

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

CERTIFICATION BY THE
LOUISIANA PUBLIC
SERVICE COMMISSION
CONCERNING
REGULATION OF CABLE
TELEVISION POLE
ATTACHMENTS

File No. ENF-85-47

DOCKET FILE COPY ORIGINAL

MEMORANDUM OPINION AND ORDER

Adopted October 24, 1986 ; Released November 7, 1986

By the Chief, Common Carrier Bureau:

1. On April 28, 1986, BellSouth Corporation ("BellSouth"), on behalf of its operating company, South Central Bell Telephone Company, petitioned for further reconsideration of the Bureau's order which held that the Louisiana Public Service Commission ("Louisiana PSC") does not regulate pole attachments within the meaning of 47 U.S.C. § 224(c). *Certification by the Louisiana Public Service Commission Concerning Regulation of Cable Television Pole Attachments*, Mimeo No. 3427 (released Mar. 27, 1986) ("Order"). Oppositions to BellSouth's petition were filed by the Louisiana Cable Television Association ("LCTA") and Group W Cable, Inc.

2. Our Order was predicated on a Louisiana Court of Appeal decision which held that the Louisiana PSC lacked jurisdiction to regulate pole attachment matters.¹ BellSouth alleges, *inter alia*, that under Louisiana law the Court of Appeal's judgment does not become final and definitive until an application for a writ of certiorari to the Louisiana Supreme Court is denied. This issue is now moot because the appellate court's decision was recently reversed by the Louisiana Supreme Court, which concluded that the Louisiana PSC properly asserted jurisdiction over cable television pole attachments. *Louisiana Cablevision, et al. v. Louisiana Public Service Commission*, No. 86-C-0375, slip op. at 10 (La. Sept. 8, 1986).

3. Although the Louisiana PSC's jurisdiction to regulate pole attachment matters is no longer at issue, we will consider the argument raised but not reached in the earlier proceeding that the Louisiana PSC has not made effective rules and regulations implementing its regulatory authority over pole attachments in conformity with 47 U.S.C. § 224(c). The Bureau has already considered and rejected a similar attack on the adequacy of a state's regulatory scheme for pole attachment matters. *Certification by Maryland Public Service Commission Concerning Regulation of Cable Television Pole Attachments*, Mimeo No. 3621 (released Apr. 8, 1986). In both that decision and the Report and Order in MM Docket No. 84-1296, 50 Fed. Reg. 18637 (1985), the Commission made clear that it would not prejudge a state's regulatory scheme for pole attachments once the state has filed a certification that it regulates rates, terms, and conditions of pole attachments pursuant to 47 U.S.C. § 224(c) and 47 C.F.R. § 1.1414. It will not look behind a certification unless it has

evidence that a party is unable to file a complaint with the state Commission or the state Commission has failed to act on a complaint within the prescribed period.

4. The Louisiana PSC certification meets the formal requirements of Section 224(c). None of the parties opposing the Louisiana certification alleges that anyone attempted to file a complaint with the Louisiana PSC and was unable to do so due to a lack of appropriate procedures. Nor is there any evidence of a complaint which has been pending in Louisiana longer than the 180-day period the statute allows. We conclude that LCTA, the petitioner in the original proceeding, has failed to demonstrate that it exhausted its remedies at the state level before seeking relief in this forum. Therefore, we will accept the Louisiana PSC's March 13, 1985, certification and will add Louisiana to the list of states which have certified that they regulate pole attachments. Thus, the relief sought by BellSouth in the instant petition will be granted.

5. Accordingly, IT IS ORDERED, pursuant to 47 C.F.R. § 0.291, that the petition for further reconsideration filed by BellSouth Corporation on behalf of South Central Bell Telephone Company IS GRANTED.

6. IT IS FURTHER ORDERED, that the Order in the above-captioned proceeding, Mimeo No. 3427 (released Mar. 27, 1986), IS VACATED.

FEDERAL COMMUNICATIONS COMMISSION

Albert Halprin
Chief, Common Carrier Bureau

FOOTNOTES

¹ *Louisiana Cablevision v. Louisiana Public Service Comm'n.*, No. CA-84-1114, slip op. at 8-9 (La. Ct. App., 1st Cir., Dec. 26, 1985).

FILED/ACCEPTED

APR 26 2010

Federal Communications Commission
Office of the Secretary

Louisiana Certification file

See ENF-85-47 for additional materials re
the certification by the Louisiana Public Service
Commission