

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

* * * * *

In the Matter of:

BILL CUNNINGHAM, COMMONWEALTH ATTORNEY)	
COMPLAINANT)	
)	
V.)	CASE NO. 9168
)	
SOUTH CENTRAL BELL TELEPHONE COMPANY)	
DEFENDANT)	

O R D E R

On October 3, 1984, the Honorable Bill Cunningham ("Cunningham"), the Commonwealth's Attorney for the 56th Judicial District of Kentucky, filed a formal complaint with the Commission, complaining of the criminal misuse of telephones at the Kentucky State Penitentiary and South Central Bell Telephone Company's ("SCB's") refusal to remove the phones in accordance with Cunningham's reading of SCB's tariff provisions concerning removal of telephones for apparent criminal misuse. On October 18, 1984, SCB was directed to either satisfy or answer Cunningham's complaint.

On November 1, 1984, SCB responded to the complaint, alleging generally that the Corrections Cabinet of the Commonwealth of Kentucky ("Corrections") has jurisdiction over violations of law occurring in state prisons and that that agency had not requested removal of the telephones. SCB characterizes

the dispute as between two agencies of state government, Corrections and Cunningham. SCB also proposed a revision of its tariff, which would include a requirement that a court order would be necessary for SCB to remove a phone for a complaint of this nature.

A public hearing was held in this matter on January 29, 1985. Parties participating in the case were Cunningham, SCB, Corrections, and Mr. Oliver H. Barber, Jr., attorney on behalf of inmates at the Kentucky State Penitentiary. All parties were given the opportunity to present testimony and at the conclusion of the hearing were given 30 days to file simultaneous briefs.

DISCUSSION

It was determined at the hearing that SCB had filed its proposed tariff change and that the revised tariff became effective on December 13, 1984, after the filing of the complaint. It is not necessary in this instance to determine which of the tariff versions is applicable to this complaint. Both of the tariffs require that a law enforcement agency, acting within its apparent jurisdiction, advise the company in writing that a particular telephone service is being used in violation of the law. Cunningham has failed to prove that SCB was directly notified by an appropriate law enforcement agency, within the context of the tariff of the use of the telephones for unlawful purposes.

Additionally, no evidence was presented to indicate that SCB's customer, Corrections, violated the tariff or used the phones for any illegal purpose. Either version of the tariff

would be applicable to the customer, and there are no grounds for any finding that the customer has violated any provision of the tariff.

Irrespective of the above conclusions, the Commission agrees with SCB's position, as stated in its brief (p. 8), wherein SCB asserts that its tariff was simply not intended to cover a situation when one agency of government desires to remove the telephone service of a law enforcement agency or indeed, any legitimate agency of government. Any reasonable interpretation of the tariff must conclude that the intent of both the "old" and "new" versions of that tariff is to assist, rather than control, the law enforcement agencies of government in curtailing the illegal use of telephone service by private customers. Given the facts of this particular situation, the solution to this complaint is not through an interpretation of the tariff.

FINDINGS AND ORDER

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

1) Cunningham has failed to prove that SCB was directly notified by an appropriate law enforcement agency, within the context of the tariff;

2) No evidence was presented to indicate that SCB's customer, Corrections, is either violating the tariff or making any illegal use of the telephone service;

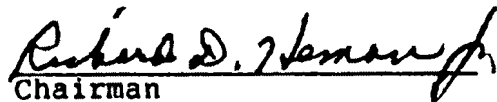
3) SCB's tariff was not meant to apply to a situation such as the subject of this complaint and therefore is not appropriate to the instant situation; and

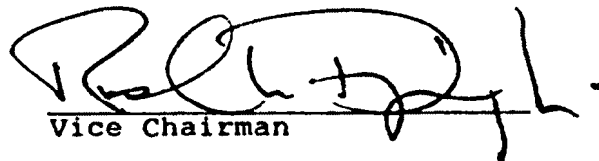
4) This complaint should be dismissed.

IT IS THEREFORE ORDERED that the complaint be and it hereby is dismissed.

Done at Frankfort, Kentucky, this 4th day of April, 1985.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary