

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 June 24, 1988, the Commission entered an Order approving certain changes to the "Dial-It" or "976" tariff of South Central Bell Telephone Company ("South Central Bell"). The approved tariff inter alia, prohibits subscribers to "976" service from using the service, directly or indirectly, for the provision of live voice connections, or to refer callers to other non-"976" numbers. The Order also denied Omnicall, Inc.'s ("Omnicall"), request for intervention and suspension of the proposed tariff.

On July 14, 1988, Omnicall filed a petition for reconsideration and requested a hearing. South Central Bell filed a response in opposition to Omnicall's petition on July 27, 1988.

South Central Bell is a privately owned, regulated public utility. South Central Bell has a monopoly on local exchange telephone service within specific geographical areas of Kentucky. In addition to those monopoly services, South Central Bell offers other services which are not monopoly services, but are competitive with other, unregulated alternatives. The billing feature of "976" service is such a competitive service.

Unlike local exchange service (network access), to which a subscriber arguably could claim entitlement, "976" billing service, though tariffed, is offered at the discretion of South Central Bell. South Central Bell may choose to enlarge, or narrow, the scope of this offering, or withdraw it completely. In any case, initial determinations as to the breadth of this service are properly entrusted to the business judgment of South Central Bell.

Citing concerns for its corporate image, and for the healthy development of information services, South Central Bell has decided to prohibit the practice of using its "976" services to promote live conversation and group conferencing services. In our June 24, 1988 Order we found South Central Bell's decision to be entirely consistent with KRS 278.030(3). We read this section of the statute as an affirmative grant to South Central Bell to make certain management decisions related to service, without unnecessary interference, and subject only to Commission approval. As to the need to control the content of certain commercial messages the company is willing to bill customers for, we will not substitute our judgment for that of South Central Bell.

Omnical's claim of discrimination, raised in both its brief and its petition for reconsideration, was rejected in our earlier Order. The tariff change is plainly nondiscriminatory -- it restricts certain practices, and applies equally to all subscribers to the tariff. Omnical's claim that South Central Bell discriminates in favor of AT&T is without merit. AT&T is not a subscriber to the "Dial-It" tariff. AT&T's subscribers may

provide services similar to those of Omnicall, but South Central Bell lacks the ability to govern the practices of AT&T's subscribers. The fact that South Central Bell may provide billing services for AT&T does not support Omnicall's discrimination claim. See Omniphone, Inc. v. Southwestern Bell Tel., Tex.App.-Austin, 742 S.W.2d 523, 527-28, (1987) (Telephone Company did not violate state anti-discrimination statute by billing for AT&T "700" and "900" service, while refusing to bill for certain "976" messages). Were Omnicall to subscribe to AT&T "700" or "900" services, Omnicall's operation would then be beyond the scope of South Central Bell's "976" tariff.

Omnicall's pleadings and brief have attempted to inject collateral issues that are beyond the jurisdiction of this Commission. We cannot adjudicate claims of violations of anti-trust law and the law of United States v. AT&T, 552 F.Supp. 131 (D.D.C.), aff'd sub nom., Maryland v. United States, 460 U.S. 1001 (1983), (The "Modified Final Judgment"), nor Omnicall's claims of prior restraint of protected speech. Our prior Order found that Omnicall has failed to demonstrate that this proposal of South Central Bell constitutes a violation of Omnicall's right of free speech. The actions of a private company, upon its own initiative, are not subject to due process analysis. Jackson v. Metropolitan Edison Co., 419 U.S. 345, 42 L.Ed.2d 477, 95 S.Ct. 449 (1974). See also Heflin v. Kentucky State Racing Com'n., 6th Cir., 701 F.2d 599 (1983), per curiam, (actions of privately owned, regulated race track not subject to Fourteenth Amendment due process analysis). Even the censorship of certain lawful messages

by a telephone company is permissible. Carlin Communications v. Mountain States Tel. & Tel., 9th Cir., 827 F.2d 1291, 1297 (1987), cert. denied, 108 S.Ct. 1586, 99 L.Ed.2d 901 (1988).

Commission approval of tariff changes containing such restrictions does not alter the due process analysis. Carlin Communications v. Southern Bell Tel. & Tel., 11th Cir., 802 F.2d 1352 (1986).

Our earlier decision was intended to address only Omnicall's discrimination claims arising under state law. We affirm our earlier rejection of the claims of unreasonable discrimination. Our decision to approve the tariff is based upon a review of the language of the tariff itself, and Omnicall's discrimination claim. Further participation by Omnicall could not develop facts that would assist the Commission. South Central Bell's tariff is lawful and nondiscriminatory.

Based upon the foregoing, the petition of Omnicall is hereby DENIED.

Done at Frankfort, Kentucky, this 3rd day of August, 1988.

PUBLIC SERVICE COMMISSION

Charles D. Blanton, Jr.
Chairman

Robert M. Davis
Vice Chairman

James N. Williams, Jr.
Commissioner

ATTEST:

Forest M. Skaggs
Executive Director