COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE ADOPTION OF A STANDARD METHODOLOGY FOR ESTABLISHING RATES FOR CATV POLE ATTACHMENTS	)))	ADMINISTRATIVE CASE NO. 251

PREFACE

The Commission has before it South Central Bell Telephone Company's Petition for Modification, Louisville Gas & Electric Company's Petition to Reconsider, Kentucky Utilities Company's Petition for Rehearing, Kentucky Power Company's Petition for Reconsideration, and Kentucky Cable Television Association's Motion for Rehearing and/or Modification, all timely filed, with respect to the Commission's Order dated August 12, 1982.

This Order incorporates the modifications and points of clarification which the Commission finds appropriate after consideration of the above motions and petitions, and replaces, in its entirety, the Order of August 12, 1982. Appendix "A," attached hereto and made a part hereof, contains the comments of the Commission on the issues so raised.

Having considered all the issues raised by the Motions and Petitions of the parties, the Commission finds that it will not be necessary to have further hearings in this matter.

AMENDED ORDER

On petitions of regulated telephone utilities (Case No. 8040) and regulated electric utilities (Case No. 8090), which were consolidated, the Commission on August 26, 1981, asserted jurisdiction over the rates, terms and conditions for pole attachment space made available to cable television ("CATV") systems by telephone and electric utilities. Tariffs ordered to be filed were rejected by the Commission, which by its Order of October 28, 1981, established this administrative case to determine a standard methodology for calculating rates for pole attachment space.

Hearings were held on February 2, 3, and 4, 1982, for direct testimony. Rebuttal testimony was prefiled, and witnesses subjected to cross-examination on March 18, 1982, with final oral argument on March 25, 1982.

Parties of record were Louisville Gas & Electric Company, South Central Bell Telephone Company, Union Light, Heat and Power Company, Cincinnati Bell, Inc., General Telephone Company of Kentucky, Kentucky Power Company, Continental Telephone Company, Echo Telephone Company (now Allied Telephone Company of Kentucky), Kentucky Utilities Company, Kentucky Cable Television Association, Consumer Protection Division of the Attorney General's Office, Kentucky Association of Electric Cooperatives, and Duo County Telephone Cooperative. Others who submitted information or testimony were Thacker-Grigsby Telephone Company, Foothills Rural

Telephone Cooperative Corporation, Inc., Peoples Rural Telephone Cooperative Corporation, Inc., Ballard Rural Telephone Cooperative Corporation, Inc., and Logan Telephone Cooperative, Inc.

DISCUSSION

In its Order of August 26, 1981, the Commission directed regulated utilities which provide CATV pole attachment services to file tariffs concerning the provision of such service. The tariffs which were filed proposed rates, terms and conditions which varied widely, and in some cases did not afford CATV operators rights equal to those afforded other utility customers. For these and reasons of convenience, the Commission determined that a uniform methodology should be established by which fair, just and reasonable pole attachment rates could be determined.

At the hearings on methodology, it developed that some minimum equitable standards for terms and conditions would be required to assure CATV operators that to the extent possible they would have the same rights as other utility customers. First, as a tariff customer, each qualified CATV operator must have the right to receive service (make pole attachments), just as a telephone or electric customer has the right to receive service. Similarly, the CATV operator must be allowed to remain a customer by observing the usual customer obligations, such as payment of bills and conformance to applicable safety standards.

Objectionable Provisions in Agreements

CATV operators assert that the present practice of some utilities in requiring bonds for satisfactory construction practices and payment of billings imposes restrictions more burdensome than those imposed on other utility customers. However, while the CATV operator will be a utility customer, it must be recognized that it forms a separate classification of customer, with different rights and responsibilities. The imposition of a bonding requirement is not unlike the deposit requirement for other utility customers, except that the CATV operator climbs and works on poles, and makes pole attachments, a situation uniquely different from that of utility customers merely receiving electric or telephone service. For this reason, the Commission does not find it discriminatory to allow a bonding requirement to assure safe and adequate construction and operating practices on the part of the CATV operator, especially during the initial phases of construction and operation. However, the Commission will expect that the size of the bond or other required assurances will be reasonably related to the size and scope of the proposed CATV system, and will be reduced or lifted after the operator has proven itself a reliable utility customer.

The CATV operators complained of the charges imposed by the utilities for periodic inspections of the attachments to the poles, but generally were not dissatisfied with "make-ready"

charges determined by agreement of the parties after a "walk-through" inspection of the proposed CATV system by representatives of the operator and the utility. The Commission recognizes the necessity for periodic inspections of utility plant for safety and other reasons, and Commission regulations (807 KAR 5:006, Section 22) require them, without any provision for additional payment by customers. Of course, when substandard installations are found which are not created by the utility but by the CATV operator, the utility should charge the CATV operator for the cost of correcting them, plus some contribution toward administrative costs and labor and materials costs for making such corrections.

Similarly, since some CATV operators have made attachments to utility poles without prior authorization, and the utility must rely, between inspections, on voluntary reporting by such operators, it is reasonable for the utility to charge a penalty for unauthorized attachments. We will allow tariff provisions which provide for a charge of not greater than twice the amount equal to the rate that would have been due had the installation been made the day after the last previous required inspection. Additionally, tariffs may also provide for "make-ready" charges for unauthorized attachments not to exceed twice the charges which would have been imposed if the attachment had been properly authorized.

CATV operators argue that some utilities have unfairly imposed provisions in their agreements that required the operators to reimburse the utilities for changes made after the initial CATV attachments have been made, when such changes were not required by CATV operations. They cite some instances when, after initially allowing CATV attachment to their poles, the utilities changed the use of the pole and required the CATV operator to pay for the changes.

The Commission agrees that a number of these provisions and charges may have been unfair or unnecessary. When a utility subsequently requires a change in its poles or attachments for reasons unrelated to CATV operations, the CATV operator should be given notice of the changes required (e.g., relocation to another pole), and sufficient time to accomplish the CATV-related change. Normally, 48 hours will be sufficient time for advance notice of a change, unless an emergency requires a shorter period. If the CATV operator is unable or unwilling to meet the utility's time schedule for such changes, the utility may do the work and charge the CATV operator its reasonable costs for performing the change of CATV attachments.

Also, the CATV operators argue that a number of the agreements imposed on them for pole attachments have included "hold harmless clauses" and have required them to maintain insurance coverage against their negligence and that of the utility. The Commission is of the opinion that such requirements generally are

excessive. Except for compelling reasons requiring additional protective provisions, the Commission will approve only tariff provisions which require insurance or a bond (at CATV's option) to protect the utility and the public against claims for liability arising out of the negligence of the CATV operator or the joint negligence of the CATV operator and the utility.

CATV Operators Are Not Joint Users

Considerable argument, and some evidence, was offered on behalf of the CATV operators that they have been treated unfairly by the utilities in not being accorded many of the rights granted each other by the utilities in their joint use arrangements. This issue is resolved by the decision of this Commission to treat CATV operators as customers of the utilities, with concomitant customer rights. CATV operators do not argue that they should be allowed to construct pole line systems of their own to share with the regulated utilities under typical joint use arrangements, and we see no reason why they should. Since they have no poles to "share," they need not be offered terms equivalent to those in prevailing joint use agreements between utilities both of which own and share poles.

Methodology

The CATV operators contend that the FCC methodology should be adopted by this Commission. We do not agree. While the FCC

methodology purports to recover for the utility its incremental cost of providing pole attachment service, it does not provide for the allocation of the utility's full cost of providing such service among all its classifications of customers. This Commission cannot accept a formula which allocates costs so unevenly.

The Commission recognizes, as recommended by the CATV operators and most of the utilities represented at the proceeding, that the formula should be simple and easily applied. Further, the formula should produce a fair, just and reasonable rate, based on the fully allocated costs of the utility in furnishing pole attachment services.

Ideally, the various cost factors needed to apply the formula should be readily available public information, such as that disclosed in the utility's required annual reports to the Commission or other public agencies. When this is not the case, we find that each utility shall file with its proposed tariffs the source and justification for cost factors used in applying the formula to compute its rate to the CATV operator.

The Commission has determined that the methodology shall be (1) the embedded cost of an average bare pole of the utility of the type and size which is or may be used for the provision of CATV attachment (2) multiplied by an annual carrying charge, and (3) this product multiplied by the percentage of usable space used for CATV pole attachments.

Bare Pole Costs

In determining the embedded cost of a bare pole, the Commission finds that poles less than 30 feet or more than 45 feet long are used so infrequently for CATV purposes that they should be excluded from the calculation. Cross arms, anchors, guy wires, grounds and other appurtenances not installed for CATV purposes will be excluded to establish the cost of a bare pole.

South Central Bell used 78 percent of its gross pole accounts as a "bare pole factor" to exclude investment attributable to appurtenances, i.e., cross arms, guys, anchors, etc. CATV's testimony was that 85 percent of pole accounts was an accepted industry standard for bare poles, which standard includes investment in anchors and guy wires and excludes all other appurtenances. General Telephone has also used an 85 percent factor, but has testified that this factor excludes "cross arms, anchors and other fixtures," which appears inconsistent with the testimony of other parties.

Therefore, for telephone utilities the Commission finds that 22 percent of the utility's pole account consists of appurtenances and should be excluded.

For electric utilities, the cost of major appurtenances such as cross arms can be specifically identified in sub-accounts of the Federal Energy Regulatory Commission ("FERC") Form 1, Account 364, and excluded, but lesser appurtenances such as aerial cable clamps, pole top pins, and some ground wires are not segregated

in the basic pole accounts. Kentucky Power offered specific evidence on ground wire costs, for which it adds $12.41 to the pole accounts, and estimated that 8.7 percent of the unsegregated pole accounts represents lesser appurtenances. It was acknowledged generally by CATV operators and the telephone utilities that an exclusion of 15 percent for pole appurtenances would be reasonable, but this percentage did not include the cost of anchors.

Consistent with our finding that 22 percent of the utility's pole account is a reasonable exclusion for telephone utilities, and that the ratio of the cost of anchors to the basic pole accounts should not vary significantly between telephone and electric utilities, the Commission finds that an adjustment of 15 percent subtracted from the sum of the appropriate sub-account of FERC Form 1, Account 364, and a deduction of $12.50 per ground, when such grounds have been included in Account 364, will reasonably approximate the cost of an average bare wooden electric utility pole. Further, when CATV has used the utility's ground wire, the $12.50 should be added into (or back into) the bare pole cost for each such ground.

Each utility must determine its weighted average cost of two-user and three-user poles. For telephone utilities, the average cost of a two-user pole will be assumed to be the weighted average cost of all 30-foot and 35-foot poles, and for a three-user pole, the weighted average cost of 40-foot and 45-foot poles. For electric utilities, the average cost of a two-user

pole will be assumed to be the weighted average cost of 35-foot and 40-foot poles, and for a three-user pole, the weighted average cost of 40-foot and 45-foot poles. Each of these averages must then be multiplied by the bare pole factors stated herein.

Annual Carrying Charge

Having determined that the CATV operator will be considered a customer of the utility, the Commission finds that such customers should be required to pay their equitable share of all the utility's costs in providing service.

CATV operators argue that certain costs of the utility have no relationship to the services provided to them such as directory advertising, insurance and administrative overhead. However, no classification of utility customers can or should be allowed to pick and choose the categories of expense to which it will be subject.

The annual carrying charge should be designed to recover the utility's cost in providing service. Items included in this calculation should represent an equitable share of all operating and maintenance expenses, taxes, and depreciation, and a cost of money return component. The costs included in the annual carrying charge calculation should be identifiable by specific account number as established in the Uniform System of Accounts prescribed by this Commission and utilized by each utility.

There should be included in the "cost of money" factor a reasonable amount representing a return on the utility's investment in the poles. For convenience and certainty of computation, the Commission finds that this return should be equal to the return on investment (or margin) allowed in the utility's last rate case.

We find it reasonable to allow a contribution by CATV toward the common costs of the utility which cannot be directly allocated to any particular classification of customer. However, each utility which includes such a contribution in its rate development must provide justification for the amount of such contribution which it proposes to include.

Usable Space

Parties to this proceeding have generally agreed that "average poles" be used in constructing a methodology. No party has offered to incur the costs involved in measuring, inspecting, and recording each pole which is or may be used by CATV.

Three distinct situations arise with respect to calculation of usable pole space: poles with only telephone and CATV connections, poles with only electric and CATV connections, and poles with all three connections.

In the first case, the Commission concludes that poles 30 and 35 feet long are commonly used, and that an average length for convenience of calculation would be 32.5 feet. Electric and

CATV connections are commonly made on 35-foot and 40-foot poles, and therefore a 37.5-foot average pole will be reasonable for computation of the charge for that pole use. Poles with three users (telephone, electric, and CATV) are commonly 40 feet and 45 feet long, with an average length of 42.5 feet. An equal distribution of the pole population and utilization would produce a composite average pole of 37.5 feet in length. The Commission notes that an average pole length of 37.5 feet was supported by CATV testimony.

All parties have agreed that CATV operators should be responsible for the use of one foot of the usable space on poles.

When a telephone and CATV attachment occupy a single pole the amount of usable space will be calculated as if it were a 32.5-foot pole. It will be assumed that the pole is buried six feet in the ground. There was much testimony concerning the height of the lowest attachment. Neither the 18 feet of CATV nor the 21 feet of some of the utilities appears to be realistic. An 18-foot attachment would not allow for sag in those places where safety requirements demand 18 feet of clearance, and a 21-foot attachment would be unnecessarily high for most installations. CATV should not be penalized for connections that telephone utilities have placed unnecessarily high on their poles, but neither will this Commission assume that any connections are made so low as to produce violations of the National Electric Safety Code ("NESC"). Therefore, for purposes of calculation, the

Commission finds that an average height of the lowest connection on the pole of 20 feet is reasonable, and will allow for adequate clearances for cable spans. The top foot of a pole of this two-user configuration is not normally used.

Assuming the average two-user (telephone and CATV) pole of 32.5 feet in length, less 6 feet buried, 20 feet to the lowest attachment, and a foot of unused space at the top, there would be 5.5 feet of usable pole space. The CATV operator must be responsible for 1 foot. (1/55 or .1818.)

The typical two-user electric and CATV pole is assumed to be an average of 37.5 feet. NESC regulations for poles on which high voltage electrical current is carried require a 40-inch clearance between the lowest electrical conductor and the highest communications conductor. There was some evidence that on occasion the electric utilities have used a small portion of the safety clearance space for electrical appurtenances such as transformers. Similarly, the CATV operators have pointed to occasional use of the top foot of the pole by electrical utilities as an argument that this space should be included in "usable space" for all poles. To take these situations into account, the Commission finds that it is reasonable to assign the top foot of the pole as usable space by the electric utility, while retaining the integrity of the NESC-required 40-inch clearance as non-usable space in situations involving the electric utility.

Assuming the typical two-user electric and CATV pole of an average 37.5 feet in length, less 6 feet buried, 20 feet to the lowest attachment, and 3.33 feet required safety space, there would be 8.17 feet of usable pole space. The CATV customer must be responsible for 1 foot. (1/8.17 or .1224.)

Assuming the typical three-user pole of 42.5 feet in length, less 6 feet buried, 20 feet to the lowest attachment, 3.33 feet required safety space, there would be 13.17 feet of usable pole space. The CATV customer must be responsible for 1 foot. (1/13.17 or .0759.)

In summary, the Commission finds that the use to which a pole is subjected will determine the appropriate factors in computing the rate to be charged the attaching CATV operator.

The telephone utility with a two-user situation (telephone and CATV), should take its weighted average cost of 30-foot and 35-foot poles, multiplied by its bare pole factor of 78 percent, multiplied by its annual carrying charges, and finally multiplied by the appropriate usage factor of .1818 to arrive at an annual pole charge for CATV attachments for such use.

The electric utility with a two-user situation (electric and CATV) should take its weighted average cost of 35-foot and 40-foot poles multiplied by its bare pole factor of 85 percent, adjusted for grounds, multiplied by its annual carrying charges, and finally multiplied by the appropriate usage factor of .1224 to arrive at an annual pole charge for CATV attachments for such use.

Finally, in the case of the three-user pole, the utility should take its weighted average cost of 40-foot and 45-foot poles, multiplied by its bare pole factor [85 percent for electric, adjusted for grounds, and 78 percent for telephone utilities], multiplied by its annual carrying charges, and finally multiplied by the appropriate usage factor of .0759 to arrive at an annual pole charge for CATV attachments for such use.

We are aware that some utilities may not have accurate records of the number of two-user and three-user poles with CATV attachments. Although we require that a two-user and a three-user rate be developed and filed by each affected utility, the Commission will allow a composite billing rate based on relative pole populations when a complete inventory of CATV pole attachments is not presently available. Upon compilation of such inventory records, retroactive billing adjustments should be made to the effective date of the tariffs. We see no reason why special inventories should be made for this purpose, but should be accomplished in conjunction with the periodic inspections of pole plant required by Commission regulations. (807 KAR 5:006, Section 22.) The maximum time limitations for the use of the composite rate will be the same as the time allowed for the applicable plant inspection requirements of the regulation.

Anchor Attachments

Much testimony was offered by CATV operators that anchor costs be included in pole costs. However, since CATV operators

generally have the option of installing their own anchors or utilizing an existing anchor previously installed by the utility, it would be inappropriate to include a charge for anchor usage as a part of the pole attachment costs. When anchors of the utilities are used, the Commission finds that a fully allocated portion of the utility's cost for such anchors should be identified and paid for separately.

The method should be essentially the same as for pole attachments, being (1) the embedded cost of anchors, multiplied by (2) annual carrying charges, multiplied by (3) the appropriate usage factor. When a utility has recorded its embedded cost of anchors, that figure should be used. In the absence of such information, it is reasonable to assume that a utility's cost development of anchors parallels the cost development of poles used by CATV. Therefore, the embedded investment for an anchor should equal the average current investment for a typical anchor, multiplied by the ratio of the average embedded investment for 30- and 45-foot poles to the average current costs for 30- to 45-foot poles. The annual carrying charge factors should be the same as for poles. Finally, as to the usage factor, CATV should be responsible for one-half of the costs for two-user anchors, and one-third of the cost of three-user anchors.

Conduit

Very little attention was paid at the hearing to charges for sharing conduit space. South Central Bell maintained that conduit

space should be charged at a rate based on current costs rather than embedded costs because once wire is placed in conduit, that portion of the conduit is no longer available for any other use by any party. Hence, current conduit costs more nearly reflect the utility's costs for sharing this type of installation.

Although not offered in evidence by any of the parties, the Commission takes official notice that the National Electric Code ("NEC") sets forth the maximum allowable fill percentage for wire placed in the various sizes of conduit, where electrical conductors are involved. When only communications conductors are involved, the telephone utilities should use fill standards appropriate to that industry, with documentation supporting such standards.

Therefore the Commission finds that the appropriate charge for conduit use by CATV operators should be (1) the current cost per duct foot for the type and size of conduit used, divided by (2) the appropriate allowable percentage fill for the size of conduit used, multiplied by (3) the current annual charge factors developed for conduit.

Findings and Order

The Commission, after considering the matter and all evidence of record and being advised, finds that:

(1) The CATV operator, as a user of utility poles for attachment of its cables, is a customer of the regulated utility pole owner;

(2) As a customer of the regulated utility, the CATV operator should be obligated to pay its share of the fully allocated costs of providing service to it;

(3) The rights and obligations of the CATV operator and the regulated utility are as set forth herein;

(4) The method for determining the applicable rates and charges are as set forth herein;

(5) The Commission will allow deviations from the mathematical elements found reasonable herein only when a major discrepancy exists between the contested element and the average characteristics of the utility, and the burden of proof should be upon the party asserting the need for such deviation;

(6) Each utility should file tariffs for CATV pole attachments and charges conforming to the principles and findings in this Order; and

(7) On and after the effective date of the tariffs required herein, all existing pole attachment agreements should be superseded.

IT IS THEREFORE ORDERED that within 45 days of the date of this Order electric and telephone utilities providing or proposing to provide CATV pole attachments shall file with the Commission tariffs in the form prescribed by the Commission's regulations, according to the principles and findings in this Order.

Done at Frankfort, Kentucky, this 17th day of September, 1982.

By the Commission

ATTEST:

Richard D. Heman, Jr.

Secretary