

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CONSOLIDATED TV CABLE SERVICE, INC.)
AND HOWARD NORRELL)
 COMPLAINANT)
VS.) CASE NO. 9458
)
SOUTH CENTRAL BELL TELEPHONE COMPANY)

O R D E R

On November 8, 1985, Consolidated TV Cable Service, Inc., ("Consolidated") and Howard Norrell filed a complaint against South Central Bell Telephone Company ("Bell"). The complaint alleged that Bell billed Consolidated pole attachment rental fees, which have been paid, but did not bill Community Service, Inc., ("Community") a competitor of Consolidated. A refund of the amounts paid by Consolidated or a backbilling of Community was the relief requested.

The Commission, without hearing, issued an Order on May 2, 1986, dismissing the complaint. The Commission found, based on documents submitted by the parties that Community Service, Inc., is a party to a joint use agreement dated September 10, 1952, with Bell based on its relationship with the Frankfort Electric and Water Plant Board ("Plant Board"). That agreement allows the parties to use each others' poles without charge. This type of agreement was explicitly recognized by the Commission in Administrative Case No. 251. However, in that case, the

Commission found that cable television companies, such as Community, were not joint users and should not be covered by joint use agreements in the future. It was ordered that all joint use agreements be terminated. Bell has notified Community of the termination of the agreement effective October, 1986.

Because the Commission found that the joint use agreement exempted Community from pole attachment fees, and because Bell had given notice of termination of the agreement as required by the Order in Administrative Case 251, the complaint was dismissed.

However, on May 23, 1986, Consolidated filed a motion for rehearing. The grounds for the rehearing request were:

1. That Community Service, Inc., is a separate legal entity from the Frankfort Electric and Water Plant Board, and, that the joint use agreement between South Central Bell and the Plant Board does not exempt Community from pole attachment fees;

2. That contested issues of fact exist and complainants are entitled to confront and cross-examine South Central Bell and its representatives concerning the joint use contract and its policies and practices in implementing that contract.

A hearing was held on July 8, 1986. The complainant provided testimony about its relationship to Community Service, Inc., and the Plant Board. It alleged that its inability to attach to Plant Board utility poles created a competitive disadvantage as did the expense of paying the attachment fee. However, the testimony of Bell, uncontradicted by the complainant, shows that a valid joint use agreement exists between Bell and the Plant Board. The agreement exempts the Plant Board from cable attachment fees. The

testimony and documents submitted by Bell also show that the Plant Board and Community are the same entity for purposes of the attachments. Consolidated presented no evidence regarding the relationship of the Plant Board and Community. Thus, it has failed to support the allegation in its rehearing petition that Community and the Plant Board are distinct legal entities. Having failed to prove the separate identity of Community and the Plant Board, and the Commission having before it documents and testimony indicating that the Plant Board and Community are not a separate and distinct entity as alleged by Consolidated, it appears that Consolidated has failed to provide any basis for which the Commission could conclude that Bell has discriminated against Consolidated by following the terms of the agreement providing free service to the Plant Board.

Additional testimony confirms that Bell, according to the requirements of Administrative Case 251, has notified the Plant Board of the cancellation of the joint use agreement.

The other basis for granting rehearing petition--that of allowing Consolidated the opportunity to confront Bell's witnesses --has been satisfied. The testimony of Bell confirms the original finding of the Commission.

The complainant, through testimony of its witness, and cross-examination of Bell's witness, failed to introduce any evidence that would dispute the appropriateness of the inclusion of Community's cable attachments in the joint use agreement of Bell and the Plant Board.

Consolidated in its original complaint requested that the Commission order Bell to cease and desist in its discrimination against Consolidated. After reviewing this case, the Commission has not found any indication that Bell has discriminated against Consolidated; rather, Bell has acted in accordance with its Joint Use Agreement with the Plant Board. The complainant's claim of competitive disadvantage relates to the affiliation of the Plant Board and Community and the Plant Board's business relationship with Consolidated, which is beyond this Commission's jurisdiction.

FINDINGS AND ORDERS

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

1. The complainants have been given the opportunity to cross-examine Bell's witnesses and present testimony by its own witness;
2. Consolidated failed to present any evidence through its witness or cross-examination of Bell's witness, which would compel the Commission to alter the findings of its May 2, 1986, Order;
3. The testimony and documentary evidence do not support complainant's allegation that Community and the Plant Board are separate entities;
4. The evidence presented by Consolidated does not prove that it was discriminated against by Bell; and
5. Consolidated presented no proof and the Commission has no proof before it to support a finding that Consolidated is entitled to a refund of pole rental fees or that Community should be back-billed for those fees.

IT IS THEREFORE ORDERED that:

(1) The Findings and Orders in the Commission's May 2, 1986, Order in this Case are affirmed.

(2) The relief requested is denied; and

(3) The complaint is dismissed.

Done at Frankfort, Kentucky, this 22nd day of September, 1986.

PUBLIC SERVICE COMMISSION

Richard D. Hansen Jr.
Chairman

[Signature]
Vice Chairman

Pat Sittling Evans
Commissioner

ATTEST:

Executive Director