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June 6, 2006

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JUN 07 2006

PUBLIC SERVICE
COMMISSION

Ms. Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40601

**Re: Case No. 2006-00192 – Big River Telephone's Opposition
to Ballard Rural Telephone's Motion for Reconsideration**

Dear Ms. O'Donnell:

Enclosed herewith is an original and ten copies of Big River Telephone Co., LLC's Opposition to Ballard Rural Telephone Cooperative Corp's Motion for Reconsideration.

Please acknowledge receipt by returning a stamped copy of this letter.

Very truly yours,

STOLL KEENON OGDEN PLLC

Douglas F. Brent

Enc.

LOU 105104/116470/437021.1



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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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COMMISSION

In the Matter of:

APPROVAL OF THE INTERCONNECTION)
AGREEMENT NEGOTIATED BETWEEN)
BALLARD RURAL TELEPHONE)
COOPERATIVE CORP., INC. AND BIG RIVER)
TELEPHONE COMPANY, LLC. PURSUANT)
TO SECTIONS 251 AND 252 OF THE)
TELECOMMUNICATIONS ACT OF 1996)

CASE NO. 2006-00192

OPPOSITION TO MOTION FOR RECONSIDERATION

Big River Telephone Company, LLC (“Big River”), through counsel, objects to Ballard Rural Telephone Cooperative Corp.’s (“Ballard”) motion for reconsideration. Ballard’s motion cannot be reconciled with its earlier request that the voluntary interconnection agreement be approved, and there is no basis on which the Commission can or should reject a negotiated agreement (or any portion thereof, including the effective date) which is otherwise consistent with the requirements of the Telecommunications Act. The motion should be denied.

I. Counterstatement of Facts.

Big River is a facilities-based local carrier which competes in Western Kentucky with BellSouth and Kentucky ALLTEL. Anticipating entry into additional exchanges in the area, in mid-2005 Big River began informal attempts to interconnect with Ballard. The incumbent generally ignored these informal approaches. Consequently, Big River formalized its request for interconnection on October 27, 2005, by letter. The letter (attached as Exhibit A) made clear that Big River was seeking the ability to exchange local traffic, port telephone numbers, and

exchange numbers for directory listing services. Big River did not request collocation or access to Ballard loops or transport facilities. In other words, Big River's request was comparably simple. Foremost was the basic need to exchange local traffic. Of course, the exchange of local traffic among local carriers has existed since well before the 1996 Act, and Ballard has exchanged local (EAS) traffic with BellSouth for approximately twenty years.¹

After months of negotiation the parties reached and executed an interconnection agreement. On April 21, 2006, Ballard's counsel submitted the agreement on behalf of both parties and specifically requested the Commission to "approve the Agreement." See Exhibit A to Big River's Motion for Expedited Approval filed May 16, 2006. The Commission approved the agreement on May 19, 2006. By its terms the agreement was to be effective on approval by the Commission. Accordingly, the agreement is now effective and Big River is attempting to operate pursuant to its terms. Ballard, however, is not honoring the agreement. Instead, Ballard has asked the Commission to "reverse" its approval and/or "stay" the effectiveness of the agreement. The Commission can do neither. The motion should be denied.

II. Argument.

The Commission may well wonder why Ballard would now quarrel with a Commission order which granted precisely what the parties requested *i.e.*, approval of a voluntary interconnection agreement. The reason is simple – Big River is prepared to begin exchanging local traffic with Ballard and is eager to begin competing to win customers; Ballard is not so enthusiastic. Ballard now claims that it is "theoretically and technically capable of providing

¹ In 1986, customers of Ballard petitioned for extended area service to Paducah. The Commission ordered Ballard and South Central Bell to exchange traffic subject to the Commission's EAS guidelines. *Order*, Case No. 9566 (April 28, 1986).

local number portability” but that until it completes testing, employee training and tariff filings for cost recovery it should not have to operate under the interconnection agreement *at all*. This is absurd. Even if Ballard’s claims related to LNP are true, in no way would they justify a blanket delay, let alone the other chicanery currently being perpetrated on Big River.

For example, Big River has ordered the interconnection circuit (a transport facility from BellSouth) needed to exchange local traffic with Ballard and has requested that Ballard activate its end of the circuit. Big River is prepared to test the exchange of traffic using its own NPA/NXX blocks. Big River can originate and receive traffic even in the absence of local number portability.² Ballard’s response to this overture has been unmistakably anticompetitive. *Ballard is refusing to exchange local traffic at all*, let alone port telephone numbers. Ballard’s staff has refused to cooperate with the completion of the installation of the inter-office facility, to the point of not returning phone calls from Big River or responding to email requests for assistance. Instead, Ballard is operating under the pretense that its pending motion operates as a stay of its obligation to exchange local traffic, or to even respond to inquiries from Big River. This is of course not the law at all. The Commission’s orders remain in force until modified or revoked by the Commission or vacated by a court. *Com. ex rel. Stephens v. South Central Bell Tel. Co.*, 545 S.W. 2d 927 (Ky. 1976).

In its motion Ballard claims it needs additional time to prepare for number portability. As an excuse for its failure to perform under the effective agreement, Ballard claims it had “anticipated” an effective date approximately ninety days after filing of the agreement. But what Ballard is really asking is for the Commission to rework a voluntary bargain Ballard already

² Portability is of course essential to enable customers to switch to Big River without losing numbers they currently use with Ballard.

negotiated with Big River. There is no reason for the Commission to do this, and Ballard cites no legal authority in support of its extraordinary request. Indeed, granting Ballard's misguided motion would have the legal effect of rejecting a portion of the agreement, *i.e.* the effective date. This the Commission may not do unless the negotiated agreement discriminates against another carrier or "the implementation of such agreement or portion is not consistent with the *public interest*, convenience and necessity; . . ." *See* 47 U.S.C. § 252(e)(2)(A) (emphasis added). Ballard's motion implicates only the private business interests of the incumbent, *e.g.*, the desire to recover costs of LNP implementation, and does not even allege that the effective agreement is inconsistent with any interests other than Ballard's.

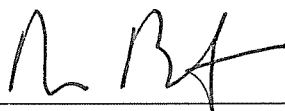
Finally, if the parties to this agreement had agreed to allow a delay in performance until July 20, 2006 (the date Ballard's motion cites as its anticipated effective date), they could easily have made July 20 the effective date of the agreement. Alternatively, the parties' letter to the Commission could have requested that the Commission *take no action* on the agreement in order that it be "deemed approved" 90 days after submission by the parties through operation of law, specifically, Section 252(e)(4). Neither of these things happened because Big River never agreed to a ninety day delay and would have objected immediately if Ballard had asked the Commission to do anything other than *approve* the agreement.

Big River is ready to provide service now. Ballard's attempt to further slow the process must be denied. Even if the Commission had the authority to grant Ballard's motion, to do so would be inconsistent with the public interest in promoting facilities-based competition in rural areas of Kentucky. Swift denial of Ballard's motion will send the message that Ballard must begin exchanging traffic immediately, as it is required to do under the agreement, federal law, and state law. *See* KRS 278.530(1); KRS 278.990(7).

III. Conclusion.

The Commission granted the parties' request to approve an interconnection agreement. The agreement is now effective. There exists no basis under law for the Commission to alter an approved agreement. The motion must be denied.

Respectfully Submitted:



Douglas F. Brent
STOLL KEENON OGDEN PLLC
2650 AEGON Center
400 West Market Street
Louisville, Kentucky 40202
Ph: (502) 568-9100
Fax: (502) 568-5700

Dated: June 6, 2006

Counsel for Big River Telephone Co.



24 So. Minnesota Ave. Cape Girardeau, MO 63703

October 27, 2005

Harlon Parker
General Manager
Ballard Telephone Cooperative
159 West 2nd Street
La Center, KY 42056

Dear Mr. Parker,

Big River Telephone Company, LLC (OCN – 9562) would like to enter into a Local Interconnection Agreement with Ballard Telephone Cooperative (OCN- 0396). Big River Telephone is authorized and is currently providing local and interexchange telecommunications services in the state of Kentucky.

Big River Telephone Company provides a full range of local exchange and access services, as well as interexchange services. These services include switched, as well as dedicated access, providing both voice and data services. We seek to have an Interconnection Agreement with Ballard that provides us the ability to simply exchange local call traffic, port telephone numbers, and exchange telephone numbers for directory listing services.

Per our discussion yesterday, I will call you in two weeks to set up a meeting to discuss and work out the details to this interconnection. If you have any questions, you can contact me at (314) 225-2203 or Andrew Schwantner, Manager-Contract Compliance at (314) 225-2205. We look forward to working with you.

Sincerely,

A handwritten signature in black ink that reads "Gerard J. Howe". The signature is written in a cursive style with a large initial "G".

Gerard J. Howe

cc: Doug Brent

CERTIFICATE OF SERVICE

It is hereby certified that this 6th day of June, 2006 I have served the within Opposition by electronic mail and hand delivery to counsel for Ballard Rural Telephone Cooperative.



Counsel for Big River Telephone Co.

Edward T. Depp
Dinsmore & Shohl
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