

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY UTILITIES)	CASE NO.
COMPANY FOR AN ADJUSTMENT OF BASE)	2009-00548
RATES)	

O R D E R

The matter is before the Commission upon a motion for full intervention filed by TW Telecom of Kentucky, LLC ("TW Telecom"). TW Telecom states that it is a competitive local exchange carrier and a long-distance carrier in Kentucky. In support of its motion, TW Telecom avers that its facilities are attached to poles owned by Kentucky Utilities Company ("KU") and that it would be affected by "that part of the rate-adjustment application that seeks to increase [KU's] pole attachment rates" TW Telecom further states that it seeks intervention to "maintain any distinction in pole-attachment rates disfavoring those classified as telecommunications carriers." Lastly, TW Telecom acknowledges that Kentucky Cable Telecommunications Association, an organization representing the interests of certain cable television customers of KU, has been granted full intervention in this matter, but contends that no telecommunications carrier has intervened. Thus, TW Telecom concludes that it is likely to present issues and develop facts that will assist the Commission in fully considering the matter without complicating the proceedings.

KU filed an objection to TW Telecom's request for intervention, arguing that TW Telecom has not alleged that it is a customer of KU. KU points out that, as part of its

base rate case, it is proposing changes in rates for the attachment of cable television system facilities to its poles and that these adjustments do not affect TW Telecom. Thus, KU maintains that “any issues [TW Telecom] might raise regarding any distinction in pole attachment rates disfavoring those classified as telecommunications carriers are totally irrelevant to these cases.” KU contends that rates between telecommunications providers and electric utilities are negotiated and set forth in joint-use agreements and that the proper forum for disputes relating to joint-use agreements is a complaint proceeding, not a base rate case.

TW Telecom filed a reply, asserting that it is a customer of KU because it attaches its facilities to the poles of that utility and is charged by KU. TW Telecom further argues that KU's proposed language changes to its cable television attachment charges tariff (“CATV Tariff”) eliminate the restriction to cable television operators from the “Availability of Service” provision. TW Telecom notes that the proposed language would make the tariffed service available to entities like TW Telecom. TW Telecom argues that, in the event that KU would not be willing to provide pole-attachment service under the proposed CATV Tariff to TW Telecom, that the “maintenance of that unreasonable distinction is an issue in this proceeding in which [TW Telecom] has a special interest not otherwise adequately represented.”

In its sur-reply, KU asserts that only cable television system operators may take service under its existing and proposed CATV Tariff. Because TW Telecom is not a cable television system operator, KU contends that TW Telecom may not attach its cables, wires, and appliances to the utility's poles under the proposed CATV Tariff. Consequently, TW Telecom has no interest in this rate proceeding.

Based on the pleadings and being otherwise sufficiently advised, the Commission finds that the only person entitled to intervene as a matter of right is the Attorney General, pursuant to KRS 367.150(8)(b). Intervention by all others is permissible and is within the sound discretion of the Commission.¹

In exercising its discretion to determine permissive intervention, the Commission follows its regulation, 807 KAR 5:001, Section 3(8). That regulation requires a person seeking intervention to file a request in writing which “shall specify his interest in the proceeding.”² That regulation further provides:

If the Commission determines that a person has a special interest in the proceeding which is not otherwise adequately represented or that full intervention by party is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings, such person shall be granted full intervention.³

It is under these statutory and regulatory criteria that the Commission reviews a petition to intervene.

Contrary to TW Telecom’s arguments, a plain reading of the proposed CATV Tariff indicates that attachments to KU’s poles would be permitted only to cable television system operators. Specifically, the “Availability of Service” section provides:

Where Company is willing to permit the attachment of cables, wires and appliances to its poles where, in Company’s judgment, such attachments will not interfere with its electric service requirements and other prior licensees using Company’s poles. Attachments will be

¹ Inter-County Rural Electric Cooperative Corporation v. Public Service Comm’n of Kentucky, 407 S.W.2d 127, 130 (Ky. 1966).

² 807 KAR 5:001, Section 3(8)(b).

³ Id.

permitted upon execution by both parties of a Cable Television Attachment Agreement supplied by Company.

Additionally, the section under the heading "Terms and Conditions of Pole Attachments" provides, in relevant part:

Upon written Agreement, Company is willing to permit, to the extent it may lawfully do so, the attachment of cables, wires and appliances to its poles by a cable television operator, hereinafter "Customer,"

TW Telecom is not a cable television operator and, therefore, is not eligible to take service under the existing or proposed CATV Tariff. As a telecommunications utility, TW Telecom uses KU's poles under the terms of a negotiated joint-use pole agreement and such agreements are not within the scope of the rate application filed by KU. Accordingly, the Commission finds that TW Telecom has neither a special interest in these proceedings nor will TW Telecom be likely to present issues or to develop facts that will assist the Commission in resolving this matter.

Having determined that the requisites of 807 KAR 5:001, Section 3(8), have not been satisfied, the Commission will deny TW Telecom's request for intervention. However, if TW Telecom believes that the negotiated rates it pays to KU under the terms of the joint-use agreements are unreasonable or discriminatory, it may file a complaint under Commission regulation 807 KAR 5:001, Section 12. In addition, TW Telecom will have ample opportunity to participate in these proceedings even though it is not granted intervenor status. TW Telecom may submit comments that will be entered in the record of this case. TW Telecom may also keep abreast of the status of the case and filings by monitoring the KU case's electronic file located at <http://psc.ky.gov/Home/Library?type=Cases&folder=2009cases/2009-00548>.

IT IS THEREFORE ORDERED that the motion filed by TW Telecom to intervene in this case is denied.

By the Commission

ENTERED
APR 29 2010 *M*
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2009-00548

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