

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENTUCKY CABLE TELEVISION ASSOCIATION, INC.,)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 8982
)	
GENERAL TELEPHONE COMPANY OF KENTUCKY,)	
)	
DEFENDANT)	

ORDER DENYING MOTION TO DISMISS

On March 28, 1984, General Telephone Company of Kentucky ("General") filed a motion to dismiss the complaint filed by the Kentucky Cable Television Association, Inc. ("Ky. CATV"). On April 3, 1984, Ky. CATV filed its response to General's motion. General asserts that the complaint should be dismissed because Ky. CATV lacks standing as a "directly interested" party, and that the substance of the complaint was the subject of a prior determination by the Commission in Administrative Case No. 251. Additionally, General objects to Ky. CATV's request to take depositions of certain of General's officers as being premature until a ruling is made on whether or not the complaint should be dismissed. The Commission will address each of General's points below.

1. Status of Ky. CATV

While it can certainly be argued that an "association" may not be directly interested, certain member companies of Ky. CATV are clearly "directly" affected by the Commission's approval of General's pole attachment tariff. KRS 278.260 offers no guidelines as to the precise meaning to be given the phrase "directly interested." However, since a ruling excluding Ky. CATV as a proper complainant would merely force a refiling of the complaint on behalf of one or more of Ky. CATV's members, the effect would be merely to delay this proceeding and the ultimate resolution of the rate question. Moreover, the Commission believes that the questions raised in Ky. CATV's complaint are of sufficient importance that it would, if necessary, invoke the provision of KRS 278.260 which provides that "the Commission may also make such an investigation on its own motion." For all of these reasons, the Commission finds that General's objection to the status of Ky. CATV's status as a complainant has no merit. Ky. CATV has participated in prior cable pole attachment matters before both this Commission and the courts, and we will allow them to prosecute this complaint in the name of the association as well.

2. Prior Determination

General next argues that the substantive matters contained in Ky. CATV's complaint have all been previously resolved by the Commission. While it is true that the methodology of establishing pole attachment rates was approved in Administrative Case No. 251 in which both General and Ky. CATV were parties, the

application of that methodology to General was not made until the tariff filing was approved by the Commission on August 18, 1983. As the Commission's General Counsel emphasized in his letter of December 15, 1983, Ky. CATV agreed to withhold all its objections to a particular tariff filing until after it became effective. This was done both to prevent problems with the running of the 20-day period for court review and to expedite the PSC's analysis of the majority of the pole attachment tariffs to which Ky. CATV had no objection. Under this agreed-upon procedure, Ky. CATV has had no chance before to oppose the specific way in which General has chosen to implement the previously-approved methodology. The complaint procedures of KRS 278.260 offer Ky. CATV its only avenue of opposing General's new tariff and the Commission will, therefore, allow this complaint to proceed.

3. Depositions

A party to a proceeding before the Commission may engage in full discovery through requests for information to other parties, and may also request any person to be subpoenaed for testimony at evidentiary hearings before the Commission. For these reasons, the Commission is of the opinion that depositions have little place in modern administrative practice. Moreover, the Commission agrees with General that responding to depositions requires key employees to be removed from their necessary duties for what may or may not be relevant testimony in the administrative hearing. Nevertheless, KRS 278.340 gives any party to a proceeding before the Commission the right to take depositions and the Commission is, therefore, constrained to grant Ky. CATV's

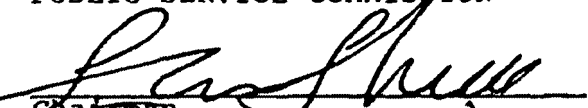
request. The admissibility of any such depositions will, of course, be a matter for the Commission to decide at the time of the hearing in this matter.


For all of the foregoing reasons and being advised, the Commission hereby ORDERS that the motion of General Telephone Company of Kentucky to dismiss this complaint be, and it hereby is, denied.

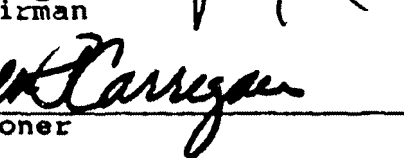
IT IS FURTHER ORDERED that the Kentucky Cable Television Association, Inc.'s request to take depositions from certain of General Telephone Company's employees be, and it hereby is, granted.

Done at Frankfort, Kentucky, this 2nd day of May, 1984.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Acting Secretary _____