COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE CATV POLE ATTACHMENT TARIFF OF HENDERSON-UNION RURAL ELECTRIC COOPERATIVE CORPORATION	))))	ADMINISTRATIVE CASE NO. 251-38

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," and 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, Henderson-Union Rural Electric Cooperative Corporation ("Henderson-Union") filed rates, rules, and regulations for CATV pole attachments. On November 15, 1982, the Commission suspended Henderson-Union's CATV pole attachment tariff to allow the maximum statutory time for investigation and comment from interested persons.

On November 19, 1982, the Kentucky Cable Television Association, Inc., ("KCTA") requested and was granted leave to intervene and comment on Henderson-Union's CATV pole attachment tariff. On January 17, 1983, KCTA filed a statement of

objections to various CATV pole attachment tariffs, including those of Henderson-Union.

Findings

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

1. Henderson-Union'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 for the following objections:

(a) Billing: The late payment provision should be the same as that applied to other customers of Henderson-Union.

(b) KCTA objects to tariff provisions which disclaim liability for loss or damage resulting from Henderson-Union's transfer of CATV facilities when the CATV operator has not made the transfers according to the specified timetable. This is a reasonable objection, and Henderson-Union should only disclaim liability in such instances for any consequential damages such as loss of service to CATV customers.

(c) KCTA objects to indemnification and hold harmless provisions which require indemnity from the CATV operator even when Henderson-Union is solely liable. This is a reasonable objection, and should be corrected in the tariff. Henderson-Union may require indemnification and

hold harmless provisions in cases of alleged sole or joint negligence by the CATV operator, but cannot require same merely because of the existence of CATV attachments and equipment on Henderson-Union's poles.

(d) KCTA objects to lack of tariff provisions which would provide for reduction or lifting of bonding requirements after the CATV operator has proven to be a reliable customer. This is a reasonable objection. If a bond is furnished by the CATV operator to assure performance of required indemnity and hold harmless provisions, such bond should be in a form and amount reasonably calculated to cover the undertakings specified during the "make-ready" and construction phases of the CATV system's operation.

The amount of the bond may be reduced after the CATV operator has proven itself to be a reliable utility customer. Allowance of such reduction should not be unreasonably denied.

(e) KCTA objects to provisions disclaiming liability if the CATV operator is ever prevented from placing or maintaining attachments on Henderson-Union's poles, or if CATV service is ever interrupted or television service interfered with. This objection is reasonable, although

Henderson-Union may have tariff provisions disclaiming liability if the inability of the CATV operator to make attachments is not the fault of Henderson-Union, as when municipal franchises or right-of-way must be acquired by the CATV operator prior to making pole attachments.

Similarly, Henderson-Union may not require that it be held harmless when its own negligence results in damage to CATV lines and equipment or interference with CATV service, but may require that it be held harmless when such conditions are caused by situations beyond its control.

(f) KCTA objects to provisions which require a penalty fee at double the normal rate for changes necessary to correct substandard installations by CATV operators. Specifically, KCTA states that while the Commission's Order in this matter authorizes double billing for unauthorized, substandard attachments, it makes no provision for substandard, but authorized installations.

This objection is unreasonable. While the CATV operator may obtain authorization to make attachments, this can in no way relieve the operator of the responsibility to insure that attachments are made in a safe manner which adheres to applicable codes such as the National

Electric Safety Code. KCTA is incorrect in applying this complaint to Henderson-Union since its tariff only proposes to apply the penalty to substandard, unauthorized installations.

(g) Abandonment by the Utility: Henderson-Union's provision allowing the CATV operator only 48-hours' notice when it desires to abandon a pole is unreasonable. The CATV operator should be informed of such abandonment as soon as possible, but in any event should have at least 30-days' notice if no other pole is available or planned to be installed by Henderson-Union.

(h) Abandonment by the CATV Operator: Henderson-Union's tariff provision requiring the CATV operator to pay rental for the then current year is unreasonable. Just as with any other customer, the CATV operator can only be held responsible for rental for the then current month when the CATV operator abandons the pole.

(i) Henderson-Union's tariff proposes that it may terminate service to the CATV operator if the bill is not paid within 20 days of the mailing date. The tariff should be amended to conform to the Commission's regulations concerning discontinuance of service to electric customers.

2. Henderson-Union's calculation of its annual carrying cost should be modified to exclude interest expense, as this is covered by the "cost of money" component, and to include customer accounts expense, customer service and information expense and all taxes other than income taxes.

3. KCTA objected to Henderson-Union's calculation of its pole attachment rates which was based on investment over only the last 25 years. KCTA's objection is reasonable. Henderson-Union's calculation should be modified to include fully embedded costs.

4. Henderson-Union should be allowed to substitute 1982 Annual Report information to adjust its annual carrying charge, if the information is available and filed with the Commission.

ORDERS

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

IT IS FURTHER ORDERED that Henderson-Union shall file revised rates, rules, and regulations governing 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.

IT IS FURTHER ORDERED that Henderson-Union shall file detailed workpapers supporting its revised rates at the same time it files its revised rates, rules and regulations.

Done at Frankfort, Kentucky, this 9th day of May, 1983.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Secretary