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September 30, 2013

Jeff DeRouen  
Executive Director  
Kentucky Public Service Commission  
P.O. Box 615  
211 Sower Boulevard  
Frankfort, KY 40601

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*RE: Ballard Rural Telephone Cooperative Corporation, Inc. et al v.  
BellSouth Telecommunications d/b/a AT&T Kentucky, Inc.  
Case No. 2011-00199*

Dear Mr. DeRouen:

Enclosed please find an original and ten copies of Response to AT&T Kentucky's Opposition to Full Intervenor Status of Bluegrass Telephone Company, Inc.

Please indicate receipt of this filing by placing your file stamp on the extra copy and returning to me via our runner.

Very truly yours,

STOLL KEENON OGDEN PLLC

Douglas F. Brent

DFB:

Enclosures

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**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

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**In the Matter of:**

<b>BALLARD RURAL TELEPHONE</b>	)	
<b>COOPERATIVE CORPORATION, INC., ET AL.</b>	)	
	)	
<b>COMPLAINANTS</b>	)	<b>CASE NO: 2011-00199</b>
	)	
<b>V.</b>	)	
	)	
<b>BELLSOUTH TELECOMMUNICATIONS, INC.</b>	)	
<b>D/B/A AT&amp;T KENTUCKY</b>	)	
	)	
<b>DEFENDANT</b>	)	

**RESPONSE TO AT&T KENTUCKY'S OPPOSITION TO FULL INTERVENOR**  
**STATUS OF BLUEGRASS TELEPHONE COMPANY**

Pursuant to the Commission's Order dated September 10, 2013, Bellsouth Telecommunications, LLC, d/b/a AT&T Kentucky ("AT&T"), submitted an Opposition to full intervenor status for Kentucky Telephone Company ("KTC"). AT&T claims KTC has interests so different from those as the Rural Local Exchange Carrier Complainants that it cannot participate in this case without disrupting it. AT&T is wrong. As explained below, KTC is raising fundamentally similar issues involving similar facts as the Complainants, but the Complainants pursuing their own tariff claims cannot adequately represent KTC with respect to its claims. Under 807 KAR 5:0001, § 4(11), KTC's full intervention is likely to assist the Commission in fully considering the matter and would not complicate or disrupt this proceeding. Not allowing KTC full intervention would substantially harm KTC, weaken its ability to challenge AT&T in an administratively efficient manner, and would create a duplicate and identical proceeding for resolution by the Commission.

## ARGUMENT

### **A. The Commission's Rule Supports Intervention in this Proceeding**

The Commission must allow KTC full intervention because KTC meets the standard set forth in Section 4(11). Pursuant to Section 4(11) intervention shall be granted if a party "has a special interest in the proceeding that is not adequately represented or" when "intervention 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." KTC meets this standard: its claims are comparable to those raised by the Complainants, but the Complainants do not represent KTC. KTC's intervention will also assist the Commission in fully considering the manner. KTC was harmed by AT&T in the same way the Complainants claimed they were harmed: AT&T sent compensable traffic for termination under access arrangements but did not pay for it. But the Complainants will assert claims under the access tariff in which they all concur. KTC's claims, though factually similar, arise from its own access tariff. KTC's intervention will neither unduly complicate nor disrupt the proceeding.

### **B. KTC's Issues are Fundamentally Similar to the Issues Raised by the RLECs**

KTC's claims are fundamentally similar to those raised by the RLEC Complainants. AT&T strains to isolate KTC by quoting anything KTC has mentioned as a "special" interest in the proceeding and recasting it as a "new and different" issue that should be considered in a different case. That stands intervention principles on their head. As AT&T admitted in its Opposition, the RLEC Complainants seek payment from AT&T for terminating interexchange traffic that originated with another carrier, Halo. KTC seeks payment from AT&T for terminating traffic the same type of traffic.

To be sure, AT&T's traffic never would have arrived on KTC's network if AT&T had not routed it to Windstream's Elizabethtown tandem, but for the purpose of considering

*intervention*, KTC's tandem provider is irrelevant. Rather, as KTC pointed out more than two years ago, KTC and AT&T do not share a local calling area. Thus, any traffic bound for KTC's exchange that AT&T handled as a local tandem provider within its own exchange territory should have been routed to KTC via access arrangements or an interexchange carrier, *e.g.*, AT&T Communications. KTC properly receives such traffic over *switched access* facilities at the Elizabethtown tandem, which is operated By Windstream Kentucky East, LLC ("Windstream"). But instead of sending long distance traffic at issue here over IXC facilities, AT&T apparently routed it over trunks between AT&T and Windstream used for *local traffic*, and Windstream passed the traffic to KTC for termination. AT&T tries to overstate the significance of this to ward off KTC's involvement in this case, claiming that since KTC and AT&T are not directly interconnected in the same manner as the RLEC Complainants, KTC does not belong. But the fundamental issue presented by both the RLEC Complainants and KTC is identical: what is AT&T's liability for the toll and interexchange traffic it routed or misrouted to local carriers? Full intervention by KTC will allow the Commission to further examine this issue.

### **C. KTC's Intervention Will Not Unduly Complicate or Disrupt the Proceeding**

Nor will KTC's full intervention complicate or disrupt the proceedings. As explained above, KTC's full intervention raises fundamentally similar issues and will allow the Commission to examine AT&T's method for improperly terminating traffic. AT&T claims that if KTC intervenes, Windstream may need to be joined as a party. Whether or not that is true, AT&T was surely aware of Windstream's role in passing the traffic in 2011, and had to be aware once KTC's motion for intervention was filed. That was long before AT&T changed its outside counsel in this case. Therefore, there is no reason to delay this case for AT&T to remedy a

possible conflict issue of its own making. In no event should AT&T's concern about Windstream affect KTC's right to remain in this proceeding to protect its interests. And if AT&T truly believes Windstream bears responsibility, it is curious that AT&T filed a third party complaint only against Halo.

Finally, the fact that KTC is not a party to the Kentucky Restructured Settlement Plan ("KRSP") is all the more reason to grant intervention to KTC. AT&T's conduct towards KTC cannot be measured against the KRSP, which means KTC has a special interest not otherwise represented in this case. For this reason alone, KTC is a proper intervenor under 807 KAR 5:001, §4(11).

#### **CONCLUSION**

Denying KTC full intervention would harm KTC's interests and result in a duplicate proceeding for resolution by the Commission. Requiring KTC to attempt to protect its interests by resorting to monitoring the case, viewing the Commission's website, attending public hearings, and filing written comments would prevent KTC from truly protecting its interests pursuant to Section 4(11). Due process requires that KTC be permitted to participate now.

WHEREFORE, KTC respectfully requests that the Commission deny AT&T's Opposition.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

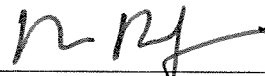
I hereby certify that a copy of the above and foregoing Motion was served upon the following persons by first class United States mail, postage prepaid, on the 30th day of September, 2013:

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