COMMONWEALTH OF KENTUCKY

BEFORE THE UTILITY REGULATORY COMMISSION

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In the Matter of:

NOTICE OF CONTINENTAL TELEPHONE COMPANY OF KENTUCKY OF AN ADJUSTMENT IN ITS INTRASTATE RATES AND CHARGES)	CASE NO. 7790

ORDER DENYING REHEARING

On September 26, 1980, the Commission issued its order in the above-captioned case granting Continental Telephone Company $2,178,921 in additional annual revenues. On October 15, 1980, Continental filed a petition for rehearing of said order alleging: (1) that the Commission improperly referred to a concurrent proceeding in which the rates of South Central Bell Telephone Company were being adjusted; and (2) that the rate of return on equity granted Continental was contrary to the evidence.

In support of its position on the former point, Continental argues that "No party to this proceeding requested that the Commission take judicial notice of the order in Case No. 7744 * * *, and it is therefore not a proper subject for juducial notice." (Petition for Rehearing, p. 1). This statement by Continental reflects a lack of understanding of the law applicable to the administrative process, and a review of the relevant case law is clearly in order.

Over a centruy ago, the Supreme Court of the United States established the unchallengeable principle that: "Courts will take notice of whatever is generally known within the limits of their jurisdiction."[1/] As to Continental's assertion that such power of judicial notice cannot be invoked unless a party to the proceeding actually requests it, the courts have been equally emphatic in their rejection of such

1/ Brown v. Piper, 91 U.S. 37, 23 L ed. 200, 202 (1875).

an argument as shown by this language in Power Curbers, Inc. v. E. D. Etnyre and Co., 298 F 2d 484, 498 (4th Cir. 1962):

> Jucicial notice may be taken without request by a party of such facts as are so generally known or of such common notoriety within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute. (Emphasis supplied)

Finally, these principles of judicial notice as developed and applied by our courts are likewise applicable to administrative agencies:

> Just as courts take judicial notice of certain matters before them, administrative agencies may take judicial or "official" notice.2/

It is thus clear that the fact that no party actually requested the Commission to take judicial notice of the concurrent Bell case is immaterial.

As to the substance of Continental's objection to reference to the Bell proceeding, the Commission FINDS that Continental Telephone Company has failed to present any facts or arguments that were not (or could not have been) made at the time of the original hearings in this matter.

As to Continental's assertion that the rate of return granted on common equity was too low, the Commission reiterates its finding that a 12.75% return on equity was within the zone of reasonableness for a company of this size and degree of risk.3/ Moreover, the fact that the Commission's finding on this point is at odds with the testimony of the company's witnesses, is immaterial.4/

Based upon these findings, and being advised, the Commission orders that the petition for rehearing be, and it hereby is, DENIED.

2/ 2 Am Jur 2d Admin. Law §385 (1962).

3/ FPC v. Natural Gas Pipeline Company, 315 U.S. 574, 585 (1942).

4/ Citizens Telephone Company v. PSC, 247 SW 2d 510, 514 (1952).

Done at Frankfort, Kentucky, this 5th day of November, 1980.

UTILITY REGULATORY COMMISSION

For the Commission

ATTEST:

Secretary