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RECEIVED

MAY 19 2017

PUBLIC SERVICE  
COMMISSION

May 18, 2017

**Via Federal Express**

Dr. Talina Mathews  
Executive Director  
Kentucky Public Service Commission  
211 Sower Blvd.  
Frankfort, KY 40601

***Re: The Verified Joint Application of Brandenburg Communications Corporation  
and Brandenburg Telephone Company for the Expedited Transfer of Certain  
Ownership Shares of Brandenburg Communications Corporation***

Dear Dr. Mathews:

Enclosed for filing with the Public Service Commission of the Commonwealth of Kentucky are an original and eleven (11) copies of the following documents.

1. Verified Joint Application of Brandenburg Communications Corporation and Brandenburg Telephone Company for the Expedited Transfer of Certain Ownership Shares of Brandenburg Communications Corporation.
2. Petition for Confidential Treatment.

Please return a file-stamped copy of these documents in the enclosed self-addressed, stamped envelope.

Sincerely,

DINSMORE &amp; SHOHL LLP

  
Edward T. Depp

ETD/kwi

Enclosures

cc: Allison T. Willoughby (w/ att.)  
John E. Selent, Esq. (w/ att.)

REDACTED

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAY 19 2017

IN THE MATTER OF:

PUBLIC SERVICE  
COMMISSION

THE VERIFIED JOINT APPLICATION OF  
BRANDENBURG COMMUNICATIONS  
CORPORATION AND BRANDENBURG  
TELEPHONE COMPANY FOR THE EXPEDITED  
TRANSFER OF CERTAIN OWNERSHIP SHARES  
OF BRANDENBURG COMMUNICATIONS  
CORPORATION

Case No. 2017-00209

**VERIFIED JOINT APPLICATION**

Brandenburg Communications Corporation ("Brandenburg Communications") and Brandenburg Telephone Company ("Brandenburg Telephone"), by counsel, pursuant to KRS 278.020 and Section 14 of 807 KAR 5:001, hereby jointly apply for expedited approval from the Public Service Commission for the Commonwealth of Kentucky (the "Commission") for the distribution of Brandenburg Communications shares by the estate (the "Estate") of Joseph D. Tobin, Jr. ("Mr. Tobin").

**BRANDENBURG ENTITIES AND OWNERSHIP**

1. Brandenburg Communications is a corporation organized and existing under the laws of the Commonwealth of Kentucky with its principal office and place of business at 200 Telco Drive, Brandenburg KY 40108. Brandenburg Communications can be contacted by e-mail at the e-mail addresses of its counsel set forth below. Brandenburg Communications was incorporated on July 12, 1991 and is currently in good standing in the Commonwealth of Kentucky. Brandenburg Communications is the sole shareholder of Brandenburg Telephone.

2. Brandenburg Telephone is a corporation organized and existing under the laws of the Commonwealth of Kentucky with its principal office and place of business at 200 Telco Drive, Brandenburg KY 40108. Brandenburg Communications can be contacted by e-mail at the

e-mail addresses of its counsel set forth below. Brandenburg Telephone was incorporated on August 14, 1950 and is currently in good standing in the Commonwealth of Kentucky. Brandenburg Telephone is a jurisdictional utility pursuant to KRS Chapter 278.

3. Prior to his death, Mr. Tobin was [REDACTED]

[REDACTED] of Brandenburg Communications.

#### **LEGAL STANDARD**

4. Pursuant to KRS 278.020(6) and 278.020(7), Brandenburg Communications and Brandenburg Telephone hereby jointly petition the Commission for the approval of the distribution of Brandenburg Communications shares as further described in this Application.

5. Pursuant to KRS 278.020(6), the Commission “shall grant its approval” for acquisitions or transfers of control of utilities “if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.”

6. Pursuant to KRS 278.020(7), the Commission “shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is in the public interest.”

#### **PROCEDURAL HISTORY**

7. In Mr. Tobin’s will, Mr. Tobin made arrangements for the distribution of all of his ownership shares of Brandenburg Communications (totaling [REDACTED] shares). (*See Accounting from January 1, 2016 through November 7, 2016 and Proposed Settlement, Case No. 13-P-0007, Meade Cty. Dist. Ct. Probate Div., p. 11 (Nov. 22, 2014) (“Estate Settlement”), a true and accurate copy of which is attached to the accompanying Petition for Confidential Treatment as Exhibit 1.*)

8. On November 22, 2016, the Meade County District Court, Probate Division ordered the Estate “to make the disbursements and distributions as outlined in the Proposed



Settlement as amended . . .” See Order, Case No. 13-P-0007, Meade Cty. Dist. Ct. Probate Div., p. 1 (Nov. 22, 2016) (approving 2016 accounting of Estate), a true and accurate copy of which is attached hereto as Exhibit 2. See also Order, Case No. 13-P-0007, Meade Cty. Dist. Ct. Probate Div., p. 1 (Nov. 22, 2016) (approving amended settlement of the Estate), a true and accurate copy of which is attached hereto as Exhibit 3 (together, the “Court Orders”).

9. After the Court Orders were issued, the Estate requested confirmation from the Commission that Commission approval pursuant to KRS 278.020(6) or (7) was not required to distribute Mr. Tobin’s Brandenburg Communications shares. In that same letter, the Estate requested, as an alternative form of relief, that the Commission treat its letter as an application to approve the share distribution. On April 27, 2017, Commission staff issued an opinion letter in response indicating that “Brandenburg Telephone should file a formal application with the Commission which provides sufficient evidence to either support or request for Commission approval of the transfer of control or rebut the presumption that there will be a change in control.” Ky. P.S.C. Staff Opinion 2017-008. Brandenburg Communications and Brandenburg Telephone subsequently filed this Application.

#### **THE DISTRIBUTION**

10. At the time the Court Orders were issued, 12,544 of the [REDACTED] Brandenburg Communications shares entrusted to the Estate were being temporarily held by the Internal Revenue Service. (Estate Settlement, p. 16, n. 1.) For that reason, the distribution was intended to take place in two stages: first, a distribution of the [REDACTED] shares not temporarily held by the IRS; and second, a distribution of the 12,544 held shares upon release by the IRS.

11. The Court Orders ordered the Estate to distribute [REDACTED] of Mr. Tobin’s Brandenburg Communications shares to his three children: Allison T. Willoughby (who has long had a leading role in the management of Brandenburg Telephone and currently serves as its



General Manager); Joseph D. Tobin, III; and Tom H. Tobin. All three are current shareholders in Brandenburg Communications. The Court Orders also approved a distribution of Brandenburg Communications shares to six individuals who did not previously own Brandenburg Communications shares: Mr. Tobin's widow Ruth Crawford, and five grandchildren. (See generally Estate Settlement.) The specific distribution of shares are as follows:

	<u>Initial Distribution</u>	<u>Post-IRS Distribution</u>	<u>Total Distribution</u>
Ruth Crawford			
Allison T. Willoughby			
Joseph D. Tobin, III			
Tom H. Tobin			
Tara T. Hager			
Blake B. Willoughby			
Dray D. Willoughby			
Kasey T. Beaton			
Kristin T. Dossett			

12. The distribution affects the recipients' ownership stakes in Brandenburg Communications as follows:

	<u>Total Shares (Pre Distribution)</u>	<u>% Total Shares (Pre Distribution)</u>	<u>Total Shares (Post Distribution)</u>	<u>% Total Shares (Post Distribution)</u>
Ruth Crawford				
Allison T. Willoughby				
Joseph D. Tobin, III				
Tom H. Tobin				
Tara T. Hager				
Blake B. Willoughby				
Dray D. Willoughby				
Kasey T. Beaton				
Kristin T. Dossett				

(See generally Estate Settlement.) As shown in the above table, the only shareholders owning more than 10% of Brandenburg Communications shares due to the distribution are pre-existing shareholders of the company.

**THE DISTRIBUTION HAS NO IMPACT ON  
BRANDENBURG TELEPHONE'S MANAGEMENT OR CUSTOMERS**

13. The distribution has no impact on the direct ownership of Brandenburg Telephone, the entity which is subject to the jurisdiction of the Commission. Brandenburg Telephone is and shall remain fully owned by Brandenburg Communications.

14. Allison T. Willoughby is and shall remain the General Manager of Brandenburg Telephone. The distribution has no impact on her continued management responsibilities. (See Affidavit of Allison T. Willoughby, a true and accurate copy of which is attached hereto as Exhibit 4, ¶¶ 1-2 ("Willoughby Aff.")). The distribution also has no effect on the roles of other individuals charged with the day-to-day control of Brandenburg Telephone, including existing financial, technical, and managerial staff. (*Id.* at ¶ 2.) The distribution has no effect on the managerial or operational functions at Brandenburg Telephone. (*Id.* at ¶ 3.) In this manner, the distribution of Brandenburg Communications shares is comparable to the circumstances in *the Application of Auxier Road Gas Corporation for Approval of Transfer of Auxier Road Gas Corporation Stock*. See Order, Ky. P.S.C. Case No. 2007-00513, 2008 Ky. PUC LEXIS 399 (April 7, 2008) ("Auxier Road Order"). In that case, the Commission approved the transfer of ownership shares resulting from the inheritance of those shares after the death of the utility's majority shareholder, relying in part on the facts that the experienced chief executive was remaining in her position and that "[t]he existing employees are remaining with the company and continuing with their normal duties." *Id.* The Commission held in that case that the "experience and technical expertise of these employees satisfies the statutory requirement for managerial and

technical ability to provide reasonable service as required under KRS 278.020.” *Id.* Therefore, because the experienced management and employees of Brandenburg Telephone remain unchanged by the distribution, the Commission should reach the same conclusion here and find that the “experience and technical expertise of these employees satisfies the statutory requirement for managerial and technical ability to provide reasonable service as required under KRS 278.020.”

15. Brandenburg Telephone is not dependent on funding or investment from Brandenburg Communications. Its operating expenses are funded from its revenues. Therefore, the Estate’s distribution of Brandenburg Communications shares has no financial impact on Brandenburg Telephone. For example, Brandenburg Telephone’s operating budget, level of investment in services, and spending on service improvements are unaffected by the distribution. (*Id.* at ¶ 4.) Therefore, the Commission should find that Brandenburg Telephone has the financial ability to continue providing its services.

16. The distribution of Brandenburg Communications shares by the Estate does not have any impact on Brandenburg Telephone’s customers. (*Id.* at ¶ 5.) Specifically, the distribution does not affect Brandenburg Telephone’s service offerings or service quality, nor does it require any alteration of Brandenburg Telephone’s existing tariffs. (*Id.*)

**THE DISTRIBUTION HAS NO MEANINGFUL EFFECT  
ON THE CONTROL OF BRANDENBURG TELEPHONE’S OPERATIONS**

17. Brandenburg Communications has not, in recent history, had any single shareholder that owns a majority of its shares. For this reason, no single individual has had the exclusive or unilateral ability to direct the company’s business operations. Instead, a measure of consensus has always been required to exert actual control over the company. The distribution of Mr. Tobin’s shares preserves this status quo of avoiding centralized control of Brandenburg



Communications because it does not give any individual a majority ownership or otherwise grant any individual shareholder the ability to exclusively or unilaterally direct the company's business operations. (Willoughby Aff., Ex. 4, ¶ 6.) For this reason, none of the individuals receiving Brandenburg Communications shares are acquiring ownership or gaining control as contemplated by KRS 278.020 (6) and (7).

18. To the extent Allison T. Willoughby, Joseph D. Tobin III, and/or Tom H. Tobin are found to have gained "control" of Brandenburg Telephone due to their ownership percentages of Brandenburg Communications increasing to more than 10% as a result of the Estate distribution, that control does not compromise the technical, financial, or managerial capabilities of Brandenburg Telephone for all the reasons stated herein. Moreover, all three individuals are current and long-time shareholders of Brandenburg Communications, and in that role they are each already familiar with Brandenburg Telephone's business operations and management. (*Id.* at ¶ 7.) In this manner, the distribution of Brandenburg Communications shares is again comparable to the circumstances in *Auxier Road*. In reaching its decision to approve the transfer of inherited shares in that case, the Commission relied in part on its findings that the acquiring individual served as President of the utility, had worked at the utility for a significant amount of time, had "extensive experience with the day-to-day operations" of utilities, and had dealt with "compliance, safety matters and supervision of the day-to-day office functions." See *Auxier Road Order*. Here, as in *Auxier Road*, the acquiring individuals Allison T. Willoughby, Joseph D. Tobin III, and Tom H. Tobin all have years of knowledge of the operations of Brandenburg Communications and the various companies it owns, including Brandenburg Telephone. (Willoughby Aff., Ex. 4, ¶ 7.) They are also all familiar with the regulated nature of utilities and the compliance and service obligations that accompany such

regulation, and with their associated obligations as part-owners. (*Id.*) Furthermore, Ms. Willoughby, like the acquiring individual in *Auxier Road*, serves as General Manager of Brandenburg Telephone, and she has extensive experience with compliance, safety matters, and supervision of the day-to-day office functions. (*Id.* at ¶ 8.) For these reasons, the Commission should reach the same conclusion it reached in *Auxier Road* and approve the distribution of Brandenburg Communications shares to these individuals.

19. KRS 278.020(7) states that “[c]ontrol shall be presumed to exist if any individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility.” Here, none of the other six recipients of the distribution of Brandenburg Communications shares cross that 10% threshold—

Accordingly, for the purposes of KRS 278.020 (6) and (7) and for all of the reasons explained herein, none of these individuals acquire ownership or gain control as a result of the Estate’s distribution of Brandenburg Communications shares, and the distribution to these individuals does not compromise the technical, financial, or managerial capabilities of Brandenburg Telephone.

#### **REQUEST FOR EXPEDITED APPROVAL**

20. For the reasons set forth in the Application above, Brandenburg Communications has and will continue to have the financial, technical, and managerial abilities to skillfully and efficiently operate Brandenburg Telephone as required by KRS 278.020(6).

21. For the reasons set forth in the Application above, the distribution of Brandenburg Communications shares are in accordance with law, for a proper purpose, and in the public interest as required by KRS 278.020(7).

22. Verification pages are provided below on behalf of both Brandenburg Communications and Brandenburg Telephone, as required by KRS 278.020(7).

23. Brandenburg Communications and Brandenburg Telephone seek to enable the distribution of all shares as expediently as possible so that the Estate may file a final accounting with the Meade County District Court, Probate Division. In addition, the factual circumstances surrounding the changes in ownership do not implicate the type of managerial or financial questions that may accompany more traditional acquisitions or changes in control because Brandenburg Telephone's management, staff, financing, services, tariffs, and day-to-day operations all remained unchanged by the distribution of Brandenburg Communications shares. For these reasons, Brandenburg Communications and Brandenburg Telephone respectfully request that the Commission expedite its review of this Application.

24. WHEREFORE, Brandenburg Communications and Brandenburg Telephone respectfully request that the Commission:

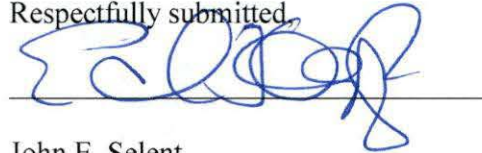
- (i) find that all individuals with less than 10% of the shares of Brandenburg Communications are not acquiring ownership or gaining control of Brandenburg Telephone, for the purposes of KRS 278.020 (6) or (7), as a result of the distribution, and that therefore no Commission approval is required under KRS 278.020 (6) or (7) to effectuate those distributions;
- (ii) find that because of the preserved "consensus" nature of the operation of Brandenburg Communications, all other individuals that receive shares from the Estate are not acquiring ownership or gaining control of Brandenburg Telephone, for the purposes of KRS 278.020 (6) or (7), as a result of the distribution, and that therefore no Commission approval is required under KRS 278.020 (6) or (7) to effectuate those distributions;
- (iii) to the extent it finds that any acquiring individual acquires ownership or gains control of Brandenburg Telephone, for the purposes of KRS 278.020 (6) or (7), because of the distribution, find that all such individuals have the necessary "financial, technical, and managerial abilities to provide reasonable service" as required by KRS § 278.020(6) and that distribution of shares to those individuals is "made in accordance with law, for a proper purpose and [are] consistent with the public interest" as required by KRS § 278.020(7);



REDACTED

- (iv) find that Brandenburg Communications, with the changes to its ownership described in this Application, has the necessary “financial, technical, and managerial abilities to provide reasonable service” as required by KRS § 278.020(6) and that the distribution of shares is “made in accordance with law, for a proper purpose and [are] consistent with the public interest” as required by KRS § 278.020(7);
- (v) approve the Estate’s distribution of all of Mr. Tobin’s shares of Brandenburg Communications consistent with the Court Orders, or expressly find that such approval is unnecessary to effectuate the distributions; and
- (vi) grant all other such relief to which Brandenburg Communications and Brandenburg Telephone are entitled.

Respectfully submitted,

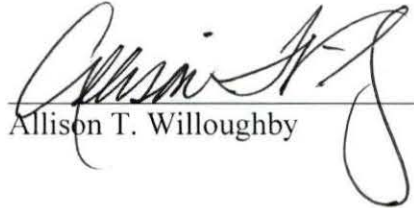
A handwritten signature in blue ink, appearing to read 'John E. Selent', is written over a horizontal line.

John E. Selent  
Edward T. Depp  
DINSMORE & SHOHL LLP  
2500 National City Tower  
101 South Fifth Street  
Louisville, Kentucky 40202-3115  
Telephone: (502) 581-8000  
Fax: (502) 581-8111  
john.selent@dinsmore.com  
tip.depp@dinsmore.com

*Counsel to Brandenburg Communications  
Corporation and Brandenburg Telephone  
Company*

**VERIFICATION**

I, Allison T. Willoughby, General Manager of Brandenburg Telephone Company and President of Brandenburg Communications Corporation, do hereby state that the statements made in this Joint Application are true and accurate to the best of my knowledge.

  
Allison T. Willoughby

**COMMONWEALTH OF KENTUCKY :**  
:  
**COUNTY OF MEADE :**  
: **SS.**

Subscribed, sworn to, and acknowledged before me by Allison T. Willoughby, General Manager of Brandenburg Telephone Company and President of Brandenburg Communications Corporation, for and on behalf of said corporation.

My Commission expires: \_\_\_\_\_  
**Kerry W. Ingle**  
**Notary Public, State at Large, KY**  
**My commission expires Mar. 7, 2020**

  
NOTARY PUBLIC, State at Large, KY

The Exhibit 1 attachment has been omitted from the public filing. It has been provided under a petition for confidential treatment

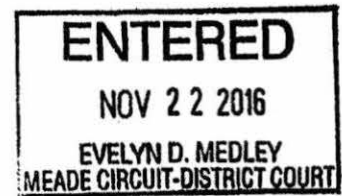


Exhibit 2

NO. 13-P-0007

MEADE DISTRICT COURT  
PROBATE DIVISION

IN RE: ESTATE OF JOSEPH D. TOBIN, JR., DECEASED



ORDER

Upon the Affidavit of Ruth Carolyn Crawford and John E. Selent, Co-Executors of the Estate of Joseph D. Tobin, Jr., and the Court being otherwise duly and sufficiently advised,

IT IS HEREBY ORDERED THAT:

The Periodical Accounting Through December 31, 2014 filed with this Court on February 13, 2015 is approved, and the Co-Executors are discharged of any further responsibility and liability by reason of the transactions involved in this estate for the period of said Periodical Accounting.

The Periodical Accounting For Period January 1, 2015 Through December 31, 2015 filed with this Court on January 15, 2016 is approved, and the Co-Executors are discharged of any further responsibility and liability by reason of the transactions involved in this estate for the period of said Periodical Accounting.

The Accounting From January 1, 2016 Through November 7, 2016 presented by the Co-Executors is approved, <sup>as amended on page 17</sup> and said Co-Executors are ordered to enter into the transactions on behalf of the estate and to make the disbursements and distributions as outlined in the Proposed Settlement, <sup>as amended,</sup> and to file their Final Accounting and Settlement with this Court. Upon receipt of distributions to them consistent with the Proposed Settlement, the estate beneficiaries are ordered to acknowledge receipt thereof. Upon filing of a Final Accounting and Settlement with this Court consistent with the Proposed Settlement, said Co-Executors will be

Exhibit 2

discharged of any further responsibility and liability by reason of all transactions and other acts  
and omissions during the administration of this estate.

November 22, 2016  
DATE

[Signature]  
JUDGE

61560951.1



COMMONWEALTH OF KENTUCKY  
MEADE DISTRICT COURT  
PROBATE DIVISION  
NO. 13-P-0007



IN RE:        ESTATE OF JOSEPH D. TOBIN, JR., Deceased

**ORDER**

On Motion of the beneficiary, Allison Willoughby, by counsel, having filed exceptions to the Proposed Final Settlement of the Co-Executors per KRS 395.617(1), a hearing having been held, and this Court having been sufficiently advised,

**IT IS HEREBY ORDERED** that Proposed Final Settlement of the Co-Executors, Ruth Crawford and John E. Selent, is accepted as amended, and further altered as set forth below.

**IT IS HEREBY FURTHER ORDERED** that the Proposed Final Settlement of the Co-Executors, Ruth Crawford and John E. Selent, pursuant to KRS 395.617(1), shall be amended as follows:

1. Ruth Crawford shall contribute \$400,000.00 for any additional estate expenses and taxes.
2. Any and all dividends payable from Brandenburg Communications Corporation for the 12,544 shares of stock held by the IRS shall be paid  $\frac{1}{4}$  each to Ruth Crawford, Tom Tobin, Joseph D. Tobin, III, and Allison Willoughby.
3. Pending receipt of the Waiver of Right of Appeal from all beneficiaries before November 30, 2016, the distributions to the heirs of stock on hand set forth in the Proposed Final Settlement shall occur on or before November 30, 2016.

This is a final order and pursuant to KRS 395.617(2), any aggrieved party must institute an adversary proceeding in the Circuit Court pursuant to KRS 24A.120(2).

JUDGE

DATED: Nov 22, 2016



## Exhibit 4

### COMMONWEALTH OF KENTUCKY BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

THE VERIFIED JOINT APPLICATION OF  
BRANDENBURG COMMUNICATIONS  
CORPORATION AND BRANDENBURG  
TELEPHONE COMPANY FOR THE EXPEDITED  
TRANSFER OF CERTAIN OWNERSHIP SHARES  
OF BRANDENBURG COMMUNICATIONS  
CORPORATION

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Case No. 2017-\_\_\_\_\_

#### AFFIDAVIT OF ALLISON T. WILLOUGHBY

I, Allison T. Willoughby, being duly cautioned and sworn, do hereby testify to the facts of which I have personal knowledge.

1. I serve as the General Manager of Brandenburg Telephone Company (“Brandenburg Telephone”) and as the President of Brandenburg Communications Corporation (“Brandenburg Communications”).

2. The distribution of Brandenburg Communications shares as described in the Application (the “Distribution”) has no effect on my roles or management responsibilities or the roles of other individuals charged with the day-to-day control of Brandenburg Telephone, including existing financial, technical, and managerial staff.

3. The Distribution has no effect on the managerial or operational functions at Brandenburg Telephone.

4. Brandenburg Telephone is not dependent on funding or investment from Brandenburg Communications. Its operating expenses are funded from its revenues. Therefore, the Distribution has no financial impact on Brandenburg Telephone. For example, Brandenburg Telephone’s


operating budget, level of investment in services, and spending on service improvements are unaffected by the Distribution.

5. The Distribution does not have any impact on Brandenburg Telephone's customers. Specifically, the Distribution does not affect Brandenburg Telephone's service offerings or service quality, nor does it require any alteration of Brandenburg Telephone's existing tariffs.

6. Brandenburg Communications has not, in recent history, had any single shareholder that owns a majority of its shares. For this reason, no single individual has had the exclusive or unilateral ability to direct the company's business operations. Instead, a measure of consensus has always been required to exert actual control over the company. The Distribution preserves this status quo of avoiding centralized control of Brandenburg Communications because it does not give any individual a majority ownership or otherwise grant any individual shareholder the ability to exclusively or unilaterally direct the company's business operations.

7. Joseph D. Tobin III, Tom H. Tobin, and I are all current and long-time shareholders of Brandenburg Communications, and in that role we are each already familiar with Brandenburg Telephone's business operations and management. We also all have years of knowledge of the operations of Brandenburg Communications and the various companies it owns, including Brandenburg Telephone. We are all familiar with the regulated nature of utilities and the compliance and service obligations that accompany such regulation, and with our associated obligations as part-owners.

8. As General Manager of Brandenburg Telephone, I also have extensive experience with compliance, safety matters, and supervision of the day-to-day office functions related to the company.

T.   
Allison T. Willoughby, Affiant

COMMONWEALTH OF KENTUCKY           )  
   ) SS:  
COUNTY OF MEADE                      )

Subscribed and sworn to before me by Allison T. Willoughby, as the General Manager of Brandenburg Telephone Company and the President of Brandenburg Communications Corporation, to me known, on this \_\_\_\_ day of May, 2017:

NOTARY PUBLIC, State at Large

**Kerry W. Ingle**  
**Notary Public, State at Large, KY**  
 My commission expires: **Mar. 7, 2020**

3

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

**RECEIVED**

**MAY 19 2017**

**PUBLIC SERVICE  
COMMISSION**

**IN THE MATTER OF:**

**THE VERIFIED JOINT APPLICATION OF  
BRANDENBURG COMMUNICATIONS  
CORPORATION AND BRANDENBURG  
TELEPHONE COMPANY FOR THE EXPEDITED  
TRANSFER OF CERTAIN OWNERSHIP SHARES  
OF BRANDENBURG COMMUNICATIONS  
CORPORATION**

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) **Case No. 2017- 00209**  
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**JOINT PETITION FOR CONFIDENTIAL TREATMENT**

1.     Brandenburg       Communications       Corporation       (“Brandenburg Communications”) and Brandenburg Telephone Company (“Brandenburg Telephone”) (together, the “Petitioners”), by counsel, petition the Public Service Commission of Kentucky (“Commission”) pursuant to 807 KAR 5:001, Section 7, to grant confidential protection to certain information being filed in this matter. The information the Petitioners seek to protect as confidential is hereinafter referred to as the “Confidential Information.”

2.     The Confidential Information is the “Accounting from January 1, 2016 through November 7, 2016 and Proposed Settlement” (the “Estate Settlement”) referenced as Exhibit 1 in the Joint Application of the Parties for the Expedited Transfer of Certain Ownership Shares of Brandenburg Communications Corporation (the “Application”). The Estate Settlement was filed under seal with the Meade County District Court, Probate Division in Case Number 13-P-0007 in connection with the distribution of the estate of Joseph D. Tobin, Jr. (the “Estate”).



3. 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 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.

4. As discussed below, the Confidential Information is entitled to confidential treatment based upon: (i) KRS 61.878(1)(a), which protects “records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy”; and (ii) 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.”

5. The Confidential Information is not publicly available, is not disseminated within the Parties 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.

6. 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, printed on yellow paper

and marked “CONFIDENTIAL,” is being filed with this petition. A slip sheet is being filed with the original and each of the ten (10) copies of the Application filed with this petition.

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

### **ARGUMENT**

#### **I. Disclosure of the Confidential Information Would Constitute an Invasion of Personal Privacy.**

8. The Kentucky Open Records Act exempts from disclosure “[p]ublic records containing information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.” KRS 61.878(1)(a).

9. The Estate Settlement, which was filed under seal with the Meade County District Court, Probate Division, sets forth an accounting of all receipts, disbursements and distributions made by the Estate from January 1, 2016 through November 7, 2016. These details include cash receipts, real property purchase information, employee salary and benefit information, allocation of private company shares (including the names of specific recipients), and more. The Estate Settlement also includes the details of a negotiated settlement regarding the final distribution of the Estate.

10. Determining whether information is exempt from disclosure pursuant to KRS 61.878(1)(a) involves a two-step inquiry. *See, e.g., Zink v. Commonwealth, Ky. App.*, 902 S.W.2d 825, 828 (1994). First, it must be determined “whether the subject information is of a ‘personal nature.’” *Id.* Second, it must then be determined whether

“public disclosure ‘would constitute a clearly unwarranted invasion of personal privacy.’” *Id.* This second step “entails a ‘comparative weighing of antagonistic interests’ in which the privacy interest in non-disclosure is balanced against the general rule of inspection and its underlying policy of openness for the public good.” *Id.* The Court of Appeals of Kentucky has explained:

At its most basic level, the purpose of disclosure focuses on the citizens' right to be informed as to what their government is doing. That purpose is not fostered however by disclosure of information about private citizens that is accumulated in various government files that reveals little or nothing about an agency's own conduct.

*Id.* at 829.

11. Here, the Confidential Information includes information about individuals' finances and share ownership, which provides insight into private income. The Confidential Information also includes a year-long accounting of all receipts and disbursements made by the Estate, which includes salary and benefit information and other expense details. As explained by the Court of Appeals of Kentucky, “few things in our society are deemed of a more intimate nature than one's income.” *Id.* (holding that records including personal information were exempt from disclosure). Accordingly, the Confidential Information constitutes information which Kentucky law recognizes as being of a “personal nature.” Furthermore, as in *Zink*, the “public interest in disclosure . . . is *de minimis* at best” because disclosure of the Confidential Information would not further “the citizens' right to be informed as to what their government is doing.” *Id.* Accordingly, the “privacy interest in non-disclosure” outweighs the “public interest in disclosure,” and the Confidential Information should be protected by the exemption set forth in KRS 61.878(1)(a).

12. The Confidential Information for which the Petitioners seek confidential treatment under KRS 61.878(1)(a) has been generally recognized as personal and exempt from disclosure under Kentucky law. For these reasons, the Parties respectfully request that the Commission grant confidential treatment to the Confidential Information.

**II. Disclosure of the Confidential Information Would Permit an Unfair Commercial Advantage to Competitors of the Parties and the Other Companies Whose Information Is Included in the Estate Settlement.**

13. The Kentucky Open Records Act also exempts from disclosure “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.” KRS 61.878(1)(c)(1).

14. The Confidential Information consists of information related to the inner workings of the Parties and numerous other companies—such as privately owned financial institutions—in which Mr. Tobin held an ownership interest. The Confidential Information includes details about ownership percentages and the precise distribution of Mr. Tobin’s ownership shares pursuant to a private settlement that has been approved by the Meade County District Court, Probate Division. The Confidential Information also includes certain employee salary and benefit information. This information “if openly disclosed would present an unfair commercial advantage to competitors” of the Parties and the other companies whose information is included in the Estate Settlement, and it therefore qualifies as protectable confidential information pursuant to KRS 61.878(1)(c)(1).

15. The Parties, as participants in the telecommunications market, face economic competition from other entities in the same market. The Parties in the



telecommunications market sell telecommunication services to customers. With the increased penetration of alternatives to basic local service such as VoIP and wireless services, the Parties face an increasingly competitive market. The Parties' ability to successfully compete against other entities in the telecommunications market would be adversely affected by the disclosure of its internal information. Similarly, the other companies whose information is included in the Estate Settlement participate in a variety of other markets, including in highly competitive industries such as financial services. Therefore, the Parties and the other companies whose information is included in the Estate Settlement have "competitors" as is contemplated under the statute, and they face actual competition from other market participants.

16. 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 Confidential Information for which the Parties seek confidential treatment under KRS 61.878(1)(c)(1) is generally recognized as confidential or proprietary under Kentucky law.

17. The disclosure of the above-referenced Confidential Information would provide allow competitors of the Parties and the other companies whose information is

included in the Estate Settlement insight into the precise distribution of ownership shares and the precise ownership percentages of private companies, as well as insight into financial information including salary and benefit information related to certain employees. This information, which is not publicly available, would result in an “unfair commercial advantage to competitors” if disclosed. For these reasons, the Parties respectfully request that the Commission grant confidential treatment to the Confidential Information.

### **III. Time Period.**

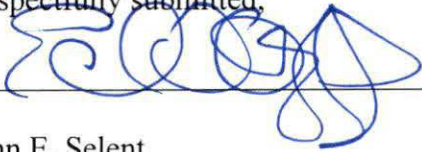
18. Pursuant to 807 KAR 5:001, Section 13(2)(a)(2), the Parties request that the Confidential Information be afforded confidential treatment in perpetuity. The information reflects sensitive personal information of numerous third party individuals and companies. Unlike competitive concerns, these privacy concerns do not disappear with the passage of time. The personal information can only be adequately protected if the Confidential Information is protected in perpetuity.

### **CONCLUSION**

19. Based on the foregoing, the Confidential Information is entitled to confidential treatment. If the Commission disagrees that the Parties are 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, Brandenburg Communications and Brandenburg Telephone respectfully request that the Commission classify and protect as confidential the Confidential Information.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be "John E. Selent", written over a horizontal line.

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