

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

THE CATV POLE ATTACHMENT	)	Administrative
TARIFF OF CINCINNATI BELL,	)	CASE NO. 251-4
INC.	)	

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 planning 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 14, 1982, Cincinnati Bell, Inc., ("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 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 that Bell failed to file documentary support for its CATV attachment rates is unreasonable. The Commission acknowledges that documentary support was not filed with the tariff, but was later filed in response to a KCTA data request.

2. KCTA's objection that Bell misapplied the Commission's CATV pole attachment rate formula is reasonable, and Bell should recompute pole attachment rates utilizing the usable space factor stated in the Commission's Amended Order in Administrative Case No. 251.

3. 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.

4. 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.

5. 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 Exchange Tariff, Section 5, Construction.

6. KCTA's objection to Bell's anchor attachment rates is reasonable. Bell should recompute its anchor attachment rates using embedded anchor investment for anchors of the size used by CATV companies or using a composite of the broad gauge unit cost of anchors.

7. KCTA's objection to Bell's failure to recognize salvage value in cases of pole and anchor replacement is reasonable. The Commission advises Bell that it should develop a regulation that allows salvage value as a credit to a CATV company in cases of pole and anchor replacement.

8. KCTA's objection to the indemnification and hold harmless provisions in Bell's CATV pole attachment tariff is reasonable and is addressed in various items in finding 12.

9. KCTA's objection to Bell's bond requirement is reasonable and is addressed in finding 12(j).

10. KCTA's objection to Bell's requirement of advance payment for CATV pole, anchor, and conduit charges is unreasonable. The Commission advises KCTA that 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.

11. 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 12(k).

12. 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 10, section 2.2.2.C, and in any similar provision in the tariff, the Commission advises Bell that 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.

(b) At pages 10-11, section 2.2.3.A, and in any similar provision in the tariff, the Commission advises Bell that it cannot render itself harmless against its own negligence, in the event its negligence causes injury to person, damage to property, interruption of service, or interference with service.

(c) At page 13, section 2.3.1.C, and in any similar provision in the tariff, the Commission recognizes that Bell cannot guarantee any necessary clearance or right-of-way involving private property. However, Bell should assist a CATV company in obtaining any necessary clearance or right-of-way involving private property, at the discretion and expense of the CATV company.

(d) At pages 14-15, section 2.3.3.A.2, and in any similar provision in the tariff, the Commission advises Bell that it may rearrange CATV facilities under the conditions described in the regulation. However, Bell cannot rearrange CATV facilities without liability in the event of a claim for compensation resulting from its negligence.

(e) At page 16, section 2.3.3.E, and in any similar provision in the tariff, the Commission advises Bell that it cannot restrict the type, number, and size of CATV facilities placed in conduit if conduit space is or can be made available.

(f) At pages 17-18, section 2.3.3.G. and in any similar provision in the tariff, the Commission advises Bell that it may remove CATV facilities under the conditions described in the regulation. However, Bell cannot remove CATV facilities without liability in the event of a claim for compensation resulting from its negligence.

(g) At page 19, section 2.3.4.A, and in any similar provision in the tariff, the Commission advises Bell that 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.

(h) At pages 19-20, section 2.3.4.D, and in any similar provision in the tariff, the Commission advises Bell that it may require protection against claims for compensation resulting from negligence on the part of a CATV company. However, Bell cannot require protection against "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 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 determination.

(i) At page 20, section 2.3.4.E, and in any similar provision in the tariff, the Commission advises Bell that it 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 from its own negligence. Furthermore, in the event of a dispute between Bell and a CATV company, liability for a claim for compensation would be a matter for judicial determination.

(j) At page 22, section 2.4.1.B, and in any similar provision in the tariff, the Commission advises Bell that it may require a bond to guarantee indemnification 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 sufficient only 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 sufficient only to indemnify continuing CATV operations, if the company has satisfactorily met performance requirements.

(k) At page 24, section 2.5.1.B, and in any similar provision in the tariff, the Commission advises Bell that 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.

(l) At page 32, section 2.6.1.C, and in any similar provision in the tariff, the Commission advises Bell that it cannot refuse authorization to make pole or anchor attachments, if attachment space is available or can be made available.

(m) At page 34, section 2.6.1.F, page 36, section 2.6.2.C, and in any similar provision in the tariff, the Commission advises Bell that it or another user may rearrange CATV facilities under the conditions described in

the regulation. However, neither Bell nor another user may rearrange CATV facilities without liability in the event of a claim for compensation resulting from negligence.

(n) At page 39, section 3.1.1.A, and in any similar provision in the tariff, the Commission advises Bell that a CATV company should be allowed at least 30 days from the date of authorization to make a pole or anchor attachment, or conduit installation. After 30 days the CATV company may be charged for authorized attachments. If authorized attachments are made in less than 30 days, Bell may charge from the date of attachment.

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

(a) The depreciation component should be 4.70 percent, as calculated from the 1981 Annual Report.

(b) The taxes component should be 12.11 percent, as calculated from the 1981 Annual Report.

(c) The administrative and overhead component should be 16.06 percent, as stated in the 1981 Annual Report.

(d) The maintenance component should be 2.57 percent, as calculated from the 1981 Annual Report.

(e) The rate of return component should be the most recent rate of return authorized by the Public Utilities Commission of Ohio.



(f) The total annual carrying charge should be 35.44 percent, based on calculations from the 1981 Annual Report, plus the rate of return authorized by the Ohio Commission.

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.

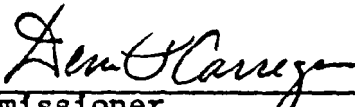
IT IS FURTHER ORDERED that Bell shall file revised rates, rules, and regulations governing CATV pole attachments with the Commission within 30 days from the date of this Order, and that the revised rates, rules, and regulations shall conform to the findings of this Order.

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

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

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Secretary

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.