

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | | |
|--|---|----------------------|
| In re: Investigation into the |) | DOCKET NO. 880250-TP |
| operation of OMNICALL, INC. (formerly |) | ORDER NO. 25509 |
| ULTRAPHONE, INC.) and live bridging in |) | ISSUED: 12/19/91 |
| general |) | |
| |) | |

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 SUSAN F. CLARK
 J. TERRY DEASON
 BETTY EASLEY
 MICHAEL MCK. WILSON

ORDER TO SHOW CAUSE

BY THE COMMISSION:

BACKGROUND

By Order No. 18427, issued November 16, 1987, we instructed our Staff to initiate an investigation into the operation of Omnicall, Inc. (formerly Ultraphone and hereinafter referred to as Omnicall) and live bridging in general. This Order is the result of the investigation.

On December 15, 1986, Omnicall filed a complaint against General Telephone Company of Florida (GTEFL). The complaint was in response to GTEFL's intent to disconnect Omnicall's 976 service because Omnicall was allowing live bridging, the practice of permitting 976 callers to converse with each other at the conclusion of the 976 recording. GTEFL believed that this practice violated its tariff. Omnicall alleged that GTEFL's actions violated federal anti-trust laws, the United States Constitution, and GTEFL's consent decree. On January 2, 1987, Omnicall filed an almost identical complaint against Southern Bell Telephone and Telegraph Company (Southern Bell).

Shortly after the complaints were filed, Omnicall began negotiating with GTEFL and Southern Bell. The parties ultimately reached a compromise agreement, which they viewed as in compliance with their tariffs. Under that agreement, the caller reaches a 976 number and is given a recorded message concerning the nature of the service, a personal identification number (PIN), and a second number to call. The caller then dials the second number, enters

DOCUMENT NUMBER-DATE

12545 DEC 19 1991

FPSC-RECORDS/REPORTING

ORDER NO. 25509
DOCKET NO. 880250-TP
PAGE 2

the PIN and is allowed to access or "bridge" the group discussion on a non-976 basis. There is no charge for the second call.

By Order No. 18427, issued November 16, 1987, we dismissed both complaints because the service was no longer being provided in the manner that gave rise to the complaints. However, preliminary data gathered by our Staff raised the concern that because of Omnicall's provision of live bridging it met the definition of a telecommunications company pursuant to Section 364.02, Florida Statutes. Therefore, we instructed our Staff to begin an investigation of Omnicall's operation and live bridging in general. This Order is the subject of that investigation.

DISCUSSION

We believe that the provision of live bridging telecommunications services to unaffiliated entities, through the referral of a 976 or 976-like call to a second number, does constitute operation as a telecommunications company. Section 364.02(7), Florida Statutes (Supp. 1990), defines a telecommunications company as "every corporation, partnership, and person . . . offering two-way telecommunications service to the public for hire within this state by use of a telecommunications facility."

First, we find that Omnicall and entities like it are offering two-way telecommunications to the public. Any person with a residential or business line can call the 976 number, obtain the PIN and then be provided with a voice link to other unrelated persons. We must distinguish this type of service from the usual call to a 976 number where the enduser hears a recorded message or dials additional digits in response to a recording. Omnicall's voice link allows live conversations to take place among unrelated persons, and except for restrictions on payphones, virtually anyone can use the service. We also believe that Omnicall is providing the service for hire because it charges for the 976 call. Even though there is no charge for the second call to enter the "bridge", both calls must be viewed as one transaction which is billed when the 976 call is completed. Thus, we view the operations of Omnicall and other live bridging providers as the provision of local service.

ORDER NO. 25509
DOCKET NO. 880250-TP
PAGE 3

Section 364.33, Florida Statutes, and Rule 25-4.001, Florida Administrative Code, require a telecommunications company to obtain a certificate of public convenience and necessity from this Commission before beginning operation in Florida. Additionally, Section 364.335(3) states that the Commission shall not grant a certificate for a proposed telecommunications company which will be in competition with or duplicate the local exchange services provided by another telephone company unless the existing facilities are inadequate to meet the reasonable needs of the public. The local exchange company, Southern Bell in this case, does offer conference call capability in Omnicall's area of operation. Further, the live bridging providers do not qualify for certification as another type of telecommunications company, such as an interexchange carrier or shared tenant service provider. Therefore, we find that the only way these entities may operate is to delete the bridged conversations among unaffiliated entities and restrict their service to that of a 976 information provider whose service is limited to providing recorded information to individual callers.

When our Staff initiated this investigation in 1988, there were several live bridging entities operating in Florida. However, it appears that there has been a marked decrease in the provision of this service. Omnicall continues to operate in the Southern Bell service area only. In response to our Staff's interrogatories, Omnicall admitted that consumer interest in live bridging has declined, and that it anticipates closing its one remaining office in Florida in the near future. However, as long as Omnicall continues to operate in Florida, we find that it is doing so in violation of Chapter 364.33 and Rule 25-4.004.

Accordingly, we hereby order Omnicall, Inc. to show cause, in writing, why it should not be required to discontinue its provision of live bridging telecommunications services to unaffiliated entities, through the referral in a 976 call to a second number.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the provision of live bridging telecommunications service to unaffiliated entities through the referral in a 976 or 976-like call to a second number, does constitute operation as a telecommunications company. It is further

ORDER NO. 25509
DOCKET NO. 880250-TP
PAGE 4

ORDERED that Omnicall, Inc. or other entities who provide live bridging telecommunications service to unaffiliated entities, through the referral in a 976 or 976-like call to a second number, should not be certificated as telecommunications companies. It is further

ORDERED that Omnicall shall show cause, in writing why it should not discontinue its provision of live bridging telecommunications service to unaffiliated entities, through the referral in a 976 or 976-like call to a second number. It is further

ORDERED that any response filed must contain specific statements of fact and law. It is further

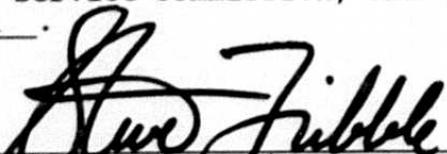
ORDERED that any response filed to this Order must be received by the Director of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, within the time limit established below. It is further

ORDERED that failure to specifically request a hearing in any written response that is submitted will constitute a waiver of any right to a hearing in this matter. It is further

ORDERED that failure to respond in the form and within the prescribed time frame will constitute an admission of the violations alleged herein and a waiver of any right to a hearing. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission, this 19th
day of DECEMBER, 1991.


STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

PAK

ORDER NO. 25509
DOCKET NO. 880250-TP
PAGE 5

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on 1-8-92.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.