

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

THE CATV POLE ATTACHMENT)	Administrative
TARIFF OF SOUTH CENTRAL)	CASE NO. 251-18
BELL TELEPHONE COMPANY)	

O R D E R

PROCEDURAL BACKGROUND

On September 17, 1982, the Commission issued an Amended Order in Administrative Case No. 251, The Adoption of a Standard Methodology for Establishing Rates for CATV Pole Attachments, in which it ordered electric and telephone utilities providing or proposing to provide CATV pole attachments to file tariffs conforming to the principles and findings of the Order on or before November 1, 1982.

On October 27, 1982, South Central Bell Telephone Company ("Bell") filed rates, rules and regulations for CATV pole attachments. On November 15, 1982, the Commission suspended Bell's CATV pole attachment tariff to allow maximum statutory time for investigation.

On November 19, 1982, the Kentucky Cable Television Association, Inc., ("KCTA") requested and was granted leave to intervene and comment on Bell's CATV pole attachment tariff. On January 17, 1983, KCTA filed a statement of objections to various CATV pole attachment tariffs including that of Bell. On March 9, 1983, Bell filed a response to

KCTA's objections and a motion for approval of its CATV attachment tariff.

On March 29, 1983, the Commission received an extension of time in which to consider Bell's CATV pole attachment tariff.

FINDINGS

The Commission, having considered the evidence of record and being advised, is of the opinion and finds that:

1. KCTA's objection to Bell's two and three user CATV pole attachment rate methodology is unreasonable. Bell filed sufficient information concerning embedded pole investment and calculated pole attachment rates in a manner consistent with the Commission's Amended Order in Administrative Case No. 251.

2. KCTA's objection to Bell's composite rate for CATV pole attachments is unreasonable. The Commission's Amended Order in Administrative Case No. 251 clearly allows a composite rate based on relative pole populations when an inventory of pole attachments is not available. Bell developed such a composite rate for pole attachments. However, the Commission advises Bell that at such time as an inventory of pole attachments is available for any given CATV company, Bell should reconcile accounts with the CATV company and initiate appropriate two and three user pole attachment rates.

3. KCTA's objection to Bell's two and three user CATV anchor attachment rate methodology is unreasonable. The

Commission will allow Bell to use broad gauge unit cost as a reasonable surrogate measure of current anchor cost. The Commission will also allow Bell to add installation cost to current anchor cost, since the cost of anchor installation is a capital item. However, the Commission advises Bell that the cost of anchor installation should be based on a statewide average, as opposed to selected installation contracts. Otherwise, Bell filed sufficient information and calculated anchor attachment rates in a manner consistent with the Commission's Amended Order in Administrative Case No. 251.

4. KCTA's objection to Bell's CATV conduit rate methodology is unreasonable. Bell filed sufficient information concerning conduit investment and calculated the conduit rate in a manner consistent with the Commission's Amended Order in Administrative Case No. 251, except for the use of an occupancy factor as a substitute for a National Electric Code based fill factor in the conduit rate calculation, which the Commission will not allow.

5. KCTA's objection to Bell's addition of a 15 percent contribution to CATV pole attachment, anchor attachment, and conduit use rates is unreasonable. The Commission will allow the contribution and advises KCTA that it is consistent with the contribution allowed in other areas of non-basic telephone service.

6. KCTA's objection to Bell's addition of a 10 percent surcharge to CATV "make-ready" and rearrangement

activity is unreasonable. The Commission will allow the surcharge and advises KCTA that similar surcharges on customer-oriented construction are allowed in Bell's General Subscriber Services Tariff, A5 Charges Applicable Under Special Conditions.

7. KCTA's objection to Bell's calculation of its annual carrying charge is reasonable. The Commission agrees with KCTA that the annual carrying charge should be based on readily available information and calculated in an easily understood manner.

8. KCTA's objection to Bell's failure to recognize salvage value in cases of pole replacement is reasonable. Bell should develop a regulation that allows salvage value as a credit to a CATV company in cases of pole replacement.

9. KCTA's objection to the indemnification and hold harmless provisions in Bell's CATV pole attachment tariff is reasonable and is addressed in finding 13.

10. KCTA's objection to Bell's bond requirement is reasonable and is addressed in finding 13(i).

11. KCTA's objection to Bell's requirement of advance payment for CATV pole, anchor, and conduit charges is unreasonable. All of Bell's customers are billed in advance of service and are subject to surety of payment conditions in the form of bond or deposit.

12. KCTA's objection to Bell's limit on the number of pole and anchor attachment applications that may be made at any given time is unreasonable and is addressed in 13(j).

13. Bell's rules and regulations governing CATV pole attachments conform to the principles and findings of the Commission's Amended Order in Administrative Case No. 251, and would be approved, except as follows:

(a) At page 5, section F1.1, and in any similar provision in the tariff, a CATV company is not a licensee and all references to licensee should be deleted from the tariff.

(b) At page 8, section F2.2.2.3, and in any similar provision in the tariff, the rights and obligations of a CATV company are defined in the tariff and cannot be abrogated by any agreement that Bell may enter into with others, unless specifically allowed in the tariff or approved by the Commission upon application for a deviation from the tariff.

(c) At page 8, section F2.2.3.1, and in any similar provision in the tariff, Bell cannot render itself harmless against its own negligence in the event its negligence causes injury to persons, damage to property, interruption of service, or interference with service.

(d) At page 11, section F2.3.1.3, and in any similar provision in the tariff, the Commission recognizes that Bell cannot guarantee a CATV company any necessary clearance or right-of-way involving private property. However, Bell should assist a CATV company in obtaining necessary clearance or right-of-way involving private property, at the discretion and expense of the CATV company.

Also, Bell may remove CATV facilities from poles, anchors, or conduit under the conditions described in the regulation if a CATV company fails to do so upon proper notice. However, Bell cannot remove CATV facilities without liability in the event of a claim for compensation resulting from its negligence.

(e) At page 12, section F2.3.4.1, and in any similar provision in the tariff, the reference to "any and all direct and indirect loss" should be deleted. The reference lacks definition and, in the event of a dispute between Bell and a CATV company, liability for damage would be a matter for judicial determination.

(f) At page 12, section F2.3.4.4, and in any similar provision in the tariff, Bell may require protection against claims for compensation resulting from negligence on the part of a CATV company. However, Bell cannot require protection from "any and all claims, demands, causes of action and costs" that might arise simply because a CATV company has made a pole or anchor attachment, or installed in a conduit. Furthermore, in the event of a dispute between Bell and a CATV company, liability for any claim for compensation would be a matter for judicial interpretation.

(g) At page 13, section F2.3.4.5, and in any similar provision in the tariff, Bell may require protection against claims for compensation resulting from

negligence on the part of a CATV company. However, Bell cannot require that a CATV company protect it against claims for compensation resulting from its own negligence. Furthermore, in the event of a dispute between Bell and a CATV company, liability for any claim for compensation would be a matter for judicial determination.

(h) At page 13, section F2.3.4.6, and in any similar provision in the tariff, Bell may require protection against claims for compensation resulting from negligence on the part of a CATV company. However, Bell cannot exclude itself from claims for compensation resulting from its own negligence. Furthermore, in the event of a dispute between Bell and a CATV company, liability for any claim for compensation would be a matter for judicial determination.

(i) At page 15, section F2.4.1.2. and in any similar provision in the tariff, Bell may require a bond to guarantee against claims for compensation resulting from negligence on the part of a CATV company. However, any such bond should be in a form and amount only sufficient to indemnify undertakings during the "make-ready" and construction phases of CATV operations. Furthermore, any such bond should be reduced after the construction phase has been completed to an amount only sufficient to indemnify continuing CATV operations, if the CATV company has satisfactorily met performance requirements.

(j) At page 16, section F2.5.1.2, and in any similar provision in the tariff, the last two sentences of

the regulation should be modified to conform to the following language:

However, if the attachee files application in excess of the limits specified herein, the attachee shall designate a desired priority of completion of the pre- installation survey and "make-ready" work for each application relative to all other applications on file with the company at the same time.

(k) At page 20, section F2.6.1.3, and in any similar provision in the tariff, Bell cannot refuse authorization to make CATV pole or anchor attachment, if attachment space is available or can be made available.

(l) At page 21, section F2.6.1.6, and in any similar provision in the tariff, Bell or another user may replace or rearrange CATV facilities on poles or anchors under the conditions described in the regulation if a CATV company fails to do so upon proper notice. However, neither Bell nor another user may replace or rearrange CATV facilities without liability in the event of a claim for compensation resulting from negligence.

(m) At page 21, section F2.6.2.2, and in any similar provision in the tariff, Bell cannot refuse authorization to make CATV installations in a conduit if conduit space is available or can be made available.

(n) At page 21, section F2.6.2.3, and in any similar provision in the tariff, Bell or another conduit user may replace or rearrange CATV facilities under the conditions described in the regulation if a CATV company fails to do so

upon proper notice. However, neither Bell nor another conduit user may replace or rearrange CATV facilities without liability in the event of a claim for compensation resulting from its negligence.

(o) At page 25, section F3.1.1.1, and in any similar provision in the tariff, a CATV company should at least 30 days from the date of authorization be allowed to make pole attachments or conduit installations. After 30 days the CATV company may be charged for authorized attachments, except when the authorization is cancelled upon request of the CATV company. If authorized attachments are made in less than 30 days, Bell may charge from the date of attachment.

14. Bell's calculation of its annual carrying charge should be modified as follows:

(a) The maintenance component should be 4.62 percent, as calculated from the 1981 Annual Report.

(b) The taxes component should be 9.09 percent, as calculated from the 1981 Annual Report.

(c) The depreciation component should be 6.47 percent, as stated in the 1981 Annual Report.

(d) The administrative and overhead component should be 12.42 percent, as calculated from the 1981 Annual Report.

(e) The rate of return component should be 11.35 percent, as authorized by the Commission in Case No. 8467, Notice of South Central Bell Telephone Company of an Adjustment of its Intrastate Rates and Charges.

(f) The total annual carrying charge should be 43.95 percent, based on calculations from the 1981 Annual Report and the Commission's Order in Case No. 8467.

15. Bell should be allowed to substitute 1982 Annual Report information to adjust its annual carrying charge, provided the information is filed with the Commission. Furthermore, any adjusted calculation of the annual carrying charge should be made as outlined in Attachment 1 to this Order, unless a specific deviation is requested and reasonable cause is demonstrated.


ORDERS

IT IS THEREFORE ORDERED that Bell's CATV pole attachment tariff filed with the Commission on October 27, 1982, be and it hereby is rejected.

IT IS FURTHER ORDERED that Bell shall file revised rates, rules, and regulations for CATV pole attachments with the Commission within 30 days from the date of this Order, and that the revised rates, rules and regulations shall conform to the findings of this Order.

Done at Frankfort, Kentucky, this 1st day of June, 1983.

PUBLIC SERVICE COMMISSION


Chairman

ATTEST:


Vice Chairman

Secretary


Commissioner

ATTACHMENT 1

CATV Annual Carrying Charge

The annual carrying charge should be based on the 1981 or 1982 Annual Report, Form M, to the Public Service Commission of Kentucky, and Commission Orders, as follows:

1. Depreciation

Depreciation on pole lines is stated at Page 31, Line 7, Column (d).

2. Taxes

The formula for calculating taxes is:

Page 16, Lines 5+6+7+8+9+10, Column (b)
Page 12, Line 10, Column (b)

3. Administrative and Overhead

The formula for calculating administrative and overhead is:

Page 61, Lines 36+45+51+61, Column b
Page 12, Line 10, Column (b+c)
2

4. Maintenance

The formula for calculating maintenance is:

Page 60, Line 1, Column (b)
Page 19, Line 11, Column (b+h)
2

5. The rate of return should be most recent rate of return authorized by the Commission.