville Bear Safety Service, Inc. v. South Central Bell Telephone Co., 571 S.W. 2d 438 (Ky. App. 1978), the liability limit being questioned was part of a "yellow" pages contract. The liability limit contained therein provided for complete abatement of the advertising charge in the event of a telephone company's error or omission in the patron's ad. However, South Central has proposed in this proceeding to limit their liability for "white" pages errors and omissions to 50% of the customer's monthly charge.

The "yellow" pages advertisers are also in a totally different position than the "white" pages subscribers in that they can pursue other modes of advertising, while the "white" pages subscribers will not be able to readily and economically redistribute their listing information. Because the telephone utilities enjoy the protected status of legal monopolies they can and have been held to different standards when they provide a public utility service than when they are functioning in a competitive atmosphere.

FINDINGS AND ORDER

The Commission after consideration of all the above-stated reasons and all other evidence of record and being advised FINDS:

1. That the tariffs of all the telephone utilities on file with this Commission, with the exception of South Central Bell Telephone Company, contain provisions which attempt to place limits on the damages for which those utilities may be liable as a result of "white pages" directory listing errors and omissions;

2. That South Central Bell of Kentucky has proposed to include a provision in its tariff which would limit its liability for "white pages" directory errors and omissions to the lesser of 50% of the monthly basic exchange rate or $500.00;

3. That the courts provide the proper forum for customers' claims for damages regarding directory errors and omissions;

4. That the existing and proposed tariff provisions which attempt to limit the liability of the telephone companies are not in the public interest;

5. That accordingly, this Commission's Order of July 2, 1980, issued in this matter should be reaffirmed.

Based upon the above-stated findings, it is therefore ORDERED that any existing telephone utility tariff provision which attempts to limit the company's liability for damages claimed as a result of "white pages" directory listing errors and omissions is hereby rescinded.

It is FURTHER ORDERED that the tariff provision proposed by South Central Bell of Kentucky which attempts to limit the company's liability for "white pages" directory errors and omissions is hereby denied and rejected.

It is FURTHER ORDERED that this Commission's Order of July 2, 1980 issued in this matter be and hereby is reaffirmed.

It is FURTHER ORDERED that all telephone utilities shall file complying tariffs which delete any provisions which set a limit on their liability for "white pages" directory errors and omissions within thirty (30) days.

Done at Frankfort, Kentucky this 24th day of October, 1980.

UTILITY REGULATORY COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Secretary

TO BE
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OF

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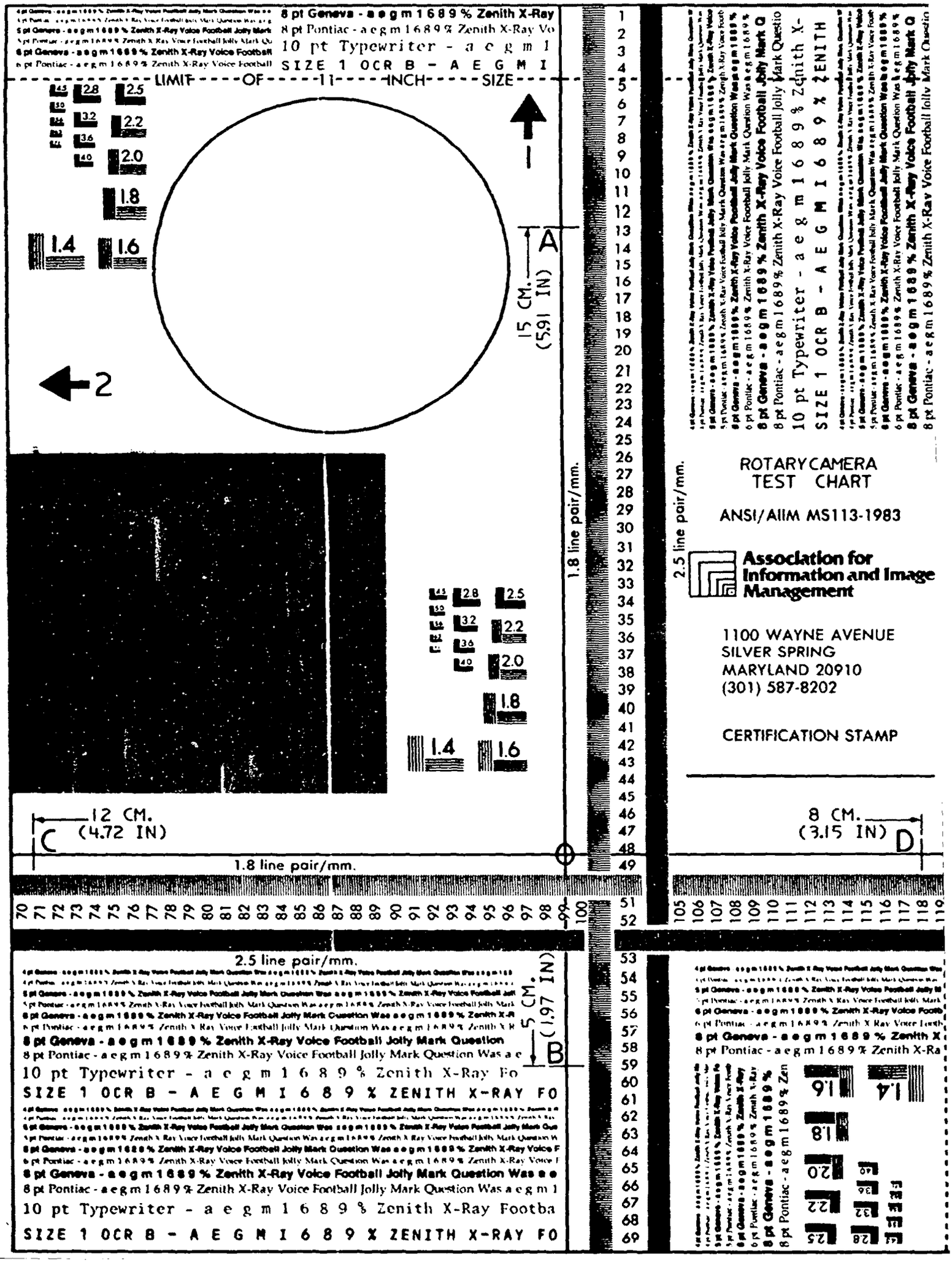
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Public Service Commission - Original Orders
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Order Bk 76 10-28-80 case # 6126-N and Ind Large

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DATE Oct 16, 1990

SIGNATURE OF CAMERA OPERATOR Billie Rodgers

NAME OF MICROGRAPHICS LABORATORY DOING FILMING

Public Records Division

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