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April 13, 2005

VIA HAND DELIVERY

Hon. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, KY 40601

RECEIVED

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PUBLIC SERVICE
COMMISSION

Re: *In the Matters of:*

- (i) ***Application of Jackson Purchase Energy Corporation for Adjustments in Existing Cable Television Attachment Tariff, before the Public Service Commission of the Commonwealth of Kentucky, Case No. 2004-00319; and***
- (ii) ***Ballard Rural Telephone Cooperative Corporation, Inc. v. Jackson Purchase Energy Corporation, before the Public Service Commission of the Commonwealth of Kentucky, Case No. 2004-00036***

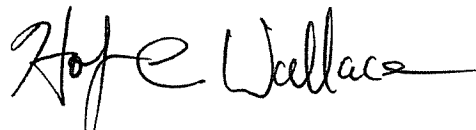
Dear Ms. O'Donnell:

Enclosed for filing in each of the above-styled cases are two originals of the Motion to Apply CTAT Rates to Ballard Rural. Also enclosed are 10 copies of these identical motions.

Thank you, and if you have any question, please call me.

Very truly yours,

DINSMORE & SHOHL LLP



Holly C. Wallace

HCW/bmt
Enclosures

Hon. Beth O'Donnell

April 13, 2005

Page 2

bcc/ Harlon E. Parker (w/enclosure)
Janice Chittenden (w/enclosure)
Randy Grogan (w/enclosure)
Jim Sharpe (w/enclosure)

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In the Matters of:

APPLICATION OF JACKSON PURC
CORPORATION FOR ADJUSTMENT
CABLE TELEVISION ATTACHMEN

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and

BALLARD RURAL TELEPHONE COC
CORPORATION, INC.

V.

JACKSON PURCHASE ENERGY CORPORATION

)
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) Case No. 2004-00036
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)

MOTION TO APPLY CTAT RATES TO BALLARD RURAL

Ballard Rural Telephone Cooperative Corporation, Inc. ("Ballard Rural"), by counsel, hereby moves the Public Service Commission of the Commonwealth of Kentucky (the "Commission") to apply the Cable Television Attachment Tariff ("CTAT") rates of Jackson Purchase Energy Corporation ("Jackson Purchase") to Ballard Rural. In support of its motion, Ballard Rural states as follows.

ARGUMENT

I. THE COMMISSION MUST TREAT CABLE TELEVISION ("CATV") AND TELEPHONE COMPANIES EQUALLY.

Section 2 of the Kentucky Constitution "prohibits the exercise of arbitrary power."

American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning

Commission, 379 S.W.2d 450, 456 (Ky. 1964). "Absolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority."

Kentucky Constitution, §2.

The Kentucky Court of Appeals established a three-part test to evaluate whether an administrative agency's action comports with Section 2 of the Kentucky Constitution. *American Beauty Homes Corp.*, 379 S.W.2d at 456 (emphasis in original). Pursuant to this three-part test, a court will review: (1) whether the action was in excess of the powers granted to the agency; (2) whether the action lacked procedural due process; and (3) whether the action lacked substantial evidentiary support. *Id.*

The case of *Womack v. City of Flemingsburg*, 102 S.W.3d 513 (Ky. Ct. App. 2002) is instructive. The central question in *Womack* was "whether the distinction drawn by the City [of Flemingsburg] between professions and non-professions for purposes of imposing an occupational license tax is based upon a significant difference between the classes such that the distinction does not amount to an arbitrary exercise of power." *Id.* at 516. The court found that there was not a significant difference between professions and non-professions and held that the occupational license tax was unconstitutional.

In the present two cases, as explained below, there is not a significant difference between CATV companies and their pole attachments, and telephone companies and their pole attachments. Accordingly, pursuant to Section 2 of the Kentucky Constitution, *American Beauty Homes* and *Womack*, the Commission must treat CATV and telephone companies equally.

II. THE COMMISSION HAS ASSERTED JURISDICTION OVER POLE ATTACHMENTS.

The Commission asserted jurisdiction over pole attachment rates in Case Nos. 8040 and 8090. Subsequent to the Commission's August 26, 1981 order in those cases, the Commission certified to the Federal Communications Commission ("FCC") that "it has assumed jurisdiction over and regulates pole attachment rates, terms and conditions of jurisdictional utilities." *Certification*, Case Nos. 8040 and 8090, January 28, 1988, p. 2. Although Case Nos. 8040 and

8090 concerned CATV companies, the Telecommunications Act of 1996 (the "Act") expressly provides that an attachment by a telecommunications service provider is a pole attachment within the meaning of the Act. 47 U.S.C. § 224 (a)(4). In addition, the Commission has found that "[c]onsumers of cable service benefit from the attachment of cable to a pole *in the same way as consumers of telephone service benefit from the attachment of cable to a pole . . .*" *Order*, Case Nos. 9678 and 9800, May 26, 1987, p.3 (emphasis added). The Kentucky Court of Appeals has also "concluded that the Kentucky statutes authorized the Public Service Commission to exercise jurisdiction over pole attachment agreements with utilities in Kentucky. The Public Service Commission is the natural state agency to consider the interests of cable television subscribers *as well as the interests of the consumers of various utility services*. The Commission has accepted that task." *Kentucky CATV Association v. Volz*, 675 S.W.2d 393, 396 (Ky. App. 1983) (emphasis added). Moreover, the Commission recently asserted jurisdiction over joint pole attachments in Case No. 2004-00036. Therefore, the Commission has jurisdiction over pole attachment services and pole attachment rates in these two cases.

III. THE COMMISSION SHOULD APPLY JACKSON PURCHASE'S CTAT RATES TO BALLARD RURAL BECAUSE TELEPHONE COMPANIES AND CATV COMPANIES ARE COMPETITORS.

In Administrative Case No. 251, the Commission approved a uniform methodology for utility companies to formulate fair and just pole attachment rates. In order to protect customers such as CATV operators from unreasonable, unjust and discriminatory practices of monopolistic utilities, the Commission stated that "CATV operators must have the right to receive service (make pole attachments) just as telephone and electric customers have the right to receive service." *Order*, Administrative Case No. 251, August 12, 1982, p. 2. The intent was to place CATV operators on equal footing with other utilities, not to place CATV operators in a more

advantageous position. "No utility shall, as to rates or service, give any unreasonable preference or advantage to any person" KRS 278.170(1).

The CTAT rates as applied, however, favor CATV operators over telephone companies because only CATV operators receive the benefit of the CTAT rates, even though CATV and telephone companies are competitors. Companies cannot simply be categorized as exclusively telephone companies or cable companies. Cable companies can and do use the same facilities to provide cable services and telephony. Similarly, telephone companies can and do use the same facilities to provide telephony and digital video services. (See Affidavit of Harlon Parker, attached as Exhibit A). There is no bright line that distinguishes cable companies from telephone companies; they are competitors.

A. Consumers view the services of telephone companies and CATV companies as interchangeable.

Although the technology used by telephone and cable companies to provide telephony and video services may differ, the end-users make no such distinction. To the end-user the products are interchangeable. It is immaterial to an end-user whether his telephone service is technically traditional land-line service using the public switched telephone network ("PSTN") or Voice over Internet Protocol ("VOIP"). Similarly, it is immaterial to customers whether they receive their television signal via cable or digital video. The customer chooses his telephony and video services based upon the quality of the product and the price, not the name of the technology. Thus, cable television companies and telephone companies are competitors. They compete for the same customer base to provide them with telephony and video services. (See Exhibit A). Accordingly, CTAT rates must be applied equally to both cable television and telephone companies. To hold otherwise would permit utilities to discriminate against companies such as Ballard Rural vis-à-vis CATV companies.

For evidence that utilities, such as Jackson Purchase, will discriminate against telephone companies absent Commission intervention, the Commission need look no further than the facts of these two cases. In Case No. 2004-00319, *Application of Jackson Purchase Energy Corporation for Adjustments in Existing Cable Television Attachment Tariff*, Jackson Purchase's proposed CTAT rates are \$5.28 for a two-party pole, \$4.41 for a three-party pole, and \$5.52 for a two-party anchor attachment. In sharp contrast, in Case No. 2004-00036, Jackson Purchase proposed to charge Ballard Rural between \$13.39 and \$17.75 for pole attachments. The Commission should not permit Jackson Purchase to charge Ballard Rural approximately 300% higher rates for pole attachment services than it charges Ballard Rural's competitors. Utilities may not engage in "unreasonable rate discrimination between similarly situated customers." *Order*, Case No. 97-107, October 12, 1998, p. 9. "No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage." KRS 278.170.

B. The Act mandates that Ballard Rural be placed on a level playing field with its competitors.

Pursuant to the Act, the Commission's finding that pole attachment "services should be regulated in the public interest" is as true today as it was twenty years ago (*Order*, Case Nos. 8040 and 8090, p. 8). Utilities, particularly electric utilities such as Jackson Purchase, continue to exercise a monopoly over pole attachment services and rates. Moreover, "[n]o State or local statute or regulation, or other State or local legal requirement may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. §253. Given CATV companies and telephone companies are competitors, competing to provide telephony and video services to the same customer base, the Commission should extend the CTAT rates to include telephone companies and their customers. In fact,

pursuant to the Act, the Commission may only implement such regulations on a "competitively neutral basis." 47 U.S.C. §253(b).

Nothing in this section shall affect the ability of a State to impose, **on a competitively neutral basis** and consistent with section 254 of this section, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

Id. (emphasis added). Given CATV and telephone companies compete for customers to provide telephony and video services, the Commission cannot permit CATV companies and their customers to benefit from the protections of CTAT rates, while telephone companies and their customers suffer discriminatorily inferior rates and service. Permitting cable companies to pay 300% less for pole attachment services as compared to telephone companies, with whom the cable companies compete for telephony customers, constitutes erecting a barrier to entry inhibiting telephone companies' abilities to provide telecommunications service in violation of the Act. The Commission should apply Jackson Purchase's CTAT rates to Ballard Rural.

IV. THE COMMISSION SHOULD APPLY JACKSON PURCHASE'S CTAT RATES TO BALLARD RURAL BECAUSE THERE IS NO QUALITATIVE DIFFERENCE BETWEEN CATV AND TELEPHONE ATTACHMENTS.

There is no rational reason to treat CATV companies and telephone companies differently. Ballard Rural's pole attachments are not materially different than CATV pole attachments. Jackson Purchase does not incur significantly higher costs in providing pole attachment services to Ballard Rural as compared to CATV customers, nor are the services it provides to Ballard Rural substantially different from the services it provides to CATV customers. (*See Exhibit A*). In fact, contrary to the previously **mistaken** belief of legal counsel to Ballard Rural, Ballard Rural's attachments occupy the same amount of space as a CATV attachment, not twice the space as Ballard Rural's counsel previously believed. (*See Exhibit A*).

In Case No. 2004-00036, counsel to Ballard Rural wrote that Ballard Rural "recognizes, however, as Jackson purchase points out in its Response, that its regular attachments occupy two feet of space as opposed to the one foot of space typically occupied by a CATV company. Therefore, with regard to attachments that occupy two feet of space, Ballard Rural would accept Jackson Purchase's suggestion that Jackson Purchase charge Ballard Rural twice its currently-effective CTAT rate on file with the Commission." *Reply in Support of Motion for Summary Judgment*, Case No. 2004-00036, p. 7. Counsel to Ballard Rural was mistaken when it stated the above on behalf of Ballard Rural. Counsel to Ballard Rural has since recognized that the aforementioned two feet of space includes one foot of **unoccupied** space between telephone attachments, which typically occupy the second space on the pole, and CATV attachments, which typically occupy the third space on the pole. *See Id.* The actual telephone facilities themselves, however, occupy only one foot of space, the same amount of space as CATV facilities. *See Id.*

In fact, the FCC has expressly recognized that telephone attachments occupy the same amount of space as CATV attachments, and thus, telephone companies should be charged accordingly.

We affirm our practice of assigning a presumptive one foot of usable space and find that the presumptive one foot used for cable attachments should be applied to attachments by telecommunications carriers generally. We believe that the one foot presumption remains reasonable and continues to provide an expeditious and equitable method for determining reasonable rates.

Report and Order, *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996 Amendment of the Commission's Rules and Policies Governing Pole Attachments*, CS Docket No. 97-151, ¶ 84 (February 6, 1998) ("Report and Order").

Therefore, the CTAT rates should apply equally to CATV companies and telephone companies. To hold otherwise would be to require Ballard Rural to pay substantially more than CATV companies for the same service. *See Id.*

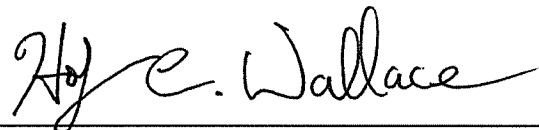
No utility shall, as to rates or service, give any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage, or establish or maintain any unreasonable difference between localities or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

KRS 278.170(1). Thus, telephone companies, such as Ballard Rural, should have to pay the straight CTAT rate only, not twice the CTAT rate, because their attachments require no more space than those of CATV companies.

CONCLUSION

For the foregoing reasons, the Commission should grant Ballard Rural's motion and apply Jackson Purchase's CTAT rates to Ballard Rural.

Respectfully submitted,



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holly.wallace@dinslaw.com (E-Mail)
**COUNSEL TO BALLARD RURAL
TELEPHONE COOPERATIVE
CORPORATION, INC.**

CERTIFICATE OF SERVICE

It is hereby certified that a true and accurate copy of the foregoing was served via First Class United States Mail, postage prepaid, to the following individuals this 13th day of April, 2005:

Frank N. King, Jr.
Dorsey, King, Gray, Norment & Hopgood
318 Second Street
Henderson, KY 42420

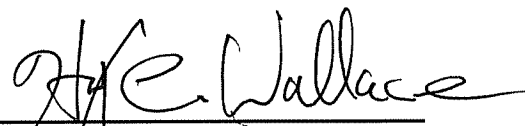
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Denton & Keuler, LLP
555 Jefferson Street
P.O. Box 929
Paducah, KY 42002-0929



**COUNSEL TO BALLARD RURAL
TELEPHONE COOPERATIVE
CORPORATION, INC.**

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

In the Matters of:

APPLICATION OF JACKSON PURCHASE ENERGY CORPORATION FOR ADJUSTMENTS IN EXISTING CABLE TELEVISION ATTACHMENT TARIFF)
) **Case No. 2004-00319**
)

and

BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION, INC.)
)
) **Case No. 2004-00036**
)
JACKSON PURCHASE ENERGY CORPORATION)
)

AFFIDAVIT

Comes the affiant, Harlon Parker, and does depose and state as follows:

1. My name is Harlon Parker. I am the General Manager of Ballard Rural Telephone Cooperative Corporation, Inc. ("Ballard Rural").
2. In that capacity I am responsible for the day-to-day business operations of Ballard Rural. I report directly to the Board of Trustees of the cooperative.
3. I have been the General Manager of Ballard Rural for 23 years.
4. Telephone companies, such as Ballard Rural, use or can use the same facilities to provide telephony and digital video services.
5. To the best of my knowledge, cable television ("CATV") companies use or can use the same facilities to provide telephony and cable services.
6. Telephone companies and CATV companies are competitors. They compete to provide telephony and video services to the same customer base.

7. Ballard Rural's pole attachments are not materially different than CATV pole attachments.


8. To the best of my knowledge and belief, Jackson Purchase does not incur significantly higher costs in providing pole attachment services to Ballard Rural as compared to CATV companies.

9. The pole attachment services that Jackson Purchase provides to Ballard Rural are substantially the same as those it provides to CATV companies.

10. Ballard Rural's attachments occupy approximately the same amount of space as CATV attachments—one foot.

11. Nonetheless, Jackson Purchase discriminates against Ballard Rural by proposing to charge it significantly higher rates for pole attachment services than it charges CATV companies for the same services pursuant to its CTAT rates.

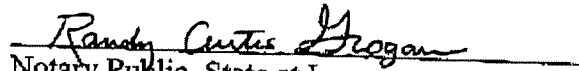
FURTHER THE AFFIANT SAYETH NOT.


Harlon Parker

COMMONWEALTH OF KENTUCKY) SS
COUNTY OF BALLARD)

SUBSCRIBED AND SWORN to before me a notary public by Harlon Parker, to me known, this 13 day of April, 2005.

My commission expires: JUNE 14, 2005


Notary Public, State at Large

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PUBLIC SERVICE
COMMISSION

o. 2004-00319

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**APPLICATION OF JACKSON
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and

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CORPORATION, INC.**

V.

JACKSON PURCHASE ENERGY CORPORATION

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Case No. 2004-00036

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ARGUMENT

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Commission, 379 S.W.2d 450, 456 (Ky. 1964). "Absolute and arbitrary power over the lives,

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The case of *Womack v. City of Flemingsburg*, 102 S.W.3d 513 (Ky. Ct. App. 2002) is instructive. The central question in *Womack* was "whether the distinction drawn by the City [of Flemingsburg] between professions and non-professions for purposes of imposing an occupational license tax is based upon a significant difference between the classes such that the distinction does not amount to an arbitrary exercise of power." *Id.* at 516. The court found that there was not a significant difference between professions and non-professions and held that the occupational license tax was unconstitutional.

In the present two cases, as explained below, there is not a significant difference between CATV companies and their pole attachments, and telephone companies and their pole attachments. Accordingly, pursuant to Section 2 of the Kentucky Constitution, *American Beauty Homes* and *Womack*, the Commission must treat CATV and telephone companies equally.

II. THE COMMISSION HAS ASSERTED JURISDICTION OVER POLE ATTACHMENTS.

The Commission asserted jurisdiction over pole attachment rates in Case Nos. 8040 and 8090. Subsequent to the Commission's August 26, 1981 order in those cases, the Commission certified to the Federal Communications Commission ("FCC") that "it has assumed jurisdiction over and regulates pole attachment rates, terms and conditions of jurisdictional utilities." *Certification*, Case Nos. 8040 and 8090, January 28, 1988, p. 2. Although Case Nos. 8040 and

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In Administrative Case No. 251, the Commission approved a uniform methodology for utility companies to formulate fair and just pole attachment rates. In order to protect customers such as CATV operators from unreasonable, unjust and discriminatory practices of monopolistic utilities, the Commission stated that "CATV operators must have the right to receive service (make pole attachments) just as telephone and electric customers have the right to receive service." *Order*, Administrative Case No. 251, August 12, 1982, p. 2. The intent was to place CATV operators on equal footing with other utilities, not to place CATV operators in a more

advantageous position. "No utility shall, as to rates or service, give any unreasonable preference or advantage to any person" KRS 278.170(1).

The CTAT rates as applied, however, favor CATV operators over telephone companies because only CATV operators receive the benefit of the CTAT rates, even though CATV and telephone companies are competitors. Companies cannot simply be categorized as exclusively telephone companies or cable companies. Cable companies can and do use the same facilities to provide cable services and telephony. Similarly, telephone companies can and do use the same facilities to provide telephony and digital video services. (See Affidavit of Harlon Parker, attached as Exhibit A). There is no bright line that distinguishes cable companies from telephone companies; they are competitors.

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Although the technology used by telephone and cable companies to provide telephony and video services may differ, the end-users make no such distinction. To the end-user the products are interchangeable. It is immaterial to an end-user whether his telephone service is technically traditional land-line service using the public switched telephone network ("PSTN") or Voice over Internet Protocol ("VOIP"). Similarly, it is immaterial to customers whether they receive their television signal via cable or digital video. The customer chooses his telephony and video services based upon the quality of the product and the price, not the name of the technology. Thus, cable television companies and telephone companies are competitors. They compete for the same customer base to provide them with telephony and video services. (See Exhibit A). Accordingly, CTAT rates must be applied equally to both cable television and telephone companies. To hold otherwise would permit utilities to discriminate against companies such as Ballard Rural vis-à-vis CATV companies.

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B. The Act mandates that Ballard Rural be placed on a level playing field with its competitors.

Pursuant to the Act, the Commission's finding that pole attachment "services should be regulated in the public interest" is as true today as it was twenty years ago (*Order*, Case Nos. 8040 and 8090, p. 8). Utilities, particularly electric utilities such as Jackson Purchase, continue to exercise a monopoly over pole attachment services and rates. Moreover, "[n]o State or local statute or regulation, or other State or local legal requirement may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. §253. Given CATV companies and telephone companies are competitors, competing to provide telephony and video services to the same customer base, the Commission should extend the CTAT rates to include telephone companies and their customers. In fact,

pursuant to the Act, the Commission may only implement such regulations on a "competitively neutral basis." 47 U.S.C. §253(b).

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Id. (emphasis added). Given CATV and telephone companies compete for customers to provide telephony and video services, the Commission cannot permit CATV companies and their customers to benefit from the protections of CTAT rates, while telephone companies and their customers suffer discriminatorily inferior rates and service. Permitting cable companies to pay 300% less for pole attachment services as compared to telephone companies, with whom the cable companies compete for telephony customers, constitutes erecting a barrier to entry inhibiting telephone companies' abilities to provide telecommunications service in violation of the Act. The Commission should apply Jackson Purchase's CTAT rates to Ballard Rural.

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There is no rational reason to treat CATV companies and telephone companies differently. Ballard Rural's pole attachments are not materially different than CATV pole attachments. Jackson Purchase does not incur significantly higher costs in providing pole attachment services to Ballard Rural as compared to CATV customers, nor are the services it provides to Ballard Rural substantially different from the services it provides to CATV customers. (*See* Exhibit A). In fact, contrary to the previously **mistaken** belief of legal counsel to Ballard Rural, Ballard Rural's attachments occupy the same amount of space as a CATV attachment, not twice the space as Ballard Rural's counsel previously believed. (*See* Exhibit A).

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In fact, the FCC has expressly recognized that telephone attachments occupy the same amount of space as CATV attachments, and thus, telephone companies should be charged accordingly.

We affirm our practice of assigning a presumptive one foot of usable space and find that the presumptive one foot used for cable attachments should be applied to attachments by telecommunications carriers generally. We believe that the one foot presumption remains reasonable and continues to provide an expeditious and equitable method for determining reasonable rates.

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Therefore, the CTAT rates should apply equally to CATV companies and telephone companies. To hold otherwise would be to require Ballard Rural to pay substantially more than CATV companies for the same service. *See Id.*

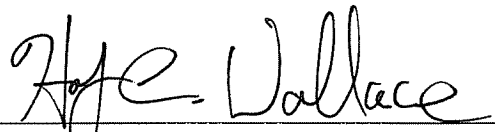
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KRS 278.170(1). Thus, telephone companies, such as Ballard Rural, should have to pay the straight CTAT rate only, not twice the CTAT rate, because their attachments require no more space than those of CATV companies.

CONCLUSION

For the foregoing reasons, the Commission should grant Ballard Rural's motion and apply Jackson Purchase's CTAT rates to Ballard Rural.

Respectfully submitted,



John E. Selent

Holly C. Wallace

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**COUNSEL TO BALLARD RURAL
TELEPHONE COOPERATIVE
CORPORATION, INC.**

CERTIFICATE OF SERVICE

It is hereby certified that a true and accurate copy of the foregoing was served via First Class United States Mail, postage prepaid, to the following individuals this 13th day of April, 2005:

Frank N. King, Jr.
Dorsey, King, Gray, Norment & Hopgood
318 Second Street
Henderson, KY 42420

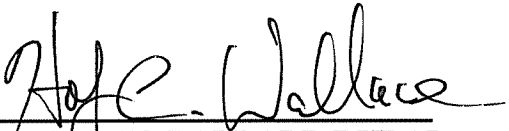
Walter R. Luttrull, III
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Wyatt, Tarrant & Combs
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Jackson Purchase Energy Corporation
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**COUNSEL TO BALLARD RURAL
TELEPHONE COOPERATIVE
CORPORATION, INC.**

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

In the Matters of:

APPLICATION OF JACKSON PURCHASE ENERGY CORPORATION FOR ADJUSTMENTS IN EXISTING CABLE TELEVISION ATTACHMENT TARIFF)
) **Case No. 2004-00319**
)

and

BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION, INC.)
)
)
v.) **Case No. 2004-00036**
)
JACKSON PURCHASE ENERGY CORPORATION)

AFFIDAVIT

Comes the affiant, Harlon Parker, and does depose and state as follows:

1. My name is Harlon Parker. I am the General Manager of Ballard Rural Telephone Cooperative Corporation, Inc. ("Ballard Rural").
2. In that capacity I am responsible for the day-to-day business operations of Ballard Rural. I report directly to the Board of Trustees of the cooperative.
3. I have been the General Manager of Ballard Rural for 23 years.
4. Telephone companies, such as Ballard Rural, use or can use the same facilities to provide telephony and digital video services.
5. To the best of my knowledge, cable television ("CATV") companies use or can use the same facilities to provide telephony and cable services.
6. Telephone companies and CATV companies are competitors. They compete to provide telephony and video services to the same customer base.

7. Ballard Rural's pole attachments are not materially different than CATV pole attachments.

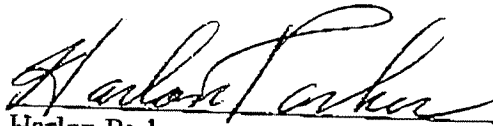
8. To the best of my knowledge and belief, Jackson Purchase does not incur significantly higher costs in providing pole attachment services to Ballard Rural as compared to CATV companies.

9. The pole attachment services that Jackson Purchase provides to Ballard Rural are substantially the same as those it provides to CATV companies.

10. Ballard Rural's attachments occupy approximately the same amount of space as CATV attachments—one foot.

11. Nonetheless, Jackson Purchase discriminates against Ballard Rural by proposing to charge it significantly higher rates for pole attachment services than it charges CATV companies for the same services pursuant to its CTAT rates.

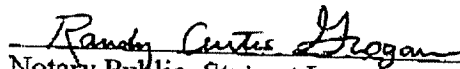
FURTHER THE AFFIANT SAYETH NOT.


Harlon Parker

COMMONWEALTH OF KENTUCKY) SS
COUNTY OF BALLARD)

SUBSCRIBED AND SWORN to before me a notary public by Harlon Parker, to me known, this 13 day of April, 2005.

My commission expires: JUNE 14, 2005


Notary Public, State at Large