



In the Matter of Tel-Central of Jefferson City, Missouri, Inc. Complainant, v. United Telephone Company of Missouri, Inc. Defendant.

File No. E-87-59

RELEASE-NUMBER: FCC 89-323

FEDERAL COMMUNICATIONS COMMISSION

4 FCC Rcd 8338; 1989 FCC LEXIS 2807

November 29, 1989 Released; Adopted November 17, 1989

ACTION:

[**1]

MEMORANDUM OPINION AND ORDER

JUDGES: By the Commission

OPINION:

[*8338] I. INTRODUCTION

1. We have before us a Complaint filed by Tel-Central of Jefferson City, Missouri, Inc. ("Tel-Central") against United Telephone Company of Missouri, Inc. ("United"), seeking damages resulting from the disconnection of service on approximately 91 WATS lines for the alleged non-payment of disputed charges, claimed to be in violation of Sections 201(b), 202(a), and 203(c) of the Communications Act, 47 U.S.C. §§ 201(b), 202(a), and 203(c). n1 United's Answer denied the alleged violations, and counterclaimed that Tel-Central owed it \$ 90,889.32 for WATS services. n2 Also pending is United's cross-complaint alleging non-payment by Tel-Central of \$ 321,668 for the provision of Feature Group A (FGA) access service to Tel-Central pursuant to tariff from May 1984 through September 1985. n3 In its answer to the cross-complaint, Tel-Central denied that it owed United \$ 321,668 for FGA services for that period n4 and raised a statute of limitations defense, relying on § 415(a) and (e) of the Act.

n1 The pleadings before us consist of the Complaint and a Request for Extraordinary Relief, both filed May 14, 1987; Amended Complaint, Addendum to Complaint and Erratum, filed June 15, 1987; an Answer, filed July 2, Tel-Central's Reply, timely filed July 21, 1987; a Cross-Complaint, filed July 2, 1987; an Answer to Cross-Complaint and a Motion to Dismiss Cross-Complaint, both filed August 7, 1987; a Motion for Extension of Time to File Reply to Cross-Defendant's Answer to Cross-Complaint and Motion to Dismiss filed August 19, 1987; a Reply to Answer to Cross-Complaint and Motion to Dismiss filed September 4, 1987; a Second Amended Complaint, filed March 30, 1988; Tel-Central's Brief, filed May 8, 1988; United's Brief, filed May 27, 1988; an Erratum to Tel-Central's Brief, filed May 9, 1988; and Tel-Central's Reply Brief, filed June 9, 1988.

n2 Answer at 10. Wide Area Telecommunications Service (WATS) is an outbound, direct-dial telephone calling service for calls placed nationwide or to pre-specified geographical areas. WATS is typically ordered by end user customers and non-facilities-based resale carriers. As provided under AT&T Tariff FCC No. 2, WATS is provided on an interstate basis and is charged for on an hourly, rather than per-call basis.

n3 Feature Group A (FGA) is an interstate telecommunications access arrangement provided by local exchange carriers, typically to interexchange carriers, which provides line-side local switching connections to enable the origination and termination of interstate calls to or from points within local exchange areas.

n4 Tel-Central Answer to Cross-Complaint at 4.

[**2]

2. Tel-Central's Second Amended Complaint Seeking Damages detailed the damages allegedly suffered as a result of the WATS lines disconnection, totalling \$ 38,354,848.97. These damages were alleged to have occurred because one of the disconnected WATS lines was an incoming administrative line which Tel-Central was using during an equal access balloting period to inform customers about Tel-Central's presence on an equal access ballot and accordingly, Tel-Central alleges that it was damaged by the loss of unspecified numbers of customers whose access to equal access ballot information was impaired. Other damages are alleged to have resulted from customer dissatisfaction resulting from the service interruption. Tel-Central states that the service disconnection of its 91 WATS lines was especially ruinous to its relations with its customers, who had spent large though unspecified sums advertising their 800 numbers that were provided by Tel-Central, with a deleterious impact on Tel-Central's revenues. n5 Exhibit 1 of the Second Amended Complaint is a Damage Study, which purports to identify present and future damages sustained by Tel-Central as a result of its temporary loss of WATS [**3] service due to the service disconnection resulting from the instant billing dispute.

n5 Complaint at 5.

II. THE COMPLAINT

A. Background

3. Tel-Central, located in Jefferson City, Missouri, is a reseller of intrastate and interstate telecommunications services. n6 As relevant herein, Tel-Central received certain interstate and intrastate interLATA WATS services of AT&T furnished through, and billed by, United under a joint service agreement between AT&T and United, as well as intrastate intraLATA WATS services provided by other phone companies or jointly by United and other phone companies. n7 Tel-Central resold these services, including interstate WATS services furnished by United under the joint arrangement with AT&T. n8

n6 Id. at 2.

n7 Answer at 6.

n8 Complaint at 2; Answer at 3, 4, 6.

4. By correspondence dated March 17, 1986, United advised Tel-Central that it had been unable to accurately and timely bill Tel-Central for prior WATS services, because of problems experienced in obtaining Tel-Central's usage information from certain unspecified companies other than Tel-Central. n9 According to the March 17, 1986 letter, a "Special Bill" was attached to cover [**4] the adjusted billing for the prior period. n10 Subsequently, on August 20, 1986, additional special bills were sent by United to Tel-Central seeking additional sums for the same prior period. n11 Together these special bills sought retroactively to charge Tel-Central \$ 120,771.86 for past usage periods, including the period from June 1984 through February 1986. n12

n9 Complaint at 3.

n10 Id.

n11 Id.

n12 Id.

5. Through an exchange of correspondence, Tel-Central vigorously disputed the retroactive charges. On April 1, 1987, by written correspondence to United, Tel-Central stated its belief that it had already paid \$ 90,889.32 of the \$ 120,771.86 claimed to be outstanding. n13 Tel-Central agreed that it owed \$ 29,882.54 for certain WATS service and was prepared to pay that amount, in full satisfaction of the dispute. United has consistently maintained that the entire

amount of \$ 120,771.86 was due, and refused to accept any partial payment offered by Tel-Central. n14 By letter dated March 27, 1987, United informed Tel-Central that if payment in the amount of \$ 120,771.86 was not received within five days of receipt of the letter, WATS service would be suspended. n15 In response, **[**5]** Tel-Central tendered a check in the amount of \$ 29,882.54 that contained a restrictive endorsement which United purports meant that its acceptance would constitute "full satisfaction" of the \$ 120,771.86 back-billing. n16 United rejected this check and on April 7, 1987 informed Tel-Central that suspension of WATS service would begin that day at 5:00 p.m. n17 At no time did Tel-Central submit or tender payment in the full amount of \$ 120,771.86 claimed for the intrastate and interstate WATS services provided, either within the five day period specified in the March 27 letter, or when United returned Tel-Central's restrictively endorsed check. Accordingly, on April 7, 1987, United terminated Tel-Central's service on approximately 91 WATS lines.

n14 Complaint at 3, 4.

n15 Answer at 4, Attachment B.

n16 United Brief at 3, 4.

n17 Complaint at 4.

[*8339] 6. Tel-Central filed the instant complaint with the Commission on May 14, 1987 and concurrently filed a request for extraordinary relief, seeking an order requiring United to restore service on the 91 WATS lines. After discussions among the parties and Enforcement Division staff, Tel-Central paid United \$ 29,882.54 on **[**6]** account and furnished a letter of credit in the amount of \$ 90,195.32. n18 United restored service to Tel-Central on the disconnected lines on June 19, 1987. n19

n18 Answer at 8.

n19 Id.

B. Contentions of the Parties.

7. Tel-Central claims that the service disconnection was unjust, unlawful, and discriminatory in that: a) of the \$ 120,771.86 retroactively billed by United, \$ 90,889.32 had been paid, and Tel-Central had tendered the balance of \$ 29,882.54 prior to disconnection, in response to United's 5-day notice; b) the disconnection, after five days notice, was not in accordance with the applicable tariff. United's Tariff FCC No. 5, which required a 30-day written notice prior to disconnection for non-payment of charges, n20 and c) even if AT&T's Tariff FCC No. 2 was the applicable tariff, rather than United's Tariff FCC No. 5, as urged by United, the disconnection was unlawful because United disconnected all 91 of Tel-Central's intrastate and interstate WATS lines, when the disputed charges pertained to only 15 of those 91 lines. Moreover, in this regard, Tel-Central argues that if United should claim that AT&T was responsible for disconnection of its WATS lines, **[**7]** the disconnection would still be unlawful under AT&T's Tariff FCC No. 2, since there is not evidence that United was acting properly as an agent under AT&T's authority in effecting the service disconnection. n21 Even assuming that United was acting pursuant to AT&T's authority, Tel-Central asserts that AT&T's Tariff FCC No. 2 contains no express provision that sanctions the termination of all services when some of those services were paid and in good standing. n22 Tel-Central argues that at worst, AT&T's tariff is ambiguous on the scope of a permissible service disconnection, and that under these circumstances and Commission precedent, that tariff should be construed most narrowly against United, in order to afford Tel-Central the relief and damages it requested. n23

n20 Complaint at 6.

n21 Complaint at 7.

n22 Id. citing AT&T Tariff FCC No. 2, Section 2.8.3. Nonpayment of Charges, and Section 2.5.3. Payment of Charges. These provisions state:

2.5 PAYMENT AND CHARGES

2.5.3. Payment of Charges -- Payment is due on presentation of a bill for the service furnished. WATS may be discontinued for nonpayment of a bill (see Violation of Regulations, page 44).

2.8.3. Nonpayment [**8] of Charges -- The Company may disconnect existing service and/or deny requests for additional WATS for nonpayment of charges due as specified in Section 2.5.3. (Payment of Charges) preceding. A written notice will be sent to the Customer at least five days in advance of the disconnection of service and/or denial of additional WATS. Upon payment of charges the denial of additional WATS will be removed.

n23 See, Complaint at 11, and cases cited.

8. United admits that by correspondence dated March 17, 1986, it advised Tel-Central that due to a delay in obtaining a portion of Tel-Central's usage information from other carriers, it would be sending Tel-Central statements for services furnished, but previously unbilled. n24 United contends that these statements and subsequent back-bills sought to recover for charges properly due for the period from June 1984 through February 1986 for WATS services used by Tel-Central. United contends that Tel-Central improperly sought to condition its payment of an undisputed \$ 29,882.54 portion of the \$ 120,771.86 on United's relinquishment of its claim for the remaining \$ 90,889.32, by tendering the restrictively endorsed check in the amount [**9] of \$ 29,882.54 on April 7, 1987. United contends that it properly rejected the tender of this partial payment, out of fear that acceptance would bar any subsequent attempt to collect the full amount. n25 United states that it advised Tel-Central in its letter dated March 27, 1987 that if payment in the amount of \$ 120,771.86 were not received within five days, Tel-Central's "WATS services" would be suspended. n26 United rejects Tel-Central's attempt to characterize the situation as a "billing dispute" involving only fourteen out-going, and one incoming WATS line. n27 Rather, in its view there was a failure to pay for WATS service obtained under tariff (as opposed, by implication, to specific WATS lines furnished pursuant to tariff). n28 United argues that Tel-Central's reference to a 30-day prior notice period as a pre-condition to disconnection of its WATS service invokes the wrong tariff. United noted that the 30-day notice provision relied on by Tel-Central is found in United's Tariff FCC No. 5, which covers the provision of interstate access service, and termination thereof, and does not apply to the provision or termination of WATS services. n29 According to United, the applicable [**10] tariff was AT&T's Tariff FCC No. 2, and the applicable provision thereof required only five days prior written notice as a pre-condition to service disconnection for non-payment, a condition it fulfilled. United states that it gave Tel-Central proper and timely notice of the service disconnection, and denies that the provisions of United's interstate access tariff are relevant to the instant controversy.

n24 Answer at 3.

n25 Answer at 4.

n26 Id.

n27 Although Tel-Central refers to this in-bound service as "WATS," and it is offered pursuant to AT&T's Tariff FCC No. 2, it is technically known as "800-Service."

n28 Answer at 5.

n29 Id.

C. Discussion.

9. We have reviewed the evidentiary record in this proceeding, as well as the voluminous briefs, and conclude that the record does not support Tel-Central's contentions. Since the law is clear on the right of a carrier to collect its tariffed charges, even when those charges may be in dispute between the parties, n30 the pivotal issue is that of the governing tariff. Tel-Central argues in its Brief that the only tariff that United has on file is its Tariff F.C.C. No. 5. Tel-Central states that a letter from United dated [**11] October 6, 1986 "relative to Feature Group A (FGA) services only references this tariff". n31

n30 See e.g. *Mocatta Metals Corp.*, 54 F.C.C. 2d 104 (1976)

n31 Tel-Central Brief at 7.

10. The letter cited by Tel-Central erroneously states that charges were due with respect to FGA services and refers to United's interstate access tariff. n32 Although the letter compounds a complicated situation, we assign it little weight in light of notice given otherwise to Tel-Central regarding the amount claimed due for WATS service. n33 The

facts show that the service suspended was not FGA exchange access service, but rather interstate WATS service. Tel-Central does not dispute that the service at issue is WATS and not FGA, Interstate WATS service was not a United service, and was not tariffed by United. Rather, it was an AT&T interstate service offering furnished through, and billed by, United under a joint agreement with AT&T.

n32 See Complaint, Attachment 5, letter dated October 6, 1987 from United Telephone System to Tel-Central of Jefferson City, Missouri, Inc., which states:

To confirm our conversation of September 25, 1986, and our letter dated September 30, 1986, please be advised unless full payment of \$ 123,957.19 is received within 30 days of receipt of this written notice by Certified Mail, your FGA lines will be suspended. Company policy for the disconnection of lines due to non-payment is outlined in the FCC Interstate Tariff, Section 2, Part 29, paragraph 1.8.

The record does not reveal why the amount demanded in this letter is inconsistent with the amount claimed to have been retroactively billed.

n33 See supra paras. 4-5.

[12]**

11. The record shows that the AT&T WATS services were ordered, furnished, and priced pursuant to the terms and conditions of AT&T's interstate WATS tariff. AT&T Tariff FCC No. 2, and not those of United's interstate access tariff, as Tel-Central contends. Tel-Central has presented no facts or substantial argument to rebut this conclusion. We note that such a situation is foreseen in AT&T's FCC Tariff No. 2, since it defines the term "the Company", as used throughout that tariff, as including not only AT&T Communications (AT&T), but also "its concurring carriers, connecting carriers, and its other participating carriers, either individually or collectively." n34 We note more specifically that United as well as all other local exchange carriers are "other participating carriers" under AT&T's FCC Tariff No. 2. By virtue of their definitional inclusion in the term "the Company," these carriers are governed by, and authorized to invoke all terms and provisions of that tariff when they are involved in the provision of the tariffed services. Accordingly, termination for non-payment of service would be governed by applicable provisions, if any, of that tariff, whether the **[*8340]** **[**13]** termination was carried out by AT&T or United. n35 AT&T's WATS tariff provides: "[t]he Company may disconnect existing service and/or deny requests for additional WATS for nonpayment of charges due as specified in Section 2.5.3. (Payment of Charges) preceding. A written notice will be sent to the customer at least five days in advance of the disconnection of service and/or denial of additional WATS". n36 Section 2.5.3. provides that "[p]ayment is due upon presentation of a bill for the service furnished. WATS may be disconnected for nonpayment of a bill . . .". Thus, United was correct in applying the 5-day minimum notice provision of the AT&T tariff to this service disconnection, rather than the 30-day provision required in the United tariff. The service disconnection was not unlawful, therefore, for lack of sufficient prior written notice.

n34 AT&T Tariff F.C.C. No. 2 § 2.9.

n35 United Brief at 6.

n36 AT&T Tariff F.C.C. No. 2 § 2.8.3.

12. Notwithstanding the fact that United properly applied the applicable tariff, Tel-Central takes the position that the disconnection could still be found unlawful under the Act, if the charges billed were in fact not due. While Tel-Central **[**14]** alleges that \$ 90,889.32 of the \$ 120,771.86 billed is not in fact due, the burden of proving prior payment of the charges concerned, and thus any consequent wrongful "double billing" and consequential damages, rests with the complainant. The record contains no support for the position that Tel-Central previously paid any of the bill adjustments which constituted the subsequently billed charges. The gist of Tel-Central's argument seems to be, on thorough examination of the record, that it had previously paid the underlying bills to which the special bills referred. The record does not, however, reflect that it had paid any amounts corresponding to the retroactive adjustments for which the special bills sought payment. Thus, the fact that Tel-Central furnished for the record copies of the special bills which contained notations and dates, presumably of prior payments, is unpersuasive that the claimed retroactive adjustments, in unpersuasive that the claimed retroactive adjustments are in error. n37 Absent evidence of payment, the factual predicate underlying Tel-Central's proposed conclusion of law is without basis.

n37 See, Complaint, Attachment 1 (at various unnumbered pages).

[**15]

13. We must next determine whether United unlawfully terminated all of Tel-Central's 91 WATS lines when charges were allegedly due and unpaid on only 15 of these lines. As noted above, Section 2.5.3. authorizes the disconnection of service for non-payment of charges and the procedures governing disconnection are covered by Sections 2.5.3. and 2.8.3. of AT&T Tariff F.C.C. No. 2. These provisions fail to support Tel-Central's contention that United is restricted in the number of furnished WATS lines it may disconnect or on which it may suspend service in the event of an alleged failure to pay charges billed for certain WATS lines. Section 2.5.3. states that "WATS may be discontinued for non-payment of a bill", and Section 2.8.3. states not only that existing service may be disconnected, but also that requests for additional service may be denied for non-payment of existing service. Tel-Central is correct in arguing that in cases of a tariff ambiguity the terms are interpreted in favor of the customer. We do not find here, however, the disputed tariff terms ambiguous, and have no basis to construe them adversely to United. These provisions clearly encompass WATS service as a whole [**16] and we can find no acceptable way to interpret the tariff as requiring disconnection of only specific WATS lines.

14. In support of its case, Tel-Central relies on an affidavit of an AT&T official furnished by United with its Brief. n38 The AT&T affidavit states: "As section 2.8.3. of the Tariff permits, AT&T's practice is to disconnect all of a customer's Tariff 2 services for failure to pay any undisputed charges owing for any Tariff 2 service" (emphasis supplied). n39 Tel-Central's interpretation appears to be that it is AT&T's practice to terminate all WATS service only when undisputed charges remain unpaid, but that when disputed charges are involved, the rights of AT&T (and other carriers subject to the tariff) are limited to disconnection of only those lines for which the charges are in dispute. Tel-Central's reliance on this affidavit for this premise is misplaced for two reasons. First, the affidavit by its terms only refers to situations involving unpaid, undisputed charges. It does not purport to describe what the AT&T practice is in the case of disputed charges such as those which are the subject of the instant complaint. Second, and more importantly, Tel-Central's [**17] interpretation of the import of the affidavit is not reflected in any applicable tariff provision. Section 2.8.3. of AT&T Tariff F.C.C. No. 2 governs the procedure for this disconnection, and there is nothing in that section that limits disconnection of all WATS service to situations involving only undisputed unpaid charges. It is established law that the terms of the applicable tariff determine the rights of the parties, and cannot be varied by inconsistent, nontariff representations. n40 Because the disconnection was effected in a manner plainly consistent with an ordinary, fair reading of Section 2.8.3., the disconnection of all WATS service of Tel-Central in these circumstances was lawful. The fact that more than one interpretation of the affidavit could conceivably be made does not change the parties' legal rights and obligations under the plain language of the tariff.

n38 United Brief, Exhibit C (Unger Affidavit).

n39 United Brief, Exhibit C, at 2 (Unger Affidavit).

n40 *M.R.C.S., Inc. v. MCI Communications Corp.*, Cir. A. No. 86-3831 (E.D. La. 1987). *AT&T v. Florida - Texas Freight, Inc.*, 375 F. Supp. 977 (S.D. Fla. 1973), aff'd, 485 F.2d 1390 (5th Cir. 1973). *Paulson v. Greyhound Lines, Inc.*, 804 F.2d 506 (8th Cir. 1986). *Mocatta Metals Corp.* 54 F.C.C. 2d 104 (1976). See generally, *Keogh v. Chicago N.W. Railway Co.*, 260 U.S. 156, 43 S. Ct. 47 (1922); *Illinois Central Gulf Railroad Co. v. Golden Triangle Wholesale Gas Co.*, 586 F.2d 588 (5th Cir. 1978).

[**18]

15. As to Tel-Central's allegations of discriminatory treatment by United, we fail to find any facts in the record to support such a contention. Tel-Central apparently bases its theory of unlawful discrimination on the statements as to AT&T's alleged internal policy made by the AT&T employee in the affidavit discussed above. Such an assertion is without basis, and we conclude that no evidence of an actual discrimination has been presented in this Complaint. A mere possibility of discriminatory treatment, as Tel-Central may be suggesting here, is insufficient to support a prima facie case. Absent facts showing an actual discrimination or preference, complainant can rely only on those facts of record, if any, which show that it was treated at variance with the express language of the applicable tariff. Here, complainant has failed to adduce any such facts. Because we find that United acted properly under the appropriate tariff, we deny its claim for damages allegedly suffered as a result of the disconnection of WATS service.

16. Finally, United's Answer to the Complaint contains a request for relief which seeks a Commission order requiring for relief which seeks a Commission [**19] order requiring Tel-Central to pay the remaining \$ 90,889.32 of back-billed WATS charges in dispute. We decline to order the requested relief for the reasons set forth in *Illinois Bell*

Telephone Co. et al. v. AT & T et al., 4 FCC Rcd 5268, 5270 (1989), recon. denied FCC 89-287 (released Oct. 20, 1989). The complaint procedures make a carrier liable to a customer for damages that result from the carrier's unlawful actions or omissions. 47 U.S.C. §§ 206- 209. However, this statutory scheme does not constitute the Commission as collection agent for carriers with respect [*8341] to unpaid tariffed charges. In the normal situation, if a carrier has failed to pay the lawful charges for services or facilities obtained from another carrier, the recourse of the unpaid carrier is an action in contract to compel payment, or a termination or disconnection of service until those charges have been paid. Accordingly, we decline to order this part of the relief requested in United's Answer.

III. THE CROSS-COMPLAINT

A. Background.

17. According to United, it provided Tel-Central with foreign exchange (FX) service in a number [**20] of Missouri exchanges until May, 1984. Effective May 25, 1984, as a result of access tariff revisions filed with the Commission,, this FX service was reclassified as Feature Group A service. From that day forward, United contends, Tel-Central "should have been" billed for FGA service. It appears that United was unable to implement the changes from FX to FGA, for billing purposes, until October 1985. As a result, according to United, United's representatives met with Tel-Central representatives on June 6, 1985 to discuss the billing situation. Tel-Central was advised that retroactive bills would be sent, covering the reclassified FGA service. n41 It appears that the first notice that Tel-Central received regarding the reclassification of its FX service to FGA service was at the June 6, 1985 discussion, over one year after the change in service. United does not appear to have formally billed Tel-Central, as of the date of the Cross-Complaint, for the \$ 321,668 for the FGA service provided pursuant to tariff from May 1984 through September 1985, until it sent a so-called "Retro FGA" bill dated September 2, 1987. United now claims that this amount remains unpaid.

n41 Cross-Complaint at 2.

[**21]

18. According to Tel-Central, the meeting described by United was held in June 1985, but its purpose was to discuss service problems, and not "to discuss the retroactive billing Tel-Central would be receiving for FGA service," as alleged by United. n42 Tel-Central states that United did inform Tel-Central "that it would begin to provide Tel-Central with FGA service when it had the ability to bill for that service". Tel-Central maintains United did not indicate that any rate increase would result from the reclassification and did not inform Tel-Central of the "content of the tariff publication," nor did it inform Tel-Central that Tel-Central would be retroactively billed. n43

n42 Answer to Cross-Complaint at 3.

n43 Id.

B. Contentions of the Parties.

19. United contends that Tel-Central was given proper notice of the tariff change resulting from the reclassification of FX to FGA service, by virtue of oral discussions of that prospective tariff change, which took place in a meeting held with Tel-Central on June 6, 1985, and therefore that the retroactive bills regarding this reclassified service are proper, and thus remain due, and unpaid. n44

n2 Cross Complaint at 2.

[**22]

20. Tel-Central takes issue with the propriety of the FGA retroactive billing, claiming that sufficient notice of the tariff change was not given as required by Section 61.58(a)(4) of the Commission's Rules, n45 and that United did not inform Tel-Central that it would be retroactively billed. n46 According to Tel-Central's arguments, this purported lack of proper notice voids United's attempts to bill and collect for the retroactive FGA charges at issue. Tel-Central further takes the position that all but three month's worth of the FGA charges are barred by the statute of limitations, 47 U.S.C. § 415. n47

n45 47 C.F.R. § 61.58(a)(4) states:

This subsection applies only to dominant carriers. If the tariff publication would increase any rate or charge, or would effectuate and [sic] authorized discontinuance, reduction or other impairment of service to any customer, the offering carrier must inform the affected customers of the content of the tariff publication. Such notification should be made in a form appropriate to the circumstance, and may include written notification, personal contact, or advertising in newspapers of general circulation. (emphasis supplied)

Thus, it was permissible for United to give Tel-Central only oral notice, as the record indicates occurred.

n46 Answer to Cross-Complaint at 3.

n47 Motion to Dismiss at 1.

[**23]

C. Discussion and Conclusion.

21. The cross-complaint involves an allegation of non-payment of an interexchange carrier's charges brought against a resale carrier customers. For the reasons discussed, *supra* at paragraph 16, we dismiss the cross complaint.

IV. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, pursuant to authority granted in sections 201(b), 47 U.S.C. § 201(b); 4(i), 47 U.S.C. § 154(i); 5(c)(1), 47 U.S.C. § 155(c)(1) of the Communications Act, and delegated in section 0.291 of our Rules, 47 C.F.R. §§ 0.291, that Tel-Central's complaint IS DENIED.

23. IT IS FURTHER ORDERED, pursuant to section 4(i) of the Communications Act, 47 U.S.C. § 154(i), and section 1.728, that United's cross-complaint IS DISMISSED for failure to state a cause of action on which relief can be granted.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy

Secretary

Legal Topics:

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