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RECEIVED

AUG 03 2006

PUBLIC SERVICE
COMMISSION

August 3, 2006

VIA HAND DELIVERY

Ms. Beth O'Donnell
Executive Director
Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

Re: *Petition of Ballard Rural Telephone Cooperative Corporation, Inc. for Arbitration of Certain Terms and Conditions of Proposed Interconnection Agreement with American Cellular Corporation f/k/a ACC Kentucky License LLC; Case No. 2006-00215*

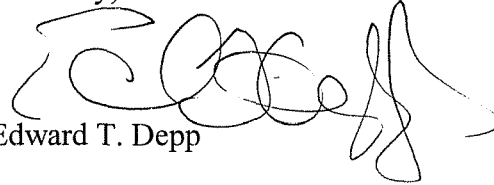
Dear Ms. O'Donnell:

I have enclosed for filing in the above-styled case the original and eleven (11) copies of the Motion for Rehearing of Ballard Rural Telephone Cooperative Corporation, Inc. in the above-referenced matter. Please file stamp one (1) copy of the motion and return them our deliveryperson.

Thank you, and if you have any questions, please contact me at (502) 540-2300.

Sincerely,

Edward T. Depp



ETD/lb
Enclosures

cc: Harlon Parker(w/encl.)
Steven E. Watkins (w/o encl.)

Ms. Beth O'Donnell
August 3, 2006
Page 2 of 2

John E. Selent, Esq. (w/o encl.)
Holly C. Wallace, Esq. (w/o encl.)

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

In the Matter of:

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Petition of Ballard Rural Telephone)	AUG 03 2006
Cooperative Corporation, Inc. for Arbitration of)	
Certain Terms and Conditions of Proposed)	PUBLIC SERVICE
Interconnection Agreement with American)	COMMISSION
Cellular f/k/a ACC Kentucky License LLC,)	Case No. 2006-00215
Partnership Pursuant to the to the Communications)	
Act of 1934, as Amended by the)	
Telecommunications Act of 1996)	

MOTION FOR REHEARING

Ballard Rural Telephone Cooperative Corporation, Inc. ("Ballard Rural"), by counsel, pursuant to the Telecommunications Act of 1996 ("the Act"), KRS 278.400, and 807 KAR 5:001, moves the Public Service Commission of the Commonwealth of Kentucky (the "Commission") for rehearing of its July 25, 2006 Order in the above-captioned matter. In support of its motion, Ballard Rural states as follows.

INTRODUCTION

The Commission should vacate or modify three parts of its July 25, 2006 Order ("the Order").

First, the Commission should not require Ballard Rural to conduct or file TELRIC studies and related testimony. The Commission has no legal or factual basis for imposing this requirement on Ballard Rural, much less by the deadline of August 16, 2006. Ballard Rural is a small, Rural Telephone Company that has never conducted and, moreover, would incur undue and unreasonable expense to conduct TELRIC studies.

Second, the Commission should modify the procedural schedule set forth in Appendix C to its Order because that schedule violates Section 252 of the Act. The Commission has unilaterally

and, therefore, unlawfully extended the timeline for this arbitration proceeding beyond the time permitted by the Act. Ballard Rural is amenable to addressing this issue with the Commission and the parties, but any solution must ensure that the parties have approved interconnection agreements prior to January 1, 2007.

Third, the Commission should modify its Order to incorporate the procedural restrictions requested by the RLECs in their joint response to the CMRS carriers' motion to consolidate. The Commission failed to address these procedural restrictions in its Order, and the procedural restrictions are critical to avoid prejudice to the RLECs.

ARGUMENT

A party aggrieved by a Commission order may move for rehearing under KRS 278.400. Upon a proper showing, the Commission may change, modify, vacate or affirm its previous order and enter such orders as it deems necessary. KRS 278.400. The statute does not set forth specific grounds for relief from an order. However, in the judicial forum, by analogy, a motion to alter, amend or vacate an order will be granted in order to correct errors of law or fact or to prevent injustice, among other reasons. *See, e.g., Gullion v. Gullion*, 163 S.W.3d 888, 893 (Ky. 2005). The Commission's July 25, 2006 Order contains errors of law and fact and threatens injustice to Ballard Rural. Accordingly, the Order should be modified or vacated in part.

I. Ballard Rural Is Not Required to Conduct TELRIC Studies.

The Commission should not order Ballard Rural to conduct TELRIC studies. The law does not require Ballard Rural to conduct such studies. Moreover, it is physically impossible for Ballard Rural to conduct TELRIC studies during the course of this proceeding. The Commission has inexplicably imposed a requirement that Ballard Rural cannot meet. Therefore, the Commission should vacate this erroneous and unjust part of its Order.

A. The FCC Has Concluded that Rural Telephone Companies Are Not Required to Conduct TELRIC Studies.

According to the FCC's analysis and conclusions in its First Report and Order, rural telephone companies such as Ballard Rural are not required to conduct TELRIC studies. *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, FCC 96-325 at ¶¶ 697, 706, 783, 934, 957, 1059, 1068, 1088, 1115. At several places in its First Report and Order, while addressing the economic concerns of small LECs (such as RLECs), the FCC acknowledged that certain requirements of the Act, including the FCC's implemented pricing rules, do not apply to: (i) rural telephone companies that, pursuant to Section 251(f)(1) of the Act, possess an exemption from the Section 251(c) interconnection requirements; and (ii) other small LECs that seek suspension or modification of such requirements pursuant to Section 251(f)(2) of the Act. In each instance, the FCC addresses a particular concern raised by LECs, notes the "economic impact" of the concern at issue to small LECs, and states that rural telephone companies are exempt from certain portions of the Act. (Id.)

In fact, in at least two places in the First Report and Order, the FCC notes the exemption for Rural Telephone Companies under Section 251(f)(1) while discussing aspects of TELRIC studies. For instance, when addressing the concern of small LECs that TELRIC methods will not allow LECs to recover embedded costs, the FCC rejects the small LECs' concern, but indicates that Rural Telephone Companies (*see* 47 U.S.C. § 251(f)(1)) and LECs with fewer than 2% of the nation's subscriber lines (*see* 47 U.S.C. § 251(f)(2)) are exempt from this rule.

We have considered the economic impact of precluding recovery of small incumbent LECs' embedded costs. We do not believe that basing the prices of interconnection and unbundled elements on an incumbent LEC's embedded costs would advance the pro-competitive goals of the statute. **We also note certain small incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission, and**

certain other small incumbent LECs may seek relief from their state commissions from our rules under section 251(f)(2) of the 1996 Act.

Id. at ¶706. Thus, the FCC acknowledges that Ballard Rural (as a rural telephone company pursuant to Section 251(f)(1) of the Act) is exempt from the requirement of TELRIC studies.

The FCC also reached the same conclusion elsewhere in its discussion of TELRIC studies. In discussing whether TELRIC studies will allow LECs to recover common costs, again the FCC addressed the economic impact of TELRIC studies on small LECs by noting that rural telephone companies with an exemption under 251(f)(1) are exempt from certain requirements of the Act.

In our decisionmaking, **we have considered the economic impact of our rules in this section on small incumbent LECs.** For example, although opposed to the use of a forward-looking, economic cost methodology, small incumbent LECs favor the recovery of joint and common costs in the event the Commission adopts forward-looking cost methodology. We are adopting such an approach. Moreover, the cost-based pricing methodology that we are adopting is designed to permit incumbent LECs to recover their economic costs of providing interconnection and unbundled elements, which may minimize the economic impact of our decisions on incumbent LECs, including small incumbent LECs. **We also note that certain small incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission, and certain other small incumbent LECs may seek relief from their state commissions from our rules under section 251(f)(2) of the 1996 Act.**

Id. at ¶697. In at least six other instances in the First Report and Order, the FCC addresses the same concerns of smaller and rural telephone companies by indicating that such small LECs are not subject to the FCC's rules as a result of the companies' status under the Act. (*See id.* at ¶¶783, 934, 957, 1059, 1068, 1088, 1115.) Accordingly, Ballard Rural must be exempt from TELRIC studies.

As the foregoing demonstrates, the FCC has acknowledged that certain of the FCC's pricing rules, including those that prescribe TELRIC pricing methods, do not apply to rural telephone companies by virtue of their Section 251(f)(1) exemption from Section 251(c) requirements.

Specifically, the FCC has indicated that rural telephone companies such as Ballard Rural would, as a result of their statutory exemption, not be required to conduct TELRIC studies. *Id.* at ¶¶697, 706. Accordingly, the Commission should vacate that part of its Order requiring the RLECs to conduct TELRIC studies¹

B. Ballard Rural Cannot Conduct TELRIC Studies in the Course of this Proceeding.

In addition to the legal barriers explained above, equivalent practical barriers will prevent Ballard Rural from conducting TELRIC studies during the course of this proceeding. Ballard Rural cannot possibly complete and file TELRIC studies and related testimony during the statutory course of this proceeding because Ballard Rural has never previously been ordered to conduct TELRIC studies, and such studies take significant periods of time and significant amounts of money to complete. Therefore, the Commission should now vacate that part of its Order requiring TELRIC studies in order to correct legal and factual errors in its Order, and in order to avoid working injustice upon Ballard Rural and its customers (who would likely bear the brunt of the ultimate economic burden imposed by the Commission's Order).

Because Ballard Rural cannot complete TELRIC studies during the course of this proceeding, it certainly cannot meet the Commission's August 16, 2006 deadline, which is a mere three weeks after the date of the Commission's Order requiring such studies. If, as explained above, requiring TELRIC studies during the course of this proceeding would work an injustice upon Ballard Rural, then requiring TELRIC studies by August 16 would work an overwhelming injustice.

¹ In addition to the automatic exemption afforded rural telephone companies under Section 251(f)(1) of the Act, small LECs with less than two percent of the nation's subscriber lines can also seek suspension and/or modification of certain interconnection requirements, including a modification or suspension from a requirement to conduct TELRIC studies, pursuant to Section 251(f)(2) of the Act. Although Ballard Rural is not subject to the FCC's pricing rules, assuming *arguendo* that it were, Ballard Rural will shortly file a Petition for Suspension and/or Modification with the Commission.

Finally, the Commission's Order imposed the requirement of TELRIC studies without discussion, explanation, or even acknowledgement of the RLECs' known opposition to TELRIC studies. The Commission imposed these requirements based on the unilateral suggestion of the CMRS providers and with absolutely no agreement from Ballard Rural or the other RLECs. Furthermore, the Commission has not conducted any proceedings with respect to this issue, and there is no evidentiary record upon which the Commission could support such an unduly and economically burdensome requirement. In fact, as the RLECs stated in their response to the CMRS carriers' motion to consolidate, the issues presented in a motion to consolidate do not rightfully concern the propriety of requiring TELRIC studies. (Response to Motion to Consolidate at 7 n.2.) The decision to require TELRIC studies requires separate, substantive briefings and proceedings. (*Id.*) Therefore, TELRIC studies should not be required.

In sum, the Commission's Order regarding TELRIC studies has no basis in law or fact. The FCC has concluded that rural telephone companies possessing an exemption under Section 251(f)(1) of the Act are not required to conduct TELRIC studies because such LECs are not subject to the FCC's pricing rules, and the application of those rules would result in adverse economic effects. Moreover, Ballard Rural cannot adequately conduct TELRIC studies within the course of this proceeding. Therefore, to correct errors of law and fact, and to avoid injustice to Ballard Rural, the Commission should vacate that part of its July 25, 2006 Order requiring Ballard Rural to file TELRIC studies and related testimony by August 16, 2006.

II. The Commission Should Modify Its Schedule in Order to Comply with the Act.

The Commission should modify its procedural schedule because the schedule violates Section 252 of the Act. Moreover, the schedule virtually guarantees that no final interconnection agreement will be implemented until sometime in 2007 – that is, until after the expiration of the current Agreement from which this arbitration proceeding commenced. Therefore, the Commission should modify its procedural schedule to comply with Section 252 of the Act and to ensure that the parties will have an effective interconnection agreement in place prior to January 1, 2007.²

The statutory schedule for negotiation and arbitration in this proceeding began on January 1, 2006.³ Section 252 of the Act requires that the Commission conclude its resolution of any unresolved issues not later than nine (9) months from that date. 47 U.S.C. 252(b)(4)(C). Because October 1, 2006 falls on a Sunday, the Commission must render its decision by October 2, 2006. Citing no authority and acting contrary to established federal law, the Commission unilaterally extended its deadline to resolve the arbitration petitions by three months, as indicated in Appendix C to the Commission's Order. The RLECs did not agree to the three-month extension. Therefore, the Commission's procedural schedule does not comply with Section 252 of the Act.

As indicated above, the practical danger presented by the Commission's procedural schedule is that no final interconnection agreement will be implemented until some time in 2007, after the existing settlement agreement among the parties has expired. After the Commission's proposed decision in December 2006, the parties will still need to negotiate their respective interconnection agreements in order to implement the Commission's arbitration decision. Following that, the parties

² Ballard Rural is willing to discuss an appropriate timeline that would ensure the resolution of all issues prior to the beginning of 2007. Ballard Rural would not intend to be exposed to uncertain costs and cost recovery because the terms and conditions of arrangements with the CMRS carriers are not resolved.

³ See Section 3.01 of Agreement, *In the Matter of: Petition of BellSouth Telecommunications, Inc. Seeking Resolution of Third Party Transit Traffic Issues*, Public Service Commission Case No. 2003-00045, attached as Exhibit 1 to the Petition.

will need to file their final, conforming interconnection agreements, and the Commission will then have an additional thirty (30) days to approve or reject that agreement. 47 U.S.C. 252(e)(4). Thus, the parties' current settlement agreement will expire in the interim period, leaving the parties with no effective terms for the transport and termination of their respective traffic. This leaves exposed Ballard Rural to uncertain costs and cost recovery, and it could adversely affect the ability of all the carriers involved to continue terminating each other's traffic.

Aside from the fact that applicable law requires the proceeding to be resolved no later than October 2, 2006, that statutory deadline is both practical and appropriate because it will provide the parties with sufficient time to submit a conforming interconnection agreement so that Commission approval of that agreement will become effective prior to the expiration of the parties' existing settlement agreement. Accordingly, the Commission should modify its July 25, 2006 Order to comply with the Act, and to ensure that the parties will have an effective interconnection agreement in place by the time the current Agreement expires.⁴

III. The Commission Should Modify Its Order to Include the Procedural Restrictions Requested by the RLECs.

In their joint response to the CMRS carriers' motion to consolidate, the RLECs requested several procedural restrictions that – if consolidation were ultimately ordered – would minimize prejudice to the RLECs and streamline the proceedings. The Commission effectively adopted none of these restrictions. Even the single safeguard that the Commission purported to adopt was effectively negated. For example, although the Commission consolidated the petitions into 12 separate proceedings, the Commission ordered one omnibus hearing. Such an arrangement is not equivalent to establishing twelve individual proceedings. Ballard Rural (along with the other

⁴ As previously noted, Ballard Rural remains willing to discuss reasonable extensions of the procedural schedule in this matter. At a minimum, however, it should not place itself in a position where it will be exposed to uncertain costs and cost recovery mechanisms as a result of the interim expiration of the parties' existing settlement agreement.

RLECs) is entitled to its own hearing so that it does not have to incur the costs associated with participating in a proceeding that largely does not concern it.

Additionally, Ballard Rural (along with the other RLECs) is entitled to other restrictions that will minimize the prejudice of cumulative or repetitive procedures and evidence. Therefore, Ballard Rural requests that the Commission order that the following procedural safeguards be implemented.

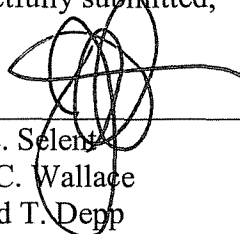
1. The Commission should order that there be separate hearings for each separate consolidated proceeding.
2. The CMRS carriers should designate one "lead counsel" to represent them collectively in each proceeding.
3. The Commission should order the CMRS carriers to serve consolidated discovery requests in the proceeding.
4. The Commission should limit the number of data requests served by the consolidated group of CMRS carriers to a total of 30 data requests in the proceeding.
5. The Commission should limit the CMRS carriers to a maximum of one deposition per Ballard Rural witness, with such deposition (if any) to be conducted by a single attorney representing the consolidated group of CMRS carriers in the proceeding.
6. Cross-examination of Ballard Rural witnesses should be conducted by a single attorney for the consolidated group of CMRS carriers.
7. Cross-examination of Ballard Rural witnesses should not be cumulative or repetitive in the proceeding.
8. The Commission should limit the number of witnesses to one witness per related group of issues in the proceeding.
9. The Commission should require joint opening and closing statements from a single attorney representing the consolidated group of CMRS carriers in the proceeding.
10. The Commission should require the consolidated group of CMRS carriers to submit joint motions, responses, replies, briefs, or other written documents advocating a particular position or result in the proceeding.

CONCLUSION

For the foregoing reasons, the Commission should modify or vacate its July 25, 2006 Order as follows:

- (1) Vacate the Order such that Ballard Rural is not required to conduct TELRIC studies;
- (2) Modify the Order such that the procedural schedule at Appendix C complies with Section 252 of the Act; and
- (3) Modify the Order such that the Commission adopts the procedural safeguards requested by Ballard Rural herein.

Respectfully submitted,



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**COUNSEL TO BALLARD RURAL
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by Federal Express and electronic mail on this 31st day of August, 2006, to the following individual(s):

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**COUNSEL TO BALLARD RURAL
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