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KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

JULIAN M. CARROLL  
GOVERNOR

REVIEW COMMISSION

104 BRIDGE ST.

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

September 14, 1977

MERLE H. STANTON  
CHAIRMAN

CHARLES B. UPTON  
MEMBER

HERBERT L. STOWERS  
MEMBER

KOSHRC #336

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

SOUTH CENTRAL BELL TELEPHONE CO.

RESPONDENT

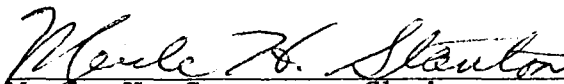
DECISION AND ORDER OF  
REVIEW COMMISSION

Before STANTON, Chairman; STOWERS and UPTON, Commissioners.

PER CURIAM:

A Recommended Order of Hearing Officer Herbert B. Sparks, issued under date of June 6, 1977, is presently before this Commission for review, pursuant to a Petition for Discretionary Review.

Finding no error in the application of the law to the facts herein, and the evidence appearing to adequately support the findings and conclusions of the Hearing Officer, it is the unanimous ORDER of the Review Commission that the Recommended Order of the Hearing Officer be and it hereby is AFFIRMED, and the citation and no penalty provision involved are SUSTAINED.

  
Merle H. Stanton, Chairman

DATED: September 14, 1977  
Frankfort, Ky.

/s/ H. L. Stowers

H. L. Stowers, Commissioner

DECISION NO. 465

/s/ Charles B. Upton


Charles B. Upton, Commissioner

This is to certify that a copy of this Decision and Order has been served by mailing or personal delivery on the following:

- ✓ Commissioner of Labor (Messenger Service)  
Commonwealth of Kentucky  
Frankfort, Kentucky 40601  
Attention: Honorable Michael D. Ragland  
Executive Director for  
Occupational Safety & Health
- ✓ Hon. Kenneth E. Hollis, General Counsel (Messenger Service)  
Department of Labor  
Frankfort, Kentucky 40601  
Attn.: Hon. Frederick G. Huggins,  
Deputy General Counsel
- ✓ Hon. Stephen M. Vinsavich, Attorney (Certified Mail #456849)  
South Central Bell  
P. O. Box 32410  
Louisville, Kentucky 40232
- ✓ Hon. William S. Connolly (First Class Mail)  
General Attorney  
P. O. Box 32410  
Louisville, Kentucky 40232
- ✓ Mrs. Nelle P. Horlander, State Dir. (First Class Mail)  
Communications Workers of America  
605 Vermont American Building  
100 East Liberty Street  
Louisville, Kentucky 40202
- ✓ Mr. Joe E. Hewlett, President (First Class Mail)  
Local 10317, CWA  
Post Office Box 1224  
Paintsville, Kentucky 41240
- ✓ Hon. Gail F. Barber, Attorney (First Class Mail)  
Post Office Box 771  
27th Floor, Headquarters Building  
Birmingham, Alabama 35201
- ✓ South Central Bell Telephone Co. (First Class Mail)  
534 Armory Place  
Louisville, Kentucky 40202

This 14th day of September, 1977.

✓ O.T.R.  
✓ H.O.A.

  
Iris R. Barrett  
Executive Director



KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

104 BRIDGE ST.

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

June 6, 1977

JULIAN M. CARROLL  
GOVERNOR

IRIS R. BARRETT  
EXECUTIVE DIRECTOR

MERLE H. STANTON  
CHAIRMAN

HERBERT L. STOWERS  
MEMBER

CHARLES B. UPTON  
MEMBER

*KOSHRC  
Decision &  
Order No. 482*

PUBLIC SERVICE COMMISSION OF  
KENTUCKY (For and on behalf  
of DEPARTMENT OF LABOR)

KOSHRC # 336

COMPLAINANT

VS.

SOUTH CENTRAL BELL TELEPHONE CO.

RESPONDENT

NOTICE OF RECEIPT OF  
RECOMMENDED ORDER, AND  
ORDER OF THIS COMMISSION

All parties to the above-styled action before this Review Commission will take notice that pursuant to our Rules of Procedure a Decision, Findings of Fact, Conclusions of Law, and Recommended Order is attached hereto as a part of this Notice and Order of this Commission.

You will further take notice that pursuant to Section 48 of our Rules of Procedure, any party aggrieved by this decision may within 25 days from date of this Notice submit a petition for discretionary review by this Commission. Statements in opposition to petition for discretionary review may be filed during review period, but must be received by the Commission on or before the 35th day from date of issuance of the recommended order.

Pursuant to Section 47 of our Rules of Procedure, jurisdiction in this matter now rests solely in this Commission and it is hereby ordered that unless this Decision, Findings of Fact, Conclusions of Law, and Recommended Order is called for review and further consideration by a member of this Commission within 40 days of the date of this order, on its own order, or the granting of a petition for discretionary review, it is adopted and affirmed as the Decision, Findings of Fact, Conclusions of Law and Final Order of this Commission in the above-styled matter.

Parties will not receive further communication from the Review Commission unless a Direction for Review has been directed by one or more Review Commission members.

Copy of this Notice and Order has been served by mailing or personal delivery on the following:

Commissioner of Labor (Messenger Service)  
Commonwealth of Kentucky  
Frankfort, Kentucky 40601  
Attention: Honorable Michael D. Ragland  
Executive Director for  
Occupational Safety & Health

Public Service Commission of Kentucky (Messenger Service)  
Capital Plaza Tower - 24th Floor  
Frankfort, Kentucky 40601  
Attn.: Richard D. Heman, Jr., Secretary

Public Service Commission of Kentucky (Messenger Service)  
Capital Plaza Tower - 24th Floor  
Frankfort, Kentucky 40601  
Attn.: A. F. Humphries  
Director of Engineering


Hon. William M. Sawyer, Attorney (Messenger Service)  
Public Service Commission of Kentucky  
Capital Plaza Tower - 24th Floor  
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Hon. Gail F. Barber, Attorney (Certified Mail #114265)  
Post Office Box 771  
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Hon. William S. Connolly (Certified Mail #114266)  
General Attorney  
Post Office Box 538  
Louisville, Kentucky 40201

South Central Bell Telephone Co. (Certified Mail #114267)  
534 Armory Place  
Louisville, Kentucky 40202

This 6th day of June, 1977,

  
Iris R. Barrett, Executive Director

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

KOSHRC # 336

PUBLIC SERVICE COMMISSION OF  
KENTUCKY (For and on behalf  
of DEPARTMENT OF LABOR)

COMPLAINANT

VS.

DECISION, FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
RECOMMENDED ORDER

SOUTH CENTRAL BELL TELEPHONE COMPANY

RESPONDENT

\* \* \* \* \*

Hon. William M. Sawyer, Morris E. Burton, John D. Minton, Jr.,  
Attorneys for Complainant, Public Service Commission of  
Kentucky, Capital Plaza Tower, 24th Floor, Frankfort,  
Kentucky

Hon. Steven M. Vinsavich, P.O. Box 538, Louisville, Kentucky,  
for Respondent

\* \* \* \* \*

An inspection was made on October 13, 1976, by a Kentucky  
OSHA Compliance Officer of a work site of South Central Bell  
Telephone Company at Prestonsburg, Kentucky, and on the basis of  
that inspection a citation was issued to the company as a result.

The procedural pertinent information and dates are as  
follows:

1. Inspection of the premises mentioned above was October  
13, 1976.
2. Citation issued October 15, 1976.

3. Notice of Contest was received November 11, 1976.
4. Certification of Employer Form was received October 19, 1976.
5. Complaint was received December 1, 1976.
6. Answer was received December 20, 1976.
7. Case was assigned to Hearing Officer on December 28, 1976.
8. The hearing was scheduled for January 18, 1977. On January 17, 1977 a continuance of thirty days was granted in order that the parties might attempt to enter into a stipulation of fact.
- 9) Stipulation of Facts were submitted on February 22, 1977, and Briefs were received from the respective parties on March 31, 1977.

The aforesaid hearing was held under the provisions of KRS 338.071(4), one of the provisions dealing with the safety and health of employees, which authorized the Review Commission to hear and rule on appeals from citations, notifications and variances issued under the provisions of this chapter, and to adopt and promulgate rules and regulations with respect to procedural aspects of the hearing. Under the provisions of KRS 338.081, the hearing was authorized by the provisions of said chapter, and such may be conducted by a Hearing Officer appointed by the Review Commission to serve in its place. After hearing and appeal, the Review Commission may sustain, modify or dismiss the citation or penalty.

After studying the Stipulation of Facts entered into by the parties, together with the exhibits filed and stipulations and representations of the parties, it is concluded that the substantial evidence on the record considered as a whole supports the following Findings of Fact.

### FINDINGS OF FACT

On October 13, 1976, Kentucky OSH Compliance Officer Amburgey conducted an inspection of a work site of South Central Bell Telephone Company in Prestonsburg, Kentucky. A citation was issued to the company as a result of such inspection, and Item No. 1 of that citation alleged a violation of 29 CFR 1926.150(a) (as adopted by 803 KAR 2:030) because there was no fire extinguisher on the Company's truck at the work site. That portion of the CFR requires that during all phases of construction or demolition work, specified fire fighting equipment is to be provided.

South Central Bell admits that no fire extinguisher was on the truck, and that such extinguisher had previously been ordered by an official of South Central Bell. South Central Bell contested this item on the ground that the construction safety standard is not applicable to the telecommunications work being performed at the site.

The only question to be decided in this matter is whether the work was within the definition of telecommunications field work (29 CFR 1910.260(a)), or whether the work was construction work within the meaning of 29 CFR 1910.12, and thus whether the construction safety standard was properly applied to the following described work:

At the time of the inspection, one of the Company's employees, a Splicer, was engaged in splicing aerial cable to buried cable. Both the aerial cable and the buried cable had been previously

installed. The purpose of this rerouting was two-fold: (1) A portion of the original cable was known to be defective; and (2) a land owner had requested that the cable be removed from his property. In order to accomplish this, two employees of an outside contractor had earlier exposed approximately eight feet of the buried cable, which was about two feet below the surface of the ground. When the Compliance Officer arrived, the company splicer was standing on the ground, not in the trench, and was splicing individual pairs of the underground cable to those of the aerial cable. Splicing in this case, as in other similar situations, involves peeling back about nine inches of the outer sheath of each cable. The splicer attached each pair of metal conductors in the aerial cable to the corresponding pair in the buried cable by inserting the ends of corresponding pairs in a miniature metal sleeve called a connector, and then pinching the sleeve with a mechanical device called a crimper.

When all of the pairs had been spliced, an air-tight metal case was used to enclose the portion of the cable from which the outer sheath had been removed. The sheath was approximately four inches in diameter and eighteen inches long. Later, the sheath was bolted to the pole about five feet above the ground at the site. The cable was then covered by the outside contractor and the job was finished. The splicing work described above was the only work performed by Respondent's employees at the time at that site.

On the basis of the Stipulation of Facts and on the basis of the research of the Hearing Officer in this case, it is found that the operations set out above done by Respondent is "construction work".

It is further found that the Respondent was in violation of the standard hereinabove in question and such violation violated the Acts and Standards of the OSH Act in Kentucky, specifically, 29 CFR 1926.150(a)(1) (as adopted by 803 KAR 2:030).

In light of the foregoing the following Conclusions of Law would seem appropriate.

#### CONCLUSIONS OF LAW

Your Hearing Officer has relied heavily on the decision handed down by the Review Commission in Public Service Commission of Kentucky (for and on behalf of the Department of Labor) vs. South Central Bell Telephone Company, KOSHRC No. 291.

In this above cited case, citations were issued on the basis of an alleged violation of 29 CFR 1926.150(a)(4) (as adopted by 803 KAR 2:030), which dealt with fire fighting equipment also.

In this decision, the Commission opinion written by Chairman Merle H. Stanton stated as follows:

"Much has been written on this matter as to whether or not the work being performed was construction work or telecommunications work, whether the telecommunication standards were controlling, or whether the telecommunication industry is also subject to the so-called Construction Standards (29 CFR 126).

Acknowledging that some industries have unique safety and health hazards, peculiar to that industry, special standards were evolved applying only to that industry.

Subpart R of the General Industry Standard (29 CFR 1910) provided for several of these; that is, pulp, paper and paperboard mills; textiles; bakery equipment; laundry machinery and operations; sawmills; and telecommunications. In order to insure that these telecommunication standards were not to be considered as exclusive of other standards, section 1910.268(a)(3) provides specifically that the Construction Standards are applicable where pertinent.

It becomes evident that respondent is subject to all other applicable general provisions for safety and health of its employees under 29 CFR 1910 and is subject to the provisions of 29 CFR 1926 involving operations in construction work.

By 29 CFR 1926.20 construction work is for 'construction, alteration, and/or repair, including painting and decorating'. Efforts have been made to make a stilted definition of this because of the addition of 'painting and decorating.' The Subpart Titles indicate that the real meaning of construction is construction, alteration and/or repair. A look at the subjects of the Subparts of 29 CFR 1926 will be convincing that painting and decorating cannot be limiting of the definition of construction, alteration and/or repair, since Welding and Cutting, Steel Erection, Excavations, Trenching, Shoring, Signs, Signals, Barricades and Motor Vehicles, Mechanized Equipment and Marine Operations are a few of the activities covered by construction, and these are not limited by painting and decorating.

The true area of involvement in this present case is the truck, described as a truck that had tool racks on the side, plus an area in the back, open area, for hauling equipment, tools and materials, among other things."

Commissioner Stanton goes on and points out in this case as follows:

"The case of West Allis Lime & Cement Co., #15,703 CCH, involved cement delivery by an independent contractor. In that case it was held that while engaged in the performance of Respondent's business, the vehicle is deemed to constitute a work-place of Respondent. Respondent contended that it was not engaged in 'construction work' and therefore not subject to 29 CFR 1926. 601(b)(4), but it was the finding of Judge Watkins that the respondent was subject to the Construction Standards."

Commissioner Stanton goes on and points out:

"In the present case, respondent was engaged in repairing or altering or replacing open wire telephone lines by installing new cable lines. It is the finding of this Commission that this would be construction, alteration or repair work, within the meaning of construction and the Construction Standards apply."

After citing Section 1910.268(a)(3) and 1910.12(d),

Commissioner Stanton goes on and says:

"It seems clear that it was the intent to construe alteration, conversion, and improvement of lines and equipment as construction work, and an effort to delineate it as 'field work' does not change the activity concerned nor keep its employees from having the same protection as others in like situations."

He then cites United Telephone Co. of the Carolinas, Inc., a case decided by the Federal OSHRC, and found at CCH 21.043, wherein it was stated:

"It is clear that erecting and removing telephone poles and transferring lines were reclassified at 1910.268(a)(1) as 'field work' to further emphasize that the regulations apply only to the telecommunications industry. Thus, we conclude that prior to reclassification the erection and removal of telephone poles and the transfer of lines was considered 'construction work' and subject to all pertinent construction standards."

Briefly stated, at the time of the citation the general construction standards were applicable to the erection and rearrangement of telephone lines. Subsequent to the citation the Secretary adopted standards specifically applicable to the telecommunications industry. We do not construe this action to suggest, as argued by respondent, that the general construction standards were never applicable to telecommunications. On the contrary, we interpret the Secretary's actions as preempting the applicability of certain general construction standards by adopting standards specifically drafted for the telecommunications industry."

The Commission then cited Public Service Commission v. Cincinnati Bell, KOSHRC Docket No. 224 and Public Service Commission

vs. Cincinnati Bell, No. 254, and Southwestern Bell Telephone Co., Federal OSHRC, CCH 21,412.

He then made the finding of the Commission that the Construction Standards, 29 CFR 1926, are applicable to the respondent in the work that is outlined in the present case. He further proceeded, however, to find that the complainant failed to carry its burden of proof as to the violation, and he therefore ordered that the citation and penalty of \$43.00 be vacated.

In this instant case it would seem that there can be little question, in following the authority handed down by our Commission in South Central Bell, KOSHRC No. 291, that the Respondent, South Central Bell Telephone Company, herein violated 29 CFR 1926.150 (a)(1) (as adopted by 803 KAR 2:030).

In light of the foregoing it would seem that the following Recommended Order is appropriate.

RECOMMENDED ORDER

IT IS ORDERED AND ADJUDGED that the citation herein in question charging a violation of 29 CFR 1926.150(a)(1) (as adopted by 803 KAR 2:030) shall be and the same is hereby sustained.

There is no proposed penalty. This violation must be corrected without delay, but no later than fifteen (15) days from the date of this Recommended Order.

This   1   day of June, 1977.

Dated: June 6, 1977  
Frankfort, Kentucky

  
HERBERT B. SPARKS, HEARING OFFICER

DECISION NO. 422



KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

JULIAN M. CARROLL  
GOVERNOR

REVIEW COMMISSION

104 BRIDGE ST.

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

June 6, 1977

MERLE H. STANTON  
CHAIRMAN

HERBERT L. STOWERS  
MEMBER

CHARLES B. UPTON  
MEMBER

IRIS R. BARRETT  
EXECUTIVE DIRECTOR

*KOSHRC*  
*Decision +*  
*Order No. 177*

PUBLIC SERVICE COMMISSION OF  
KENTUCKY (For and on behalf  
of DEPARTMENT OF LABOR)

KOSHRC # 336

COMPLAINANT

VS.

SOUTH CENTRAL BELL TELEPHONE CO.

RESPONDENT

NOTICE OF RECEIPT OF  
RECOMMENDED ORDER, AND  
ORDER OF THIS COMMISSION

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You will further take notice that pursuant to Section 48 of our Rules of Procedure, any party aggrieved by this decision may within 25 days from date of this Notice submit a petition for discretionary review by this Commission. Statements in opposition to petition for discretionary review may be filed during review period, but must be received by the Commission on or before the 35th day from date of issuance of the recommended order.

Pursuant to Section 47 of our Rules of Procedure, jurisdiction in this matter now rests solely in this Commission and it is hereby ordered that unless this Decision, Findings of Fact, Conclusions of Law, and Recommended Order is called for review and further consideration by a member of this Commission within 40 days of the date of this order, on its own order, or the granting of a petition for discretionary review, it is adopted and affirmed as the Decision, Findings of Fact, Conclusions of Law and Final Order of this Commission in the above-styled matter.

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Occupational Safety & Health

Public Service Commission of Kentucky (Messenger Service)  
Capital Plaza Tower - 24th Floor  
Frankfort, Kentucky 40601  
Attn.: Richard D. Heman, Jr., Secretary

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General Attorney  
Post Office Box 538  
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South Central Bell Telephone Co. (Certified Mail #114267)  
534 Armory Place  
Louisville, Kentucky 40202

This 6th day of June, 1977,

  
Iris R. Barrett, Executive Director

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

KOSHRC # 336

PUBLIC SERVICE COMMISSION OF  
KENTUCKY (For and on behalf  
of DEPARTMENT OF LABOR)

COMPLAINANT

VS.

DECISION, FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
RECOMMENDED ORDER

SOUTH CENTRAL BELL TELEPHONE COMPANY

RESPONDENT

\* \* \* \* \*

Hon. William M. Sawyer, Morris E. Burton, John D. Minton, Jr.,  
Attorneys for Complainant, Public Service Commission of  
Kentucky, Capital Plaza Tower, 24th Floor, Frankfort,  
Kentucky

Hon. Steven M. Vinsavich, P.O. Box 538, Louisville, Kentucky,  
for Respondent

\* \* \* \* \*

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OSHA Compliance Officer of a work site of South Central Bell  
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After studying the Stipulation of Facts entered into by the parties, together with the exhibits filed and stipulations and representations of the parties, it is concluded that the substantial evidence on the record considered as a whole supports the following Findings of Fact.

### FINDINGS OF FACT

On October 13, 1976, Kentucky OSH Compliance Officer Amburgey conducted an inspection of a work site of South Central Bell Telephone Company in Prestonsburg, Kentucky. A citation was issued to the company as a result of such inspection, and Item No. 1 of that citation alleged a violation of 29 CFR 1926.150(a) (as adopted by 803 KAR 2:030) because there was no fire extinguisher on the Company's truck at the work site. That portion of the CFR requires that during all phases of construction or demolition work, specified fire fighting equipment is to be provided.

South Central Bell admits that no fire extinguisher was on the truck, and that such extinguisher had previously been ordered by an official of South Central Bell. South Central Bell contested this item on the ground that the construction safety standard is not applicable to the telecommunications work being performed at the site.

The only question to be decided in this matter is whether the work was within the definition of telecommunications field work (29 CFR 1910.260(a)), or whether the work was construction work within the meaning of 29 CFR 1910.12, and thus whether the construction safety standard was properly applied to the following described work:

At the time of the inspection, one of the Company's employees, a Splicer, was engaged in splicing aerial cable to buried cable. Both the aerial cable and the buried cable had been previously

installed. The purpose of this rerouting was two-fold: (1) A portion of the original cable was known to be defective; and (2) a land owner had requested that the cable be removed from his property. In order to accomplish this, two employees of an outside contractor had earlier exposed approximately eight feet of the buried cable, which was about two feet below the surface of the ground. When the Compliance Officer arrived, the company splicer was standing on the ground, not in the trench, and was splicing individual pairs of the underground cable to those of the aerial cable. Splicing in this case, as in other similar situations, involves peeling back about nine inches of the outer sheath of each cable. The splicer attached each pair of metal conductors in the aerial cable to the corresponding pair in the buried cable by inserting the ends of corresponding pairs in a miniature metal sleeve called a connector, and then pinching the sleeve with a mechanical device called a crimper.

When all of the pairs had been spliced, an air-tight metal case was used to enclose the portion of the cable from which the outer sheath had been removed. The sheath was approximately four inches in diameter and eighteen inches long. Later, the sheath was bolted to the pole about five feet above the ground at the site. The cable was then covered by the outside contractor and the job was finished. The splicing work described above was the only work performed by Respondent's employees at the time at that site.

On the basis of the Stipulation of Facts and on the basis of the research of the Hearing Officer in this case, it is found that the operations set out above done by Respondent is "construction work".

It is further found that the Respondent was in violation of the standard hereinabove in question and such violation violated the Acts and Standards of the OSH Act in Kentucky, specifically, 29 CFR 1926.150(a)(1) (as adopted by 803 KAR 2:030).

In light of the foregoing the following Conclusions of Law would seem appropriate.

#### CONCLUSIONS OF LAW

Your Hearing Officer has relied heavily on the decision handed down by the Review Commission in Public Service Commission of Kentucky (for and on behalf of the Department of Labor) vs. South Central Bell Telephone Company, KOSHRC No. 291.

In this above cited case, citations were issued on the basis of an alleged violation of 29 CFR 1926.150(a)(4) (as adopted by 803 KAR 2:030), which dealt with fire fighting equipment also.

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Acknowledging that some industries have unique safety and health hazards, peculiar to that industry, special standards were evolved applying only to that industry.

Subpart R of the General Industry Standard (29 CFR 1910) provided for several of these; that is, pulp, paper and paperboard mills; textiles; bakery equipment; laundry machinery and operations; sawmills; and telecommunications. In order to insure that these telecommunication standards were not to be considered as exclusive of other standards, section 1910.268(a)(3) provides specifically that the Construction Standards are applicable where pertinent.

It becomes evident that respondent is subject to all other applicable general provisions for safety and health of its employees under 29 CFR 1910 and is subject to the provisions of 29 CFR 1926 involving operations in construction work.

By 29 CFR 1926.20 construction work is for 'construction, alteration, and/or repair, including painting and decorating'. Efforts have been made to make a stilted definition of this because of the addition of 'painting and decorating.' The Subpart Titles indicate that the real meaning of construction is construction, alteration and/or repair. A look at the subjects of the Subparts of 29 CFR 1926 will be convincing that painting and decorating cannot be limiting of the definition of construction, alteration and/or repair, since Welding and Cutting, Steel Erection, Excavations, Trenching, Shoring, Signs, Signals, Barricades and Motor Vehicles, Mechanized Equipment and Marine Operations are a few of the activities covered by construction, and these are not limited by painting and decorating.

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Commissioner Stanton goes on and points out:

"In the present case, respondent was engaged in repairing or altering or replacing open wire telephone lines by installing new cable lines. It is the finding of this Commission that this would be construction, alteration or repair work, within the meaning of construction and the Construction Standards apply."

After citing Section 1910.268(a)(3) and 1910.12(d),

Commissioner Stanton goes on and says:

"It seems clear that it was the intent to construe alteration, conversion, and improvement of lines and equipment as construction work, and an effort to delineate it as 'field work' does not change the activity concerned nor keep its employees from having the same protection as others in like situations."

He then cites United Telephone Co. of the Carolinas, Inc., a case decided by the Federal OSHRC, and found at CCH 21.043, wherein it was stated:

"It is clear that erecting and removing telephone poles and transferring lines were reclassified at 1910.268(a)(1) as 'field work' to further emphasize that the regulations apply only to the telecommunications industry. Thus, we conclude that prior to reclassification the erection and removal of telephone poles and the transfer of lines was considered 'construction work' and subject to all pertinent construction standards."

Briefly stated, at the time of the citation the general construction standards were applicable to the erection and rearrangement of telephone lines. Subsequent to the citation the Secretary adopted standards specifically applicable to the telecommunications industry. We do not construe this action to suggest, as argued by respondent, that the general construction standards were never applicable to telecommunications. On the contrary, we interpret the Secretary's actions as preempting the applicability of certain general construction standards by adopting standards specifically drafted for the telecommunications industry."

The Commission then cited Public Service Commission v.

Cincinnati Bell, KOSHRC Docket No. 224 and Public Service Commission

vs. Cincinnati Bell, No. 254, and Southwestern Bell Telephone Co.,  
Federal OSHRC, CCH 21,412.

He then made the finding of the Commission that the Construction Standards, 29 CFR 1926, are applicable to the respondent in the work that is outlined in the present case. He further proceeded, however, to find that the complainant failed to carry its burden of proof as to the violation, and he therefore ordered that the citation and penalty of \$43.00 be vacated.

In this instant case it would seem that there can be little question, in following the authority handed down by our Commission in South Central Bell, KOSHRC No. 291, that the Respondent, South Central Bell Telephone Company, herein violated 29 CFR 1926.150 (a)(1) (as adopted by 803 KAR 2:030).

In light of the foregoing it would seem that the following Recommended Order is appropriate.

RECOMMENDED ORDER

IT IS ORDERED AND ADJUDGED that the citation herein in question charging a violation of 29 CFR 1926.150(a)(1) (as adopted by 803 KAR 2:030) shall be and the same is hereby sustained.

There is no proposed penalty. This violation must be corrected without delay, but no later than fifteen (15) days from the date of this Recommended Order.

This 1 day of June, 1977.

Dated: June 6, 1977  
Frankfort, Kentucky

  
HERBERT B. SPARKS, HEARING OFFICER

DECISION NO. 422