

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|--------------------------------------|---|-----------------|
| TOMMY LEE PENDLEY |) | |
| |) | |
| COMPLAINANT |) | |
| |) | |
| V. |) | CASE NO. 93-430 |
| |) | |
| LOGAN TELEPHONE COOPERATIVE, INC. |) | |
| |) | |
| AND |) | |
| |) | |
| SOUTH CENTRAL BELL TELEPHONE COMPANY |) | |
| |) | |
| DEFENDANTS |) | |

O R D E R

Tommy Lee Pendley, a resident in the Rochester Exchange and a customer of Logan Telephone Cooperative, Inc. ("Logan"), filed a formal complaint against Logan on November 12, 1993, because he does not receive local calling to his county seat in Muhlenberg County and to certain other areas in Muhlenberg County. These areas are served by another local exchange carrier, South Central Bell Telephone Company ("South Central Bell"). Mr. Pendley also complains that his 911 emergency service calls are routed to a county other than his own, resulting in loss of response time in emergency situations. A number of Mr. Pendley's neighbors also receive service from Logan and are subject to the same conditions, while others receive service from South Central Bell under a "grandfather" agreement arising from prior litigation. Mr. Pendley suggests three alternative forms of relief: area calling service,

transfer of his service from Logan to South Central Bell, and the institution of local competition so that each subscriber may choose his local exchange carrier. On March 10, 1994, Rodney Kirtley, Muhlenberg County Judge-Executive, filed with the Commission a letter stating that Mr. Pendley has his support, and that of the Muhlenberg County Fiscal Court, in his quest for transfer from Logan service to that of South Central Bell. Numerous other letters from Muhlenberg County residents support extended local calling for the area.

By Order dated February 25, 1994, the Commission found that the complaint could not be resolved without the participation of South Central Bell, and joined South Central Bell as a party to this proceeding. On February 17, 1995, Joseph Wells, Principal of Lake Malone Elementary School, requested intervention, asking that local calling privileges be extended and citing the large telephone bills incurred by his school in calling areas within the county. Mr. Wells' request for intervention was granted on March 8, 1995.

After an informal conference with Commission staff held on March 16, 1994, Logan and South Central Bell submitted a joint proposal pursuant to which they offered to exchange territories with each other in order to give Mr. Pendley local calling. By Order dated July 20, 1994, the Commission authorized implementation of the joint proposal on the condition that affected customers, who were to be notified by Logan and South Central Bell, filed no objections within 60 days.

Subsequently, numerous letters objecting to the proposed exchange were filed with the Commission. The majority of the letters were from residents of the "Little Bend" area of Butler County. Among their concerns is the fact that, because the Green River restricts their access to their county, emergency and medical services from Ohio County are more easily accessible to them than are those services in Butler County. Consequently, they wish to retain their current local calling area.

On September 21, 1994, the Commission ordered Logan and South Central Bell to advise the Commission as to whether their joint proposal could be amended to exclude the residents of the "Little Bend" area. Logan and South Central Bell responded on November 28, 1994, filing an Amended Joint Proposal. The Amended Joint Proposal excluded the "Little Bend" residents from the proposed exchange, included residents of the Elkton and Guthrie exchanges, and provided for a negotiated compensation settlement from Logan to South Central Bell. The Amended Joint Proposal also committed the companies to offer an Area Calling Service plan in the Dunmor and Greenville exchanges as soon as such plan could be formulated, and to resolve the 911 problem by implementing a Selective Routing feature.

The Commission reviewed, and found reasonable, the Amended Joint Proposal. Consequently, it issued an Order dated December 16, 1994, requiring that the Order, along with an explanation of the proposed rate changes to be incurred by each customer, be provided to each affected customer. The Commission ordered

implementation of the proposal unless customer objections were filed with the Commission within 60 days.

Once again, the Commission received numerous protests within the 60 day period. Once again, the protesters' desire to retain their current local calling areas appeared to be as sincere as Mr. Pendley's desire to change his own. Consequently, the Amended Joint Proposal was not implemented. Attempts to negotiate a boundary exchange that respected the interests of all affected parties had, unfortunately, proved futile.

On March 17, 1995, the Commission ordered Logan and South Central Bell to provide information regarding whether Mr. Pendley's Complaint stated good cause for deviation pursuant to the Commission's Order of February 21, 1980, in Administrative Case No. 218;¹ whether 911 service routed to Muhlenberg County emergency services will be made available to Logan's Muhlenberg County subscribers; and whether optional Area Calling Service in Muhlenberg County is feasible. The responses of Logan and South Central Bell, filed April 14, 1995, and April 17, 1995, respectively, indicate that the solutions suggested by Mr. Pendley are, at present, unworkable.

¹ Administrative Case No. 218, In the Matter of Telephone Utility Exchange Boundaries. The Order, dated February 21, 1980, states, in pertinent part, as follows: "The establishment of telephone boundary lines is absolutely necessary to allow economical and efficient communication system planning. . . . Once established, the integrity of boundary lines must be observed by both the telephone utilities and by telephone subscribers, except in those instances where, upon application by the utility, a deviation is granted by the Commission for good cause shown. . . ."

Complaints similar to that of Mr. Pendley have been filed before. In 1961, responding to complaints of Rochester exchange residents who wanted local calling to their county seat, the Commission in Case No. 3963² ordered Southern Bell Telephone and Telegraph Company ("Southern Bell"), which then operated the Greenville exchange in Muhlenberg County, to serve the Rochester exchange. On December 27, 1963, the Franklin Circuit Court, in Logan Co. Rural Telephone Coop. Corp. v. Public Service Commission, Civil Action No. 61507 (Memorandum dated December 21, 1963, Order and Judgment dated December 27, 1963), set aside the Commission's Order. In its Memorandum, the court noted, inter alia, that no inadequacy of service had been shown and that Southern Bell had not asked to furnish service to the Rochester exchange. There has been no showing that the circumstances crucial to this decision have changed.

First, as in 1963, no inadequacy of Logan service sufficient to justify redrawing exchange boundaries has been alleged. KRS 278.260 confers original jurisdiction upon the Commission as to rates and service, and Mr. Pendley alleges that his complaint has to do with service. However, he admits, in a letter to the Commission dated April 24, 1995, that his "complaint in no way has to do with the quality of service from Logan but the type of services offered." Moreover, even if Mr. Pendley deems local telephone service inadequate if it does not include local calling

² Case No. 3963, Estill Knight v. Southern Bell Telephone and Telegraph Company and Logan County Rural Telephone Cooperative Corporation, Order dated August 21, 1961.

to the county seat, other subscribers clearly do not agree, as responses to the two joint proposals demonstrate. Inadequacy of service, in the sense that Mr. Pendley apparently defines it, appears to be a purely subjective matter. As in 1963, the Logan service is not alleged to be inadequate in the objective sense that it is undependable.

Second, in its Response to Data Requests filed April 17, 1995, Item No. 1, South Central Bell states its belief that the boundaries as they exist should be respected. See also Answer of Logan Telephone Cooperative, filed April 14, 1995, Item No. 1. As in 1963, South Central Bell does not ask to furnish service to the portion of the Rochester exchange that is in Muhlenberg County. South Central Bell and Logan agree that the circumstances cited by Mr. Pendley do not warrant violation of exchange boundaries. There are many other areas in Kentucky where the same, or similar, circumstances prevail.

Mr. Pendley is justifiably concerned that his 911 calls are not routed to the emergency services which serve his county. However, Mr. Pendley has brought this concern to the wrong forum. KRS 65.760 places responsibility for choosing whether to purchase 911 services upon local governments. In order to purchase these services, governments may levy a tax, license, or fee with which to pay for the service. Id. The telephone companies' rates for such services are in their filed tariffs. Local governments may purchase local 911 service in situations where different local exchange carriers operate within the same county.

In response to Commission Order dated March 17, 1995, both South Central Bell and Logan explained that, in fact, Muhlenberg County has applied for E911 service to include a selective routing feature to ensure that 911 calls by Muhlenberg County residents in the Dunmor (Logan) exchange will be received by Muhlenberg County emergency services. The county did not, however, order selective routing for the Rochester exchange from which Mr. Pendley is served. In his April 24, 1995 letter to the Commission, Mr. Pendley claims that his lack of local 911 service is "[s]urely . . . not Muhlenberg County's fault. They are not in the telephone business." However, there has been no indication that Muhlenberg County attempted to order selective routing for the Rochester exchange or that the companies refused to provide it at tariffed rates.

Presumably, if the local government wishes to purchase such service, it will do so. In the meantime, the Commission may not order telephone companies to provide the service free or at rates below tariff. KRS 278.170(1) forbids utilities to discriminate among customers as to rates or services. In addition, KRS 278.160(2) provides as follows:

No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

Mr. Pendley also suggests that Area Calling Service be offered to enable him to make local calls to additional locations within

his county. Mr. Pendley does not discuss the expense of instituting the area calling service he suggests. However, the Commission cannot ignore it. In Marshall County v. South Central Bell Telephone Co., Ky., 519 S.W.2d 616, 619 (1975), Kentucky's highest court held that the Commission cannot order a telephone company to provide area calling unless the utility's cost is covered. Furthermore, the Commission may order such cost to be borne system-wide instead of by subscribers to the new service only if the utility, "as to other fully comparable areas, is spreading the cost system-wide. . . ." Id. at 618 (emphasis supplied). There has been no allegation that area calling service is currently provided to another area such as the Muhlenberg portion of the Rochester exchange and that all ratepayers in the system are subsidizing it. Consequently, if the service is offered in Muhlenberg County, its cost should be borne by those who subscribe to it.

The Commission inquired as to the economic feasibility of providing Area Calling Service in Muhlenberg County in its Order dated March 17, 1995. South Central Bell responded in the affirmative, stating that, if Logan offers the service to its Muhlenberg County subscribers, South Central Bell will offer the same to its Muhlenberg subscribers to allow for reciprocal local calling. Logan, however, said it has not studied the matter and does not know whether it would be economically feasible to offer the service. Logan should conduct such a study and report the

results to the Commission within six months from the date of this Order.

Finally, Mr. Pendley suggests that local telephone service be deregulated so that subscribers may choose their local carriers. On April 21, 1995, the Commission opened Administrative Case No. 355³ to examine issues regarding switched local access competition. It is not clear whether the resolution of Administrative Case No. 355 will address Mr. Pendley's concerns. However, local competition cannot adequately be addressed in the context of Mr. Pendley's complaint. Administrative Case No. 355 will, of necessity, be lengthy and complex, involving as it does dozens of parties as well as crucial issues such as the effect of local competition upon universal service. Should Mr. Pendley wish to participate in the proceeding, he may file a request to intervene.

The Commission is not insensitive to Mr. Pendley's concerns. Unfortunately, despite diligent efforts by the parties, it appears impossible at this time to resolve Mr. Pendley's concerns while respecting the interests of other subscribers and of the affected companies.

IT IS THEREFORE ORDERED that:

1. Logan Telephone Cooperative, Inc. shall conduct a study of the feasibility of providing optional Area Calling Service in Muhlenberg County and shall report the results of its study to the Commission within six months of the date of this Order.


³ Administrative Case No. 355, An Inquiry Into Local Competition, Universal Service, and the Non-Traffic Sensitive Access Rate, Order dated April 21, 1995.

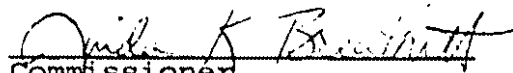
2. This case is hereby dismissed.

Done at Frankfort, Kentucky, this 15th day of June, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director