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July 10, 2001

Frederic J. Cowan
Lynch, Cox, Gilman & Mahan, P.S.C.
400 West Market Street
Suite 2200
Louisville KY 40202

Dear Mr. Cowan:

This is in response to your letter of July 10, 2001, in which you inquire whether the acquisition of LDD, Inc.'s competitive local exchange business in Kentucky by your client, Big River Telephone Co., LLC ("Big River") constitutes a violation of KRS 278.535. You state that Big River will acquire all assets of LDD, together with its entire customer base, and will file an adoption notice pursuant to 807 KAR 5:011. Accordingly, it appears that LDD will no longer provide service in Kentucky after the sale.

If, in fact, LDD will no longer provide local exchange service in Kentucky after the sale of its business to Big River, KRS 278.535's prohibition against changing a customer's preferred carrier without his consent is not implicated. In Case No. 96-078, *Application of MidCom Communications, Inc. and GE Capital Communications Services Corporation, d/b/a GE Exchange and d/b/a GE Capital Exchange for Approval of a Transfer of Assets* (May 7, 1996), the Commission drew a distinction between sale of an entire telecommunications business, which is clearly permissible, and a transfer of customer accounts between one carrier and another when both carriers will continue to provide the same service provided to the customers whose accounts were sold. The latter practice constitutes an impermissible change of preferred carrier by means of obtaining the serving carrier's permission rather than the customer's. Similarly, in Case No. 359, *Exemptions for Interexchange Carriers, Long-Distance Resellers, Operator Service Providers and Customer-Owned, Coin-Operating Telephones* (June 21, 1996), at 6, n. 4, the Commission explained that, though transfers of nondominant carriers' businesses no longer required Commission approval, transfers of customer accounts "where the transferring utility will continue to provide precisely the same service" is not



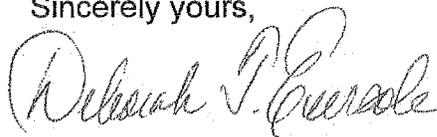
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to be confused with a transfer of business pursuant to KRS 278.020. This same distinction was drawn in Case 370, *Exemptions for Providers of Local Exchange Service Other Than Incumbent Local Exchange Carriers* (January 8, 1998), at 2 (applying to competitive local exchange carriers the standards applicable to interexchange carriers and explaining that neither may sell its customer base "where the utility would provide the same line of business to new customers or customers whose accounts were not sold").

These Commission decisions comport with KRS 278.535, which specifically defines a "[t]elecommunications provider" to include "successors in interest by way of acquisition or merger." The statute also provides for reinstatement of the customer's service with his preferred carrier. KRS 278.535. The availability of this remedy clearly indicates that the General Assembly contemplated that the preferred carrier would still be doing business in any "slamming" situation.

This letter is a legal opinion applying the law to the facts as stated in your letter. It is not binding upon the Commission should the issues treated herein be brought before the Commission for formal resolution. If you have further questions, please do not hesitate to call me.

Sincerely yours,



Deborah T. Eversole
General Counsel

/rst
cc: Thomas M. Dorman, Executive Director
File

