

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LAUREL COUNTY BOARD OF	)	
EDUCATION	)	
	)	
COMPLAINANT	)	
	)	CASE NO. 96-144
vs.	)	
	)	
GTE SOUTH INCORPORATED	)	
	)	
DEFENDANT	)	

O R D E R

On April 9, 1996, the Laurel County Board of Education ("Board") filed a formal complaint against GTE South Incorporated ("GTE South") alleging that GTE South had unreasonably refused to allow the Board to attach its lines to GTE South's poles. The Board plans to install its own fiber optic system of communications which will carry voice, video, and data information among the schools and the central Board office. It therefore wishes to sign a pole attachment agreement with GTE South and to pay a reasonable rate for the use of the poles. The Board states that GTE South has offered to provide the service itself; however, the Board claims it can accomplish the project much more cheaply.

GTE South's Answer to the complaint states that the Board has no pole attachment rights and that it does not offer to the public the service the Board seeks. GTE South adds that, since the complaint does not address either a "rate" or a "service," the Commission has no jurisdiction.

In Kentucky CATV Ass'n v. Volz, Ky.App., 675 S.W.2d 393, 396 (1983), the court held that "[t]he term 'service' not only includes the basic services for which a utility is created, but it also includes any service which arises from the use of a utility's facilities, such as its poles." As the court also noted in Volz, id., citing KRS 278.260, the Commission may investigate any practice relating to the service of the utility which may be "unreasonable, unsafe, insufficient or unjustly discriminatory." Thus, GTE South's argument that the Commission has no jurisdiction in this matter is erroneous.

GTE South also states that its poles are valuable commodities, and that requiring it to offer use of its poles to anyone else<sup>1</sup> would unreasonably burden the company and would not serve the public interest. GTE South does not expand on the term "public interest." Certainly it fails to explain how the public interest is not served by the economical provision of telecommunications services to a public school system.

As the Commission has made clear in prior orders, it believes that economical provision of telecommunications services to public school systems in this Commonwealth is unquestionably in the public interest. Kentucky's commitment to the role of telecommunications in education is demonstrated by the discounts available to Kentucky schools through the Kentucky Information Highway. As noted in Administrative Case No.

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<sup>1</sup> Cable TV companies, pursuant to Commission regulation and federal law, and telecommunications providers, pursuant to the Telecommunications Act of 1996, already must be permitted to use the poles. The Board is not a telecommunications service provider pursuant to federal law, since it does not offer telecommunications service "for a fee" directly to the public. See 47 U.S.C. Section 153, as amended by the Telecommunications Act of 1996.

355,<sup>2</sup> the state of Kentucky anticipated the requirement of the Telecommunications Act of 1996 to offer discounted service to schools through its implementation of the Kentucky Information Highway.

GTE South is, nevertheless, correct in its assertion that its poles constitute valuable and finite resources. Many institutions which operate in the public interest -- for example, colleges and nonprofit medical facilities -- may also wish to lease the very limited space on poles belonging to local exchange carriers. In addition, cable television system operators as well as telecommunications carriers are required by law to be permitted to collocate on GTE South's poles. See 47 U.S.C. Section 224(a)(4), as amended by the Telecommunications Act of 1996. Consequently, the issues raised in this case are too broad, their potential implications for this Commonwealth too far-reaching, to be adequately treated in a complaint case involving only one school board and one local exchange carrier. This is particularly true in light of the recent federal mandate to implement local exchange competition.

However, ensuring reasonably priced telecommunications services to schools remains an overarching policy of both the federal and state governments. Furthermore, the Commission applauds the Board's initiative in seeking ways to improve the telecommunications services provided in its school system. Consequently, although this petition will be dismissed, the issues it raises will be considered by the Commission in its

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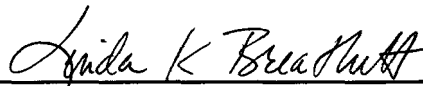
<sup>2</sup> Administrative Case No. 355, An Inquiry into Local Competition, Universal Service, and the Non-traffic Sensitive Access Rate.

universal service docket, Administrative Case No. 360,<sup>3</sup> wherein broad policies crucial to ensuring affordable telecommunications services will be adopted by the Commission after it has received the broad range of opinions and ideas expected from the workshops to be held in that case. The Board is invited to request intervention and to participate fully in that proceeding.

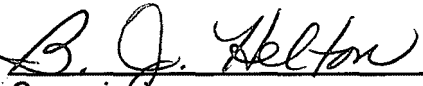
The Commission, having reviewed the record and having been sufficiently advised, HEREBY ORDERS that this petition is dismissed.

Done at Frankfort, Kentucky, this 5th day of December, 1996.


PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director

<sup>3</sup> Administrative Case No. 360, An Inquiry into Universal Service and Funding Issues.