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June 10, 2013

RECEIVED

JUN 11 2013

PUBLIC SERVICE  
COMMISSION

**VIA HAND DELIVERY**

Hon. Jeff R. Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Blvd.  
Frankfort KY 40601-8294

Re: Tariff Filing of Gearheart Communications, Inc. d/b/a Coalfields Telephone Company - Case No. 2013-00192 before the Public Service Commission of the Commonwealth of Kentucky

Dear Mr. Derouen:

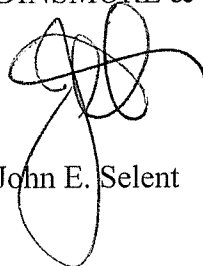
Enclosed for filing with the Public Service of the Commonwealth of Kentucky is one original and ten (10) copies of the following documents.

- 1) Application
- 2) Motion for Waiver of Certain Rate Application Filing Requirements
- 3) Petition for Confidential Treatment

Thank you, and if you have any questions with regard to this matter, please call me.

Very truly yours,

DINSMORE & SHOHL LLP



John E. Selent

JES/bmt  
Enclosures

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TARIFF FILING OF GEARHEART  
COMMUNICATIONS, INC. D/B/A COALFIELDS  
TELEPHONE COMPANY

RECEIVED  
) CASE NO.  
) 2013-00192N 11 2013  
)  
PUBLIC SERVICE  
COMMISSION

APPLICATION

Applicant Gearheart Communications Company, Inc. d/b/a Coalfields Telephone Company (“Coalfields”), by counsel, pursuant to KRS 278.180, Sections 14 and 16 of 807 KAR 5:001, Section 6 of 807 KAR 5:011, and the Public Service Commission of the Commonwealth of Kentucky’s (the “Commission”) May 29, 2013 Order in this case (the “Order,” attached hereto as “Exhibit 1”), applies for authority to adjust its rates and charges for basic local exchange service and gives notice of its intention to increase the same rates and charges effective May 31, 2013.

INTRODUCTION

This application for a rate increase is necessitated by an order from the Federal Communications Commission that fundamentally alters the cost structure of providing telecommunications services in high-cost rural areas, like those Coalfields serves. *See In the Matter of Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (Nov 18, 2011) (“Transformation Order”). For decades prior to that Order, high-cost carriers had received subsidies from the federal government’s “Universal Service Fund” (“USF”). Those USF subsidies were intended to fulfill the Federal Communications Act’s requirement that “[c]onsumers in all regions of the Nation, including . . . those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.” 47 U.S.C. §

254(b)(3). The Commission found, however, that many rural consumers were paying rates that were less than those paid by consumers in urban areas. Transformation Order ¶ 235. In consequence, the FCC Transformation Order sets a rate floor equal to the national average of local rates plus state regulated fees. *Id.* ¶ 238. The Transformation Order also “limit[s] high-cost support where local end-user rates plus state regulated fees” do not meet that national rate floor; those carriers’ federal subsidies will be reduced “on a dollar-for-dollar basis . . . , to the extent that [the] carrier’s local rates (plus state regulated fees) do not meet the urban rate floor.” *Id.* ¶ 239.

Coalfields’ proposed rate increase is thus necessary to preserve its ability to receive these important USF subsidies. Without a minimum rate sufficient to meet the FCC’s new rate floor, high-cost carriers will lose significant federal subsidies that have historically allowed these carriers to provide service to the most costly, rural customers. That loss of federal funding will threaten the financial existence of these rural carriers, who have important obligations under federal and state law as carriers of last resort. Moreover, the loss of those subsidies could portend even larger rate increases in the future, as these carriers would need to raise their rates dramatically to reflect the full, unsubsidized cost of providing service in high-cost rural areas. And, as explained in the attached exhibits, Coalfields believes that this rate increase will be effectively revenue-neutral, as a substantial percentage of its customers will qualify for an offset that negates virtually all of the proposed rate change.

\* \* \* \* \*

In support of its Application, Coalfields states as follows.

1. Pursuant to Section 14(1) of 807 KAR 5:001, (i) the full name of the applicant is Gearheart Communications Company, Inc. d/b/a Coalfields Telephone Company; (ii) the address of

the applicant is 5 Lanesville Road, Harold, KY 41635; and (iii) the electronic mailing address of the applicant is [ContactGH@Gearheart.com](mailto:ContactGH@Gearheart.com).

2. Coalfields is a rural incumbent local exchange carrier serving Pike and Floyd Counties (the “**Service Territory**”).

3. This proceeding was motivated by an Order of the Federal Communications Commission (“**FCC**”) that implemented “a rule to limit high-cost support where end-user rates do not meet a specified local rate floor.” *See* Transformation Order at ¶ 235.

4. Under the Transformation Order, certain local exchange carriers must meet a specified rate floor on June 1 of each subsequent year in order to be eligible to receive the maximum amount of High Cost Loop Support (“**HCLS**”) from the FCC. Failure to meet the rate floor will result in forfeiture of HCLS that the carrier could have otherwise received for that year. Transformation Order at ¶¶ 133, 238-40.

5. In addition to HCLS reform, the Transformation Order also established a glide path to reduce access charges to zero.

6. While Coalfields is not currently a recipient of the specific fund that forces other companies to immediately request a similar rate increase, the company expects that it will become eligible and would otherwise be unable to collect this support absent such a rate increase. More importantly, Coalfields believes that its ongoing ability to draw from any universal service funds will be compromised if it retains its historically low local service rate.

7. Coalfields filed with the Commission on March 14, 2013 revised tariff sheets that contained an adjustment of its rates for basic local exchange service. Coalfields informed the Commission of its intent to place its proposed rates into effect on and after May 31, 2013.

8. The Commission subsequently entered the Order, which allowed Coalfields's new rates to become effective on June 1, 2013, subject to refund. The Order requested that Coalfields file an application to support its proposed new rates in compliance with Section 16 of 807 KAR 5:001, except for any waivers that may be granted.

\* \* \* \* \*

9. Pursuant to Section 4 of 807 KAR 5:006, Coalfields's annual reports, including the annual report for fiscal year ended December 31, 2012, are on file with the Commission.

10. Pursuant to Section 14(2)(a) of 807 KAR 5:001, a certified copy of Coalfields's Articles of Incorporation and all amendments thereto are attached hereto as "**Exhibit 2**".

11. Pursuant to Section 16(1)(a)(1) of 807 KAR 5:001, Coalfields's application is supported by a twelve-month historical test period of January 1, 2012 to December 31, 2012. Coalfields's annual reports, including the annual report for 2012, are on file with the Commission.

12. Pursuant to Section 16(1)(b)(1) of 807 KAR 5:001, Coalfields states that it requires an adjustment of its rates to maintain eligibility for the maximum amount of HCLS.

13. Pursuant to Section 16(1)(b)(2) of 807 KAR 5:001, a Certificate of Existence, dated within sixty (60) days of the date this Application is filed, is attached hereto as "**Exhibit 3**".

14. Pursuant to Section 16(b)(3) of 807 KAR 5:001, a certified copy of Coalfield's Certificate of Assumed Name is attached hereto as "**Exhibit 4**".

15. Pursuant to Section 16(1)(b)(4) of 807 KAR 5:001, Coalfields's proposed tariff, in such form as is required by 807 KAR 5:011, is attached hereto as "**Exhibit 5**". The proposed effective date of the proposed tariff is May 31, 2013, and the rate is currently effective as of June 1, 2013 pursuant to the Oder. As more fully explained in Coalfields's Motion for Waiver of Certain Rate Application Filing Requirements filed contemporaneously with this Application, Coalfields

seeks partial waiver of Section 16(1)(b)(4) of 807 KAR 5:001, requiring that the effective date be not less than thirty (30) days from the date this Application is filed.

16. As more fully explained in Coalfields's Motion for Waiver of Certain Rate Application Filing Requirements filed contemporaneously with this Application, Coalfields seeks waiver of the requirements set forth in Section 16(1)(b)(5) of 807 KAR 5:001, requiring that the present and proposed tariff sheets be shown in comparative form or that the proposed tariff useitalicizing, underscoring, and strikethroughs to show revisions.

17. Pursuant to Section 16(1)(b)(6) of 807 KAR 5:001, the notice sent to customers is attached hereto as "**Exhibit 6**". As more fully described in Coalfields's Motion for Waiver of Certain Rate Application Filing Requirements filed contemporaneously with the Application, Coalfields seeks a waiver from of the requirement that customer notice be given in compliance with Section 16(3)-(4) of 807 KAR 5:001.

18. As more fully explained in Coalfields's Motion for Waiver of Certain Rate Application Filing Requirements filed contemporaneously with the Application, Coalfields seeks waiver of Section 16(2) of 807 KAR 5:001, requiring notice of intent to file an application for a rate adjustment.

19. Pursuant to Section 16(9)(a) of 807 KAR 5:001, a narrative summary of the particular circumstances that justify and support Coalfields's Application, including a statement of the reason the adjustment is required, is attached hereto as "**Exhibit 7**" and is incorporated herein. Exhibit 7 is filed in conjunction with a Petition for Confidential Treatment pursuant to Section 13 of 807 KAR 5:001.

20. Coalfields has gross annual revenues in excess of Five Million And 00/100 Dollars (\$5,000,000.00). As more fully explained in Coalfields's Motion for Waiver of Certain Rate

Application Filing Requirements filed contemporaneously with this Application, Coalfields seeks waiver of Section 16(9)(b) of 807 KAR 5:001.

21. Because Coalfields has gross annual revenues in excess of Five Million And 00/100 Dollars (\$5,000,000.00), the requirements of Section 16(9)(c) of 807 KAR 5:001 are inapplicable.

22. Pursuant to Section 16(9)(d) of 807 KAR 5:001, Exhibit 7 contains an estimation of the effect that the new rates will have on revenues, including the total revenues resulting from the increase or decrease and the percentage of the increase or decrease.

23. Coalfields is not an electric, gas, sewage, or water utility. Accordingly, the requirements of Section 16(9)(e) of 807 KAR 5:001 are inapplicable.

24. Pursuant to Section 16(9)(f) of 807 KAR 5:001, Exhibit 7 contains a description of the effect upon the average bill for a change in basic local service.

25. As more fully explained in Coalfields's Motion for Waiver of Certain Rate Application Filing Requirements filed contemporaneously with this Application, Coalfields seeks waiver of Section 16(9)(g) of 807 KAR 5:001.

26. As more fully explained in Coalfields's Motion for Waiver of Certain Rate Application Filing Requirements filed contemporaneously with this application, Coalfields seeks waiver of Section 16(9)(h) of 807 KAR 5:001.

27. As more fully explained in Coalfields's Motion for Waiver of Certain Rate Application Filing Requirements filed contemporaneously with this Application, Coalfields seeks waiver of Section 16(9)(i) of 807 KAR 5:001.

28. As more fully explained in Coalfields's Motion for Waiver of Certain Rate Application Filing Requirements filed contemporaneously with this Application, Coalfields seeks waiver of Section 16(9)(j) of 807 KAR 5:001.

29. As more fully explained in Coalfields's Motion for Waiver of Certain Rate Application Filing Requirements filed contemporaneously with this Application, Coalfields seeks waiver of Section 16(9)(k) of 807 KAR 5:001.

30. Coalfields has not been audited by the FCC. Accordingly, the requirements in Section 16(9)(l) of 807 KAR 5:001 are inapplicable.

31. As more fully explained in Coalfields's Motion for Waiver of Certain Rate Application Filing Requirements filed contemporaneously with this Application, Coalfields seeks waiver of Section 16(9)(m) of 807 KAR 5:001.

32. As more fully explained in Coalfields's Motion for Waiver of Certain Rate Application Filing Requirements filed contemporaneously with this Application, Coalfields seeks waiver of Section 16(9)(n) of 807 KAR 5:001.

33. As more fully explained in Coalfields's Motion for Waiver of Certain Rate Application Filing Requirements filed contemporaneously with this Application, Coalfields seeks waiver of Section 16(9)(o) of 807 KAR 5:001.

34. Coalfields has never made a stock or bond offering. Accordingly, the requirements of Section 16(9)(p) of 807 KAR 5:001 are inapplicable.

35. As more fully explained in Coalfields's Motion for Waiver of Certain Rate Application Filing Requirements filed contemporaneously with this Application, Coalfields seeks waiver of Section 16(9)(q) of 807 KAR 5:001.

36. As more fully explained in Coalfields's Motion for Waiver of Certain Rate Application Filing Requirements filed contemporaneously with this Application, Coalfields seeks waiver of Section 16(9)(r) of 807 KAR 5:001.



37. Coalfields is not required to file the U.S. Securities and Exchange Commission's Form 10-K, Form 8-K, or Form 10-Q. Accordingly, the requirements of Section 16(9)(s) of 807 KAR 5:001 are inapplicable.

38. Coalfields has not had any amounts charged or allocated to it by an affiliate or general or home office, and has not paid any monies to an affiliate or a general or home office during the test period or during the previous three (3) calendar years. Accordingly, the requirements of Section 16(9)(t) of 807 KAR 5:001 are inapplicable.

39. Coalfields has fewer than Fifty Thousand (50,000) access lines. Accordingly, the requirements of Section 16(9)(v) of 807 KAR 5:001 are inapplicable.

40. As more fully explained in Coalfields's Motion for Waiver of Certain Rate Application Filing Requirements filed contemporaneously with this Application, Coalfields seeks waiver of ¶ 3.a. of the Order, which requests an estimate of the annual revenue to be received from HCLS beginning July 1, 2013.

41. Pursuant to ¶ 3.b of the Order, Exhibit 7 contains an estimate of the annual revenue to be lost due to adjustment of terminating access rates effective July 1, 2013.

42. Pursuant to ¶ 3.c of the Order, Exhibit 7 contains an estimate of the annual revenue to be generated by the tariff changes.

43. Pursuant to ¶ 3.d. of the Order, "**Exhibit 8**" contains an estimate of the historical line counts. As more fully explained in Coalfields's Motion for Waiver of Certain Rate Application Filing Requirements filed contemporaneously with this Application, Coalfields seeks partial waiver of ¶ 3.d of the Order insofar as it requests projected line counts.

44. "**Exhibit 9**" contains the quarterly universal service from 1Q2011 to 3Q2013 projected amounts. As is certified annually to the Commission, these funds are used by Coalfields to

provide voice and advanced data services to our customers, thereby providing our communities with access to critical communications services.

WHEREFORE, Gearheart Communications Company, Inc. d/b/a Coalfields Telephone Company requests that the Public Service Commission of the Commonwealth of Kentucky enter a final order approving Gearheart Communications Company, Inc. d/b/a Coalfields Telephone Company's revisions to the applicable tariffs.

Respectfully submitted,



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John E. Selent  
Edward T. Depp  
Joseph A. Newberg, II  
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Suite 2500  
Louisville, KY 40202  
Phone: (502) 540-2300  
Fax: (502) 585-2207  
*Counsel to Gearheart Communications  
Company, Inc. d/b/a Coalfields Telephone  
Company*

**CERTIFICATE OF SERVICE**

I certify that, on the date this Application was filed or served with the Kentucky Public Service Commission, a true and accurate copy of the foregoing was served by Federal Express or by hand delivery upon the persons listed below.

On this the 10th day of June, 2013.

  
\_\_\_\_\_  
*Counsel for Gearheart Communications, Inc.  
d/b/a Coalfields Telephone Company*

Honorable Jack Conway  
Capitol Suite 118  
700 Capitol Avenue  
Frankfort, Kentucky 40601-3449



COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

TARIFF FILING OF GEARHEART	)	CASE NO.
COMMUNICATIONS, INC. D/B/A COALFIELDS	)	2013-00192
TELEPHONE COMPANY	)	

ORDER

On March 14, 2013, Gearheart Communications Company, Inc. d/b/a Coalfields Telephone Company ("Coalfields Telephone") filed with the Commission revised tariff sheets that contained a general adjustment of its rates for basic local exchange service. Coalfields Telephone informed the Commission of its intent to place its proposed rates into effect on and after May 31, 2013. However, as discussed below, the Commission finds that the proposed tariff should be suspended pursuant to KRS 278.190(2), but the proposed rates may be charged, subject to refund, on and after June 1, 2013.

Coalfields Telephone filed its proposed increased rates to comply with the directive of the Federal Communications Commission ("FCC") in its Order that, *inter alia*, comprehensively reformed intercarrier compensation.<sup>1</sup> In addition to establishing a glide path to reduce access charges to zero, the FCC's ICC/USF Order also established a rate floor for local exchange rates. The FCC required that Local Exchange Carriers ("LEC"), such as Coalfields Telephone, shall be eligible to receive high-cost support in a study area if the rates for local exchange service are at or above the rate floor on June

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<sup>1</sup> In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform; Mobility Fund, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("ICC/USF Order").

1 of every subsequent year.<sup>2</sup> Failure to meet the rate floor will result in forfeiture of the high cost support that the carrier would have otherwise received for that year.<sup>3</sup>

The Commission, in the past, has held that a general adjustment in rates cannot be made simply through a tariff filing.<sup>4</sup> A utility must file an application that complies with the filing requirements of 807 KAR 5:001 Section 16, which, *inter alia*, requires that certain financial information be filed with the Commission and notice be given to customers. Coalfields Telephone's tariff filing seeking to raise local exchange rates is a general adjustment in rates and, therefore, an application for a general adjustment in rates must be filed pursuant to 807 KAR 5:001, Section 16. Coalfields Telephone must comply with the requirements found in 807 KAR 5:001, Section 16. Coalfields Telephone's tariff filing does not comply with this regulation and cannot be put into effect on the proposed effective date.

The Commission is cognizant that Coalfields Telephone's ability to receive high-cost loop support will be jeopardized if its rates for basic local exchange service are not at or above the \$14.00 rate floor mandated in the ICC/USF. Therefore the Commission will only suspend the proposed rates for one day and allow them to go into effect on June 1, 2013, subject to refund. The Commission also acknowledges the mandatory and the time-sensitive nature of the FCC's rate floor, and that all of the information

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<sup>2</sup> 47 C.F.R. § 54.318 High-cost support; limitations on high-cost support.

<sup>3</sup> ICC/USF Order at ¶¶ 133, 238-240.

<sup>4</sup> *See*, Case No. 2004-00459, *The Application of Louisville Gas and Electric Company for Approval of New Rate Tariffs Containing a Mechanism for the Pass-Through of MISO-Related Revenue and Costs Not Already Included in Existing Base Rates* (Ky. PSC Apr. 15, 2004).

specified in 807 KAR 5:001, Section 16, may not be necessary to support an increase in basic local exchange rates under these circumstances.

At the very least, the Commission will require that Coalfields Telephone file the information required in 807 KAR 5:001, Section 16(1)(a)(1), (1)(b)(4), (1)(b)(6), (3)(b)(1), (4), (6), (9)(a), (9)(d), (9)(f), (9)(h), and (10). Except as required above, Coalfields Telephone may request a deviation, pursuant to 807 KAR 5:001, Section 16(15), from the other requirements of 807 KAR 5:001, Section 16.

Based on the foregoing, IT IS THEREFORE ORDERED that:

1. Coalfields Telephone's proposed rates for its basic local exchange service are suspended for one day from the effective date of May 31, 2013, and will be effective subject to refund on June 1, 2013.

2. Within ten days of the date of this Order, Coalfields Telephone shall file with the Commission an application to support its proposed tariff to increase rates for local exchange service. The application shall comply with 807 KAR 5:001 Section 16, except for any waivers that may be granted or requirements other than those specified in the findings above.

3. The application shall also contain:

a. The estimated annual revenue to be received from High Cost Loop Support beginning July 1, 2013.

b. The estimated annual revenue to be lost due to adjustment of terminating access rates effective July 1, 2013.

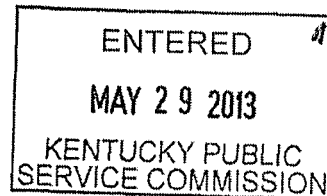
c. The total estimated annual revenue (increase or decrease) to be generated by the tariff changes. Include a breakout for each service or category of service to show changes in revenue.

d. Historical and projected line counts and the effects of any line changes on the company.

e. Historical and projected federal universal service support and its effects on the company.

f. A narrative of any other circumstances that justify or support the proposed rate changes.

By the Commission



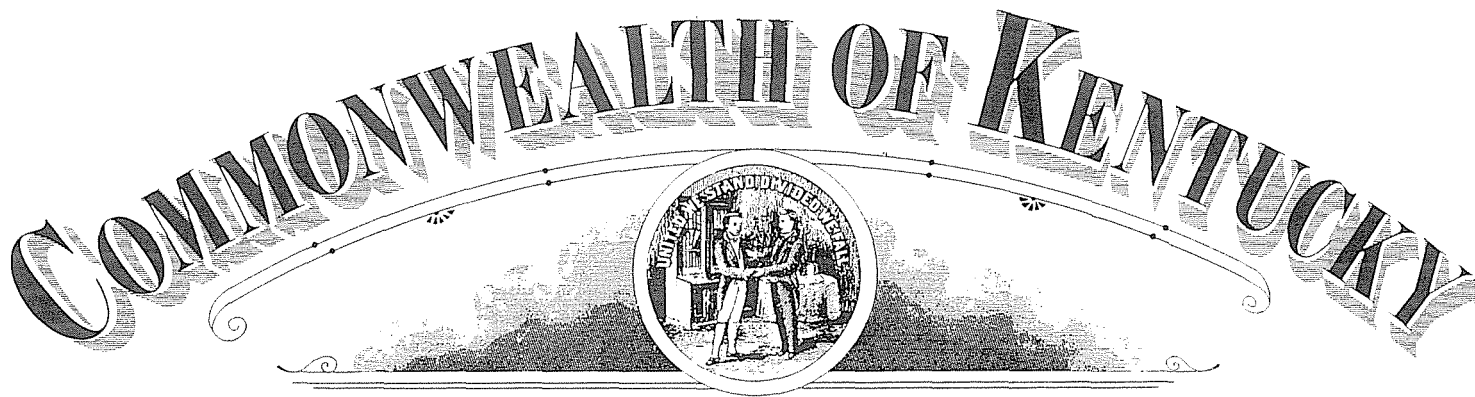
ATTEST

  
Executive Director

Case No. 2013-00192







**Alison Lundergan Grimes  
Secretary of State**

**Certificate**

I, Alison Lundergan Grimes, Secretary of State for the Commonwealth of Kentucky, do hereby certify that the foregoing writing has been carefully compared by me with the original thereof, now in my official custody as Secretary of State and remaining on file in my office, and found to be a true and correct copy of

ARTICLES OF INCORPORATION OF

GEARHEART COMMUNICATIONS COMPANY, INC. FILED SEPTEMBER 18, 1997.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at Frankfort, Kentucky, this 10th day of June, 2013.



*Alison Lundergan Grimes*

Alison Lundergan Grimes  
Secretary of State  
Commonwealth of Kentucky  
dwilliams/0438866 - Certificate ID: 139776

ARTICLES OF INCORPORATION  
OF  
GEARHEART COMMUNICATIONS COMPANY, INC.

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ARTICLE I.

The name of the Corporation shall be GEARHEART COMMUNICATIONS COMPANY, INC.

ARTICLE II.

The duration of the Corporation shall be perpetual.

ARTICLE III.

The objects and purposes for which this Corporation is organized are to transact any and all lawful business for which corporations may be incorporated under Chapter 271B of the Kentucky Revised Statutes. The Corporation shall have the power to do any and all things herein set forth the same as natural persons might or could do, either as agents, principals, contractors, trustees, or otherwise and in company of others. The foregoing shall be construed both as purposes and powers but no recitation, expression or declaration as to specific powers and purposes shall be held to limit or otherwise restrict in any manner the general powers of the Corporation herein set forth and allowed by applicable laws or otherwise.

ARTICLE IV.

The aggregate number of shares which the Corporation shall have authority to issue is one hundred (100) shares of Class A no par value voting shares of common stock and ten thousand (10,000) shares of Class B no par value non-voting shares of common stock. The Class A shares shall be entitled to one (1) vote per share. Class B shares shall have no voting rights.

There shall be no other distinctions between Class A shares and Class B shares.

ARTICLE V.

The private property of the shareholders of the Corporation shall not be subject to the payment of the debts or liabilities of the Corporation to any extent whatsoever.

ARTICLE VI.

The address of the initial registered office of the Corporation is 5 Laynesville Road, Harold, Kentucky, 41635, and the name of its initial registered agent upon whom process can be served at such address is Paul R. Gearheart.

ARTICLE VII.

The address of the initial and principal office of the Corporation is 5 Laynesville Road, Harold, Kentucky 41635.

ARTICLE VIII.

The affairs and business of the Corporation shall be conducted by a Board of Directors the number of which shall be fixed by the Bylaws. The Board of Directors shall have the authority to make, alter or amend the By-Laws and rules to regulate the business of the Corporation, as are not inconsistent with the provisions of these Articles of Incorporation, as same may be amended from time to time, or the laws of the Commonwealth of Kentucky, subject to repeal or change by action by the shareholders.

ARTICLE IX.

The name and address of the incorporator is:

<u>Name</u>	<u>Address</u>
Paul R. Gearheart	5 Laynesville Road Harold, Kentucky 41635

ARTICLE X.

The Corporation reserves the right to amend, alter, change or repeal any provisions contained in these Articles of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred herein upon the shareholders are granted subject to this reservation.

ARTICLE XI.

A. No director of the Corporation shall be personally liable to the Corporation or its shareholders for monetary damages for breach of duty as a director, except for liability (i) for any transaction in which the director's personal financial interest is in conflict with the financial interest of the Corporation or its shareholders; (ii) for acts or omissions not in good faith or which involve intentional misconduct or are known to the director to be in violation of law; (iii) for unlawful distributions under KRS 271B.8-330 or other Kentucky statute of similar import; and (iv) for any transaction from which the director derived improper personal benefit.

B. Any repeal or modification of this Article XI shall not adversely affect any right or protection of any director of the Corporation in respect of any act or omission occurring prior to the time of such repeal or modification.

C. In the event the Kentucky Business Corporation Act is amended to authorize corporate action further eliminating or limiting the personal liability of directors of Kentucky Corporations, then the liability of directors of the Corporation shall be eliminated or limited to the fullest extent permitted by the Kentucky Business Corporation Act, as so amended, and without the necessity for further shareholder action in respect thereof.

ARTICLE XII.

A. Each person who was or is made a party or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal (hereinafter a "proceeding"), by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee or agent or in any other capacity while serving as a director, officer, employee or agent, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the Kentucky Business Corporation Act in effect on the date set forth below or as it may hereafter be amended (but, in the case of any such amendment, only to the

extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorney's fees, judgment, fines, ERISA excise taxes or penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith, and such indemnification shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators; provided, however, that, except as provided in paragraph B of this Article, the Corporation shall indemnify any such person seeking indemnification in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. The right to indemnification conferred herein shall be a contract right and shall include the right to be paid by the Corporation the expenses incurred in defending any such proceeding in advance of its final disposition; provided, however, that, if the Kentucky Business Corporation Act requires, the payment of such expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such person while a director or officer, including, without limitation, service to an employee benefit plan) in advance of the final disposition of a proceeding, shall be made only upon delivery to

the Corporation of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified under this section or otherwise. The Corporation may, by action of its Board of Directors, provide indemnification to employees and agents of the Corporation with the same scope and effect as the foregoing indemnification of directors and officers.

B. If a claim under paragraph A of this Article is not paid in full by the Corporation within 30 days after a written claim has been received by the Corporation, the claimant may, at any time thereafter, bring suit against the Corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall also be entitled to reimbursement for the expense of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending any proceeding in advance of its final disposition where the required undertaking, if any is required, has been tendered to the Corporation) that the claimant has not met the standard of conduct which makes it permissible under the Kentucky Business Corporation Act for the Corporation to indemnify the claimant for the amount claimed, but the burden of proving such defense shall be on the Corporation. Neither the failure of the Corporation (including its Board of Directors, independent legal counsel or its shareholders) to have made a determination prior to the



commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Kentucky Business Corporation Act, nor an actual determination by the Corporation (including its Board of Directors, independent legal counsel or its shareholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

C. The right to indemnification and the payment of expenses incurred in defending a proceeding in advance of its final disposition conferred in this Article shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, provision or the Articles of Incorporation, Bylaw, agreement, vote of shareholders or disinterested directors or otherwise.

D. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the Kentucky Business Corporation Act.

#### ARTICLE XIII.

Any action, except the election of directors, required or permitted by the Kentucky Business Corporation Act to be taken at

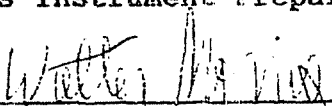
a shareholders meeting may be taken without a meeting and without prior notice, except as provided below, if the action is taken by shareholders entitled to vote on the action representing not less than 75% of the votes entitled to be cast. Any action taken pursuant to the authority of this Article shall be evidenced by one or more written consents describing the action taken, signed by the shareholders taking the action, and delivered to the Corporation for inclusion in the minutes or filing with the corporate records. Any action taken under the authority of this Article shall be effective when consents representing the votes necessary to take the action are delivered to the Corporation or, upon delivery of the consents representing the necessary votes, as of a different date if specified in the consent by a writing received by the Corporation prior to the time the consents representing the votes required to take the action have been delivered to the Corporation, but may not do so thereafter. Prompt notice of the taking of any action by shareholders without a meeting pursuant to the authority of this Article by less than unanimous written consent shall be given to those shareholders entitled to vote on the action who have not consented in writing. If the Kentucky Business Corporation Act requires that notice of the proposed action be given to nonvoting shareholders and the action is to be taken by consent of the voting shareholders under this Article, the Corporation shall give its nonvoting shareholders and voting shareholders whose consent is not solicited, written notice of the proposed action at least ten

days before the action is taken. The notice shall contain or be accompanied by the same material that, under the Kentucky Business Corporation Act, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

IN TESTIMONY WHEREOF, the undersigned, being the incorporator hereinabove named, for the purpose of forming a corporation under the laws of the Commonwealth of Kentucky, does hereby make, file and record these Articles of Incorporation, and has accordingly hereunto signed my name, this 11th day of September, 1997.

  
\_\_\_\_\_  
PAUL R. GEARHEART

This Instrument Prepared By:

  
\_\_\_\_\_  
for  
GESS MATTINGLY & ATCHISON, P.S.C.  
201 West Short Street  
Lexington, Kentucky 40507  
(606) 252-9000

ebcorp11:gearheart.art



Commonwealth of Kentucky  
Alison Lundergan Grimes, Secretary of State

Alison Lundergan Grimes  
Secretary of State  
P. O. Box 718  
Frankfort, KY 40602-0718  
(502) 564-3490  
<http://www.sos.ky.gov>

**Certificate of Existence**

Authentication number: 139762

Visit <https://app.sos.ky.gov/ftshow/certvalidate.aspx> to authenticate this certificate.

I, Alison Lundergan Grimes, Secretary of State of the Commonwealth of Kentucky, do hereby certify that according to the records in the Office of the Secretary of State,

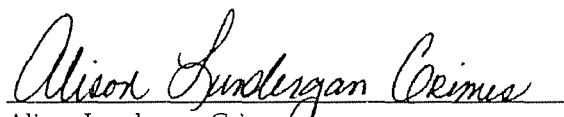
**GEARHEART COMMUNICATIONS COMPANY, INC.**

is a corporation duly incorporated and existing under KRS Chapter 14A and KRS Chapter 271B, whose date of incorporation is September 18, 1997 and whose period of duration is perpetual.

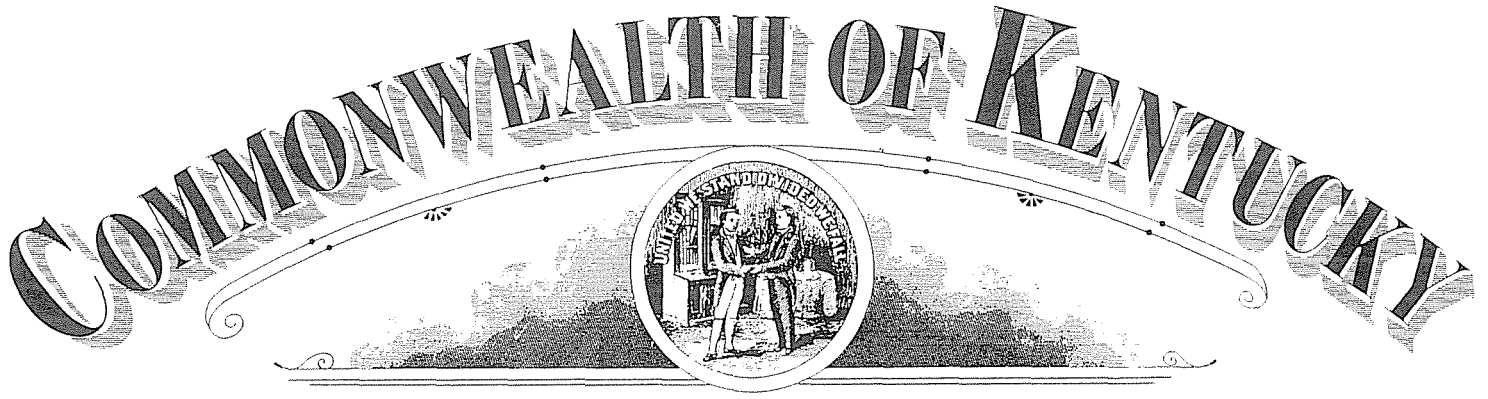
I further certify that all fees and penalties owed to the Secretary of State have been paid; that Articles of Dissolution have not been filed; and that the most recent annual report required by KRS 14A.6-010 has been delivered to the Secretary of State.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at Frankfort, Kentucky, this 7<sup>th</sup> day of June, 2013, in the 222<sup>nd</sup> year of the Commonwealth.



  
Alison Lundergan Grimes  
Secretary of State  
Commonwealth of Kentucky  
139762/0438866





**Alison Lundergan Grimes  
Secretary of State**

**Certificate**

I, Alison Lundergan Grimes, Secretary of State for the Commonwealth of Kentucky, do hereby certify that the foregoing writing has been carefully compared by me with the original thereof, now in my official custody as Secretary of State and remaining on file in my office, and found to be a true and correct copy of

CERTIFICATE OF ASSUMED NAME OF

COALFIELDS TELEPHONE COMPANY ADOPTED BY GEARHEART  
COMMUNICATIONS COMPANY, INC. FILED MAY 5, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my  
Official Seal at Frankfort, Kentucky, this 10th day of June, 2013.



*Alison Lundergan Grimes*

Alison Lundergan Grimes  
Secretary of State  
Commonwealth of Kentucky  
dwilliams/0438866 - Certificate ID: 139782

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PBlevins  
C226

COMMONWEALTH OF KENTUCKY  
TREY GRAYSON  
SECRETARY OF STATE

Trey Grayson  
Secretary of State  
Received and Filed  
05/05/2005 2:02:34 PM  
Fee Receipt: \$20.00



CERTIFICATE OF ASSUMED NAME

This certifies that the assumed name of

Coalfields Telephone Company

(Name under which the business will be conducted)

has been adopted by

Gearheart Communications Company, Inc.

(Real name - KRS 365.015(1))

which is the "real name" of [YOU MUST CHECK ONE]

- |  |   |
|--|---|
| <input type="checkbox"/> a Domestic General Partnership                      | <input type="checkbox"/> a Foreign General Partnership                      |
| <input type="checkbox"/> a Domestic Registered Limited Liability Partnership | <input type="checkbox"/> a Foreign Registered Limited Liability Partnership |
| <input type="checkbox"/> a Domestic Limited Partnership                      | <input type="checkbox"/> a Foreign Limited Partnership                      |
| <input type="checkbox"/> a Domestic Business Trust                           | <input type="checkbox"/> a Foreign Business Trust                           |
| <input checked="" type="checkbox"/> a Domestic Corporation                   | <input type="checkbox"/> a Foreign Corporation                              |
| <input type="checkbox"/> a Domestic Limited Liability Company                | <input type="checkbox"/> a Foreign Limited Liability Company                |
| <input type="checkbox"/> a Joint Venture                                     |   |

organized and existing in the state or country of

Kentucky

, and whose address is

20 Laynesville Road

Street address, if any

Harold

City

Ky

State

41635

Zip Code

The certificate of assumed name is executed by

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or type name and title

\_\_\_\_\_  
Date

X Paul V. Murchant

Signature

P. D. Gearheart, V. Pres.

Print or type name and title

05-03-05

Date





5. BASIC LOCAL EXCHANGE SERVICE (Cont'd)

5.3 Basic Exchange Line Service

5.3.1 Description

Basic Line Service provides a Customer with a single, voice-grade telephonic communications channel that can be used to place or receive one call at a time. Basic Lines are provided for connection of Customer-provided single station sets or facsimile machines to the public switched telecommunications network. Each Basic Line may be configured into a hunt group with other Company-provided Basic Lines.

Each Basic Residential (C) Line is provided with the following standard features that can be deleted at the Customer's option:

Touch Tone  
Calling Number Delivery (N)

Each Basic Business (C) Line is provided with the following standard features that can be deleted at the Customer's option:

Touch Tone

5.3.2 Rates

Rates do not include a charge for instrument or other customer premises equipment. Rates for additional services, including installation charges, are shown elsewhere in this Tariff.

	<u>Monthly Rate</u>	
1. Residential Service	\$ 14.00	(I)
2. Business Service	\$ 18.33	

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Issue Date: March 13, 2013  
Effective Date: May 31, 2013

Issued by: /s/ Paul D. Gearheart  
Paul D. Gearheart, Vice President, General Manager

7 MISCELLANEOUS SERVICES (Cont'd)

7.3 CLASS (Custom Local Area Signaling Service) Features (Cont'd)

7.3.3 Rates

	<u>Monthly Rate</u>	<u>Per Use Rate</u>
(f) <u>Selective Call Acceptance</u>		
Residential (per line)	\$ 3.50	--
Business (per line)	\$ 3.50	--
Business (per trunk)	\$ 3.50	--
(g) <u>Selective Call Rejection</u>		
Residential (per line)	\$ 3.50	--
Business (per line)	\$ 3.50	--
Business (per trunk)	\$ 3.50	--
(h) <u>Customer Originated Trace</u>		
Residential (per line)	--	\$ 0.00
Business (per line)	--	\$ 0.00
Business (per trunk)	--	\$ 0.00
<u>Annoyance Call Report</u>		\$ 7.50
- Per Report Issued		
(i) <u>Calling Name and Number Delivery</u>		
Residential (per line)	\$ 1.50 (R)	--
Business (per line)	\$ 7.00	--
Business (per trunk)	\$ 7.00	--
(j) <u>Calling Number Delivery</u>		
Residential (per line)	\$ 0.00 (R)	--
Business (per line)	\$ 5.50	--
Business (per trunk)	\$ 5.50	--

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Issue Date: March 13, 2013

Effective Date: May 31, 2013

Issued by: /s/ Paul D. Gearheart

Paul D. Gearheart, Vice President, General Manager

7 MISCELLANEOUS SERVICES (Cont'd)

7.11 Coalfields' Customer Select Service Package

7.11.1 General

1. Under the Coalfields' Customer Select Service Package, subscribers to the plan may choose unlimited access to optional calling features listed in 7.11.1 (3)
2. Exchange Access line service, described elsewhere in this tariff, is in addition to this service.
3. The rate specified herein entitles a residential and business subscribers to unlimited use of the services/features specified in the following sections of this Tariff:
  - 7.1 Touchtone
  - 7.2 Custom Calling Features
  - 7.3 CLASS Features
4. A subscriber may select an unlimited number of compatible services or features from the sections listed above. All rules, regulations and limitations specified in the sections listed apply to the respective services/features requested as part of this service.

7.11.2 Rates and Charges

	<u>Monthly Rate</u>
Residential	\$ 9.95 (R)
Business	\$16.30

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Issue Date: March 13, 2013

Effective Date: May 31, 2013

Issued by: /s/ Paul D. Gearheart

Paul D. Gearheart, Vice President, General Manager



# COALFIELDS TELEPHONE & BROADBAND

PO BOX 160  
HAROLD, KENTUCKY 41635

Dear Valued Subscriber,

Beginning June 1, 2013, your new rate for local telephone service will be \$14.00 per month. This price increase is due to new federal rules governing companies like ours, and for the first time we must comply with a federal rate benchmark and subject our customers to a minimum monthly rate for local service. We work very hard to connect you to the world at an affordable and competitive price. We'll continue to fight each and every day to ensure you can access the information, communications and entertainment services you demand and that you have the most reliable experience possible. Your local service will now include the calling number delivery feature. **The majority of our customers will see either a rate reduction or no change. The rate for caller name and feature packages will also be reduced at this time.**

If you have any questions about this rate increase or on the rule changes that are causing it, please call us at 606-478-9401 or visit us online at [www.coalfields.net](http://www.coalfields.net).

**Coalfields Telephone & Broadband**  
20 Laynesville Road  
Harold, Kentucky 41635  
1.606.478.9401  
[www.coalfields.net](http://www.coalfields.net)

Find us now:

**facebook**



**DESCRIPTION AND JUSTIFICATION**

On March 14, 2013, Gearheart Communications Company, Inc. d/b/a Coalfields Telephone Company ("**Coalfields**") filed for an increase of its basic local service rates to Fourteen And 00/100 Dollars (\$14.00) per month. This filing was in response to the Federal Communications Commission's November 18, 2011 order requiring that providers meet certain minimum local service rates in order to continue to receive certain federal universal service support. In that Order (the "**Transformation Order**") the Federal Communications Commission established a local exchange rate floor of Ten And 00/100 Dollars (\$10.00) as of June 1, 2012, Fourteen And 00/100 Dollars (\$14.00) as of June 1, 2013, and an undefined "urban rate" as of June 1, 2014. Companies below the applicable rate floor are penalized with a dollar for dollar reduction in High Cost Loop Support ("**HCLS**"). Though Coalfields is not currently a recipient of HCLS, Coalfields expects that it will become eligible to receive those funds and, without this rate increase, Coalfields would otherwise be unable to collect that support. More importantly, Coalfields believes that its ongoing ability to draw from *any* universal service funds will be compromised if it retains its historically low local service rate levels.

**FINANCIAL IMPACT**

To offset this rate increase, the company intends to modify its residential service to include calling number delivery service ("**CID**"), the company's most popular feature, at no additional charge. This, in turn, reduces the price of residential feature packages that included CID by the previous cost of that feature. This rate increase does not impact business services, and, therefore, this filing does not purport to change those rates. Overall, Coalfields expects this rate increase to be revenue neutral.



To meet the Fourteen And 00/100 Dollar (\$14.00) residential rate floor established by the Federal Communications Commission, Coalfields proposes to increase its residential services rates by Three And 42/100 Dollars (\$3.42), but to begin provide CID, a feature that ordinarily would cost Five And 50/100 Dollars (\$5.50), on all residential lines at no additional cost. Current subscribers to CID service or paid bundles including CID service and Caller Name delivery service will receive offsetting rate reductions of Five And 50/100 Dollars (\$5.50).

As shown in the table below, the impact of this filing was calculated using demand units for the various services in billing as of March 14, 2013. As a result of this rate realignment, Coalfields expects this to be a revenue neutral filing with a mere Three And Thirty-Seven Hundredths Percent (3.37%) net revenue change before any forecasted line losses are taken into account.

<b>Current Rates and Rate Structure</b>							
	<b>No CID</b>	<b>Caller Number</b>	<b>Caller Name</b>	<b>CID pay pkg</b>	<b>CID free pkg</b>	<b>Basic Rate</b>	<b>Total</b>
Rate	\$ -	\$ 5.50	\$ 7.00	\$ 15.50	\$ -	\$ 10.58	
Demand							
Revenue							
<b>Proposed Rates and Rate Structure</b>							
Proposed Rate	\$ -	\$ -	\$ 1.50	\$ 9.95	\$ -	\$ 14.00	
Demand							
Proposed Rev.							
<b>Net Change</b>							\$ 447.18
							3.37%

As shown in table below, slightly more than half of Coalfields’s customers will experience a rate decrease. The remainder will be subject to a higher rate, but will receive CID service on their residential lines at no charge.

	Current	Proposed	Change	Net Impact	No. Subs
<b>No caller ID</b>	\$ 10.58	\$ 14.00	\$ 3.42		
<b>Naked Caller #</b>	\$ 16.08	\$ 14.00	\$ (2.08)		
<b>Naked Caller Name</b>	\$ 17.58	\$ 15.50	\$ (2.08)		
<b>CID in paid package</b>	\$ 26.08	\$ 23.95	\$ (2.13)		
<b>CID in free package</b>	\$ 10.58	\$ 14.00	\$ 3.42		

Additionally, as part of the Transformation Order, the Federal Communications Commission established that the intercarrier compensation collected in 2011 fiscal year, from October 1, 2010 to September 30, 2011, was the maximum amount of allowed revenues from intercarrier compensation. In addition, the Transformation Order established a phase down schedule of those maximum amounts allowed, requiring that the maximum intercarrier compensation amount be reduced by Five Percent (5.00%) for the 2012 fiscal year and Four and Seventy-Five Hundredths Percent (4.75%) for the 2013 fiscal year. With this change, Coalfields cannot collect more than the maximum intercarrier compensation revenue amount. As is shown below, this reduction was approximately [REDACTED] [REDACTED] for Coalfields’s 2012 fiscal year and the cumulative reduction at the end of Coalfields’s 2013 fiscal year will be approximately [REDACTED] [REDACTED].

	Allowed Revenues	Reduction	Cumulative	% Reduction
FY 2011				0.00%
FY 2012				-5.00%
FY 2013				-9.75%

**CONCLUSION**

The Transformation Order seeks to dramatically change the revenue sources historically available to rural telephone companies like Coalfields to use in meeting their carrier of last resort obligation and to expand the availability of advanced broadband services to their customers. Unfortunately, for many of these companies, doing so requires upward pressure on local service rates; fortunately, however, Coalfields has been able to negate much of the effects on customer rates through the credit for qualifying bundle of services discussed herein. As shown in this documentation, Coalfields has no other options available to it, has made a good faith attempt to negate the rate increase net effect on customers and, therefore, requests that its tariff revisions be approved.



Coalfields Telephone Access Line Counts  
NECA 24-month look

	Res and SLB	Res	SLB	MLB
2013 April	4,729	4,499	230	880
Mar	4,729	4,499	230	880
Feb	4,700	4,482	218	887
Jan	4,664	4,449	215	891
2012 Dec	4,707			895
Noc	4,731			897
Oct	4,712			897
Sept	4,712			899
Aug	4,702			901
Jul	4,731			897
Jun	4,769			901
May	4,796			909
April	8,256			910
Mar	4,810			912
Feb	4,776			907
Jan	7,763			901
2011 Dec	4,793			903
Noc	4,776			907
Oct	4,821			903
Sept	4,840			890
Aug	4,823			898
Jul	4,866			899
Jun	4,899			899
May	4,908			893
April	4,955			894



GEARHEART-COALFIELDS

Case 2013-00192

Period	State	SAC	Study Area Name	Total High Cost Monthly	Total High Cost Quarterly
3Q2013	KY	260408	GEARHEART-COALFIELDS	\$ 153,817	\$ 461,451
2Q2013	KY	260408	GEARHEART-COALFIELDS	\$ 154,831	\$ 464,493
1Q2013	KY	260408	GEARHEART-COALFIELDS	\$ 158,357	\$ 475,071
4Q2012	KY	260408	GEARHEART-COALFIELDS	\$ 63,868	\$ 191,604
3Q2012	KY	260408	GEARHEART-COALFIELDS	\$ 63,868	\$ 191,604
2Q2012	KY	260408	GEARHEART-COALFIELDS	\$ 91,339	\$ 274,017
1Q2012	KY	260408	GEARHEART-COALFIELDS	\$ 86,476	\$ 259,428
4Q2011	KY	260408	GEARHEART-COALFIELDS	\$ 91,339	\$ 274,017
3Q2011	KY	260408	GEARHEART-COALFIELDS	\$ 91,339	\$ 274,017
2Q2011	KY	260408	GEARHEART-COALFIELDS	\$ 89,742	\$ 269,226
1Q2011	KY	260408	GEARHEART-COALFIELDS	\$ 89,742	\$ 269,226

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

JUN 11 2013

TARIFF FILING OF GEARHEART  
COMMUNICATIONS, INC. D/B/A COALFIELDS  
TELEPHONE COMPANY

) CASE NO. PUBLIC SERVICE  
) 2013-00192 COMMISSION  
)

**MOTION FOR WAIVER OF CERTAIN RATE  
APPLICATION FILING REQUIREMENTS**

Gearheart Communications Company, Inc. d/b/a Coalfields Telephone Company ("Coalfields"), by counsel, and pursuant to Sections 16(15) of 807 KAR 5:001, hereby moves the Public Service Commission of the Commonwealth of Kentucky (the "Commission") for waiver of certain filing requirements set forth in Section 16 of 807 KAR 5:001 and the Commission's May 29, 2013 Order in this case (the "Order"). In support of its request, Coalfields states as follows.

**I. Introduction**

In the Order, the Commission requested that Coalfields file an application pursuant to Section 16 of 807 KAR 5:001 in order to obtain the rate adjustments that it seeks. The Commission recognized "the mandatory and time-sensitive nature of the FCC's rate floor, and that all of the information specified in 807 KAR 5:001 Section 16 may not be necessary to support an increase in basic local exchange rates under these circumstances." Order at 2. Accordingly, the Commission provided a list of specific requirements from 807 KAR 5:001 that are necessary to allow the Commission to evaluate Coalfields's Application. Coalfields now moves for waiver of certain filing requirements of Section 16 of 807 KAR 5:001 and the Order.



## **II. Argument**

Upon good cause shown, the Commission shall grant “[a] request for waiver of any of the provisions of [the] filing requirements.” 807 KAR 5:001, Section 16(15). In determining whether good cause exists, the Commission shall consider:

(a) Whether other information provided by the utility is sufficient to allow the Commission to effectively and efficiently review the rate application;

(b) Whether the information for which waiver is requested is normally maintained by the utility or reasonably available from the information the utility does maintain; and

(c) The expense in providing the information which is the subject of the waiver request.

Id.

Because of the expedited nature of these proceedings (which is required due to the time-sensitive nature of the rate floor) and the relatively small size of the utility, it is not feasible for Coalfields to compile some of the information required by Section 16 by the application deadline established in the Order. Furthermore, Coalfields’s Application is simply a response to the regulatory pronouncement of the FCC as opposed to a financial need for additional revenue from its ratepayers, and the Commission acknowledged in its Order that “all of the information specified in 807 KAR 5:001 Section 16 may not be necessary to support an increase in basic local exchange rates under these circumstances.” Order at 2.

Wherefore, Coalfields requests waiver of the following filing requirements. A brief supporting narrative is included for each of these provisions.

### **A. Filing Requirements Not Specified in the Order**

The information required by the following regulations was not requested by the Commission in the Order. *See* Order at 3.

**807 KAR 5:001 Section 16(1)(b)(5)**

**New or revised tariff sheets shown by either providing the present and proposed tariffs in comparative form on the same sheet side by side or on facing sheets side by side, or providing a copy of the present tariff indicating proposed additions by italicized inserts or underscoring and striking over proposed deletions.**

Coalfields does not have this information readily available and accordingly seeks waiver of Section 16(1)(b)(5) of 807 KAR 5:001.

**807 KAR 5:001 Section 16(2)**

**File written notice of intent to file a rate application at least thirty days, but not more than sixty days, prior to filing the application; state in such notice whether the application will be supported by a historical or forecast test period; serve a copy of the notice upon the Attorney General.**

Coalfields files the Application pursuant to the Order, which established a deadline of ten days from entry of the Order. Furthermore, Coalfields will serve a copy of the Application upon the Attorney General contemporaneous with its filing. Therefore, in light of the unique circumstances of this case, Coalfields seeks waiver of Section 16(2) of 807 KAR 5:001.

**807 KAR 5:001 Section 16(9)(b)**

**If utility has gross annual revenues exceeding \$5,000,000, prepared testimony of each witness who will support the application.**

Coalfields's filing is in response to the Transformation Order and is not driven by a financial need to obtain more revenue from its ratepayers or achieve a higher rate of return.

Coalfields asserts that the information provided in the Application does not require further explication through prepared testimony. Furthermore, it is not feasible for Coalfields to prepare testimony in the timeframe prescribed by the Commission for this filing. Accordingly, Coalfields seeks waiver of Section 16(9)(b) of 807 KAR 5:001.

**807 KAR 5:001 Section 16(9)(g)**

**Analysis of customers' bills in such detail that revenues from present and proposed rates can be readily determined for each customer class.**

Because of offsets Coalfields will be providing its customers, the proposed rate change will be virtually revenue-neutral. Additionally, Coalfields's financial report, containing its 2012 revenues under the rates in effect prior to the filing of the Application, is on file with the Commission. This information should be sufficient to allow the Commission to effectively and efficiently review the Application, and Coalfields accordingly seeks waiver of Section 16(9)(g) of 807 KAR 5:001.

**807 KAR 5:001 Section 16(9)(i)**

**Reconciliation of rate base and capital used to determine revenue requirements.**

Coalfields's Application is filed for the purpose of implementing rates to maintain eligibility for the maximum amount of High Cost Loop Support ("HCLS") possible, and not because of a financial need to obtain more revenue from its customers. The new rate was determined based on the rate floor set in the Transformation Order, and was not determined based on rate base and capital. This data is thus irrelevant to the proposed rate increase and will not aid the Commission in evaluating Coalfields's Application. Accordingly, Coalfields seeks waiver of Section 16(9)(i) of 807 KAR 5:001.

**807 KAR 5:001 Section 16(9)(j)**

**Current chart of accounts, if more detailed than the Uniform System of Accounts.**

Coalfields's financial reports are on file with the Commission and should be sufficient to efficiently evaluate the Application. Accordingly, Coalfields seeks waiver of Section 16(9)(j) of 807 KAR 5:001.

**807 KAR 5:001 Section 16(9)(k)**

**Independent auditor's annual opinion report, with any written communication from auditor which indicates existence of material weakness in internal controls.**

Coalfields's rate Application is filed merely to maintain eligibility for the maximum amount of HCLS and is not driven by financial weakness in the company or a need to secure more revenue from its ratepayers. Reports that otherwise detail Coalfields's financials are on file with the Commission. Accordingly, Coalfields seeks waiver of Section 16(9)(k) of 807 KAR 5:001.

**807 KAR 5:001 Section 16(9)(m)**

**The most recent PSC Form T.**

Subscriber information similar to that which appears in the PSC Form T is included in Exhibit 6 to the Application. This information should allow the Commission the ability to efficiently evaluate the Application under the circumstances of this case, and Coalfields thus seeks waiver of Section 16(9)(m) of 807 KAR 5:001.

**807 KAR 5:001 Section 16(9)(n)**

**Summary of latest depreciation study with schedules by major plan accounts, except that telecommunications utilities**

**adopting the Commission's average depreciation rates shall provide a schedule identifying current and test period depreciation rates used by major plant accounts.**

Coalfields's annual financial report for 2012, which covers the test period, is on file with the Commission. Because this information should be sufficient to allow the Commission to efficiently evaluate the Application, Coalfields seeks waiver of Section 16(9)(n) of 807 KAR 5:001.

**807 KAR 5:001 Section 16(9)(q)**

**Annual report to shareholders, or members, and statistical supplements covering the two most recent years from the application filing date.**

Coalfields's annual financial report for 2012, which covers the test period, is on file with the Commission. Because this information should be sufficient to allow the Commission to efficiently evaluate the Application, Coalfields seeks waiver of Section 16(9)(r) of 807 KAR 5:001.

**807 KAR 5:001 Section 16(9)(r)**

**Monthly managerial reports providing financial results for twelve months in test period.**

Coalfields's annual financial report for 2012, which covers the test period, is on file with the Commission. Because this information should be sufficient to allow the Commission to efficiently evaluate the Application, Coalfields seeks waiver of Section 16(9)(r) of 807 KAR 5:001.

## **B. Filing Requirements Specified in the Order**

**807 KAR 5:001 Section 16(1)(b)(4)**                      **New or revised tariff sheets must have an effective date not less than thirty days from the date the application is filed**

Because of the time-sensitive nature of the FCC-mandated rate floor, the effective date is within the thirty-day horizon required by Section 16(1)(b)(4), and Coalfields accordingly requests waiver of 807 KAR 5:001, Section 16(1)(b)(4) so that it may comply with the Transformation Order and maintain eligibility for the maximum amount of HCLS.

**807 KAR 5:001, Section 16(1)(b)(6)**                      **A statement that notice has been given in compliance with subsections (3) and (4) of 807 KAR 5:001 Section 16, with a copy of the notice.**

Coalfields has provided a copy of the customer notice at Exhibit 4 of the Application. However, Coalfields requests waiver of 807 KAR 5:001 Section 16(1)(b)(6) insofar as it requires strict compliance with 807 KAR 5:001 Section 16(3)-(4). Coalfields targeted the notice in the most direct and efficient manner to reach its customers with the pertinent information. The notice that was provided states that basic local rates will increase, explains the necessity of the increase under the change of the FCC's rules, and informs the customers that the overall effect of the rate increase along with reductions for certain services would either reduce bills or have no effect on bills. Accordingly, Coalfields requests waiver of Section 16(1)(b)(6) of 807 KAR 5:001.

**807 KAR 5:001 Section 16(9)(f)**                      **Description of the effect upon the average bill for each customer class for change in basic local service.**

Exhibit 7 of Coalfields's Application includes a complete breakdown of the effect of the rate change based on the services subscribed to by the customers. This information is sufficient to allow the Commission to efficiently and effectively evaluate the Application, and Coalfields accordingly seeks waiver of Section 16(9)(f) of 807 KAR 5:001.

**807 KAR 5:001 Section 16(9)(h)**

**Summary of determination of revenue requirements based on return on net investment rate base, return on capitalization, interest coverage, debt service coverage, or operating ratio, with supporting schedules.**

As an average-schedule-size company, Coalfields participates in interstate pools based on the average costs of companies of their average size. Accordingly, they are not required to perform studies pursuant to Part 36 of the FCC Rules that separate revenues, expenses, and investments between various jurisdictions. Due to the substantial financial burden that such studies impose, this is a key advantage of average schedule filing. Additionally, a utility the size of Coalfields could not realistically complete a Part 36 study within ninety days, let alone within the narrow timeframe that the circumstances of this proceeding necessitate.

Coalfields does not seek a rate increase in this proceeding based on a failure to earn an adequate rate of return. The changes in rates that it seeks are merely for the purpose of meeting the rate floors prescribed by the Transformation Order to maintain eligibility for the maximum amount of HCLS and are expected by Coalfields to provide either no additional revenue or nominal additional revenue that will serve as an offset to other revenue reductions.

Finally, a hypothetical analysis would require so many assumptions or consolidations as to deprive the study of any meaningful analytical value. Such a study would require industry-average allocation factors to establish theoretical jurisdictional separations, or they would

provide only a consolidated schedule that would portray a misleading blend of interstate and intrastate performance.

Accordingly, Coalfields seeks waiver of Section 16(9)(h) of 807 KAR 5:001.

**Order at ¶ 3.a.**

**Estimated annual revenue from High Cost Loop Support beginning July 1, 2013.**

Coalfields does not have a readily-available projection for revenue from High Cost Loop Support starting July 1, 2013. Accordingly, Coalfields seeks waiver of the filing requirement that appear in the Order at ¶ 3.a.

**Order at ¶ 3.d.**

**Historical and projected line loss.**

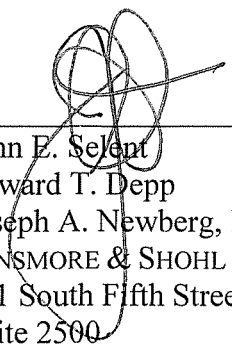
Coalfields has provided historical line counts but does not have readily-available data for projected line counts. Accordingly, Coalfields seeks waiver of the filing requirement that appear in the Order at ¶ 3.d.

### **III. Conclusion**

Coalfields has demonstrated good cause for granting each of the requests for waiver or deviation identified above. In each case, Coalfields does not prepare the requested reports or budgets or otherwise have the information readily available. In addition, it would be prohibitively expensive for Coalfields to prepare the reports in the timeframe of this case. Accordingly, Coalfields has demonstrated good cause and the Commission should grant the requested waivers.

Respectfully submitted,






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Company*

**CERTIFICATE OF SERVICE**

I certify that, on the date this Motion for Waiver of Certain Rate Application Filing Requirements was filed or served with the Kentucky Public Service Commission, a true and accurate copy of the foregoing was served by Federal Express or by hand delivery upon the persons listed below.

On this the 10th day of June, 2013.

  
\_\_\_\_\_  
*Counsel for Gearheart Communications, Inc.  
d/b/a Coalfields Telephone Company*

Honorable Jack Conway  
Capitol Suite 118  
700 Capitol Avenue  
Frankfort, Kentucky 40601-3449

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUN 11 2013

PUBLIC SERVICE  
COMMISSION

**In the Matter of:**

TARIFF FILING OF GEARHEART ) CASE NO.  
COMMUNICATIONS, INC. D/B/A COALFIELDS ) 2013-00192  
TELEPHONE COMPANY )

**PETITION OF GEARHEART COMMUNICATIONS, INC. D/B/A COALFIELDS  
TELEPHONE COMPANY FOR CONFIDENTIAL TREATMENT**

Gearheart Communications, Inc. d/b/a Coalfields Telephone Company ("Coalfields") hereby petitions the Kentucky Public Service Commission (the "Commission"), pursuant to Section 13 of 807 KAR 5:001 and KRS 61.878, to grant confidential treatment to certain information Coalfields is contemporaneously filing with its application for a general adjustment in rates. The information Coalfields seeks to protect as confidential is hereinafter referred to as the "Confidential Information."

Pursuant to 807 KAR 5:001 Sections 13(2)(a)(3) and 13(2)(b), one (1) copy of the hardcopy pages containing Confidential Information, with the Confidential Information highlighted with transparent ink, printed on yellow paper, or otherwise marked "CONFIDENTIAL," is being filed with this petition. A copy of those pages with the Confidential Information redacted is being filed with the original and each of the ten (10) copies of the application filed with this petition.

The Confidential Information is not publicly available, is not disseminated within Coalfields except to those employees and professionals with a legitimate business need to know and act upon the information, and is not disseminated to others without a legitimate need to know and act upon the information.

If and to the extent the Confidential Information becomes generally available to the public, whether through filings required by other agencies or otherwise, Coalfields will notify the Commission and have the information's confidential status removed pursuant to Section 13(1)(b) of 807 KAR 5:001.

As discussed below, the Confidential Information is entitled to confidential treatment based upon KRS 61.878(1)(c)(1), which protects "records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records." 807 KAR 5:001 Section 13(2)(a)(1).

### **I. Applicable Law**

807 KAR 5:001 Section 13(2)(a) sets forth the procedure by which certain information filed with the Commission may be treated as confidential. The regulation provides that a party seeking confidential treatment of certain information must:

Establish specific grounds pursuant to KRS 61.878, upon which the Commission should classify that material as confidential;

State the time period in which the material should be treated as confidential and the reasons for the time period; and

Include[ ] in a separate sealed envelope marked confidential, one (1) copy of the material . . . which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless redacted would disclose confidential material.

The Kentucky Open Records Act, KRS 61.870, *et seq.*, exempts certain records from the requirement of public inspection. In particular, KRS 61.878(c)(1) provides the following exemption from the requirement of public inspection:

records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would present an unfair

commercial advantage to competitors of the entity that disclosed the records.

**II. Disclosure of the Confidential Information Would Grant Coalfields's Competitors an Unfair Commercial Advantage.**

The Confidential Information for which Coalfields seeks confidential treatment pursuant to KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky law.

The Confidential Information in Exhibit 6 consists of data related to the revenue changes due to adjustment of terminating access rates pursuant to the FCC's November 18, 2011 Order reforming intercarrier compensation and the Universal Service Fund (the "**Transformation Order**").

The Confidential Information in Exhibit 7 includes Coalfields's operating expenses and revenues.

The highlighted information contained in Coalfields's application would result in an "unfair commercial advantage to competitors" of Coalfields if disclosed. Coalfields, as a participant in the telecommunications market, faces economic competition from other entities in the same market. Coalfields competes in the telecommunications market to sell telecommunication services to customers. With the increased penetration of alternatives to basic local service such as VoIP and wireless services, Coalfields faces an increasingly competitive market. Coalfields's ability to successfully compete against other entities in the telecommunications market would be adversely affected by the disclosure of its internal financial information. Therefore, Coalfields has "competitors" as is contemplated under the statute and faces actual competition from other market participants.

The Confidential Information for which Coalfields seeks confidential treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky law. In particular, information about a company's detailed inner workings is generally recognized as confidential or proprietary. *See, e.g., Hoy v. Ky. Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995) ("It does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is 'generally recognized as confidential or proprietary . . . .'"); *Marina Mgmt. Servs. v. Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995) ("The most obvious disadvantage may be the ability to ascertain the economic status of the entities without the hurdles systematically associated with the acquisition of such information about privately owned organizations.").

The disclosure of this confidential and proprietary information would provide competitors an unfair competitive advantage, allowing them insight into Coalfields's financial position and giving them the ability to unfairly tailor their competitive efforts against Coalfields in light of this Confidential Information.

### **III. Time Period**

Pursuant to Section 13(2)(a)(2) of 807 KAR 5:001 Coalfields requests that the Confidential Information remain confidential for a period of five (5) years from the date of this petition, which should allow sufficient time for the projected data to become historical and sufficiently outdated that it could not be used to determine similar Confidential Information at that time.

### **IV. Conclusion**

Based on the foregoing, the Confidential Information is entitled to confidential treatment. If the Commission disagrees that Coalfields is entitled to confidential treatment, due process

requires the Commission to hold an evidentiary hearing. *Utility Regulatory Comm'n v. Kentucky Water Serv. Co., Inc.*, 642 S.W.2d 591 (Ky. App. 1982).

WHEREFORE, Coalfields respectfully requests that the Commission classify and protect as confidential the Confidential Information.

On this the 10th day of June, 2013.

Respectfully submitted,




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Company*

**CERTIFICATE OF SERVICE**

I certify that, on the date this Petition was filed or served with the Kentucky Public Service Commission, a true and accurate copy of the foregoing was served by Federal Express or by hand delivery upon the persons listed below.

On this the 10th day of June, 2013.

  
\_\_\_\_\_  
*Counsel for Gearheart Communications, Inc.  
d/b/a Coalfields Telephone Company*

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