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September 5, 2006

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PUBLIC SERVICE
COMMISSION

via Hand Delivery
Ms. Beth O'Donnell
Executive Director
Kentucky Public Service Commission
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P. O. Box 615
Frankfort, KY 40601

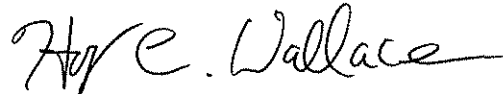
Re: *Ballard Rural Telephone v. Jackson Purchase Rural Electric Cooperative Corporation, Case No. 2004-00036*

Dear Ms. O'Donnell:

Enclosed for filing with the Public Service Commission of the Commonwealth of Kentucky (the "Commission") is one original and ten (10) copies of Ballard Rural Telephone Cooperative Corporation Inc.'s Post-Hearing Brief in the above-styled case.

Very truly yours,

DINSMORE & SHOHL LLP



Holly C. Wallace

HCW/rk
Enclosure
cc: John E. Selent, Esq. (w/o enclosure)

112553v1

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

BALLARD RURAL TELEPHONE)
COOPERATIVE CORPORATION, INC.)
Complainant)

v.)

Case No. 2004-00036

JACKSON PURCHASE ENERGY)
CORPORATION)
Defendant)

**BALLARD RURAL TELEPHONE COOPERATIVE CORPORATION, INC.'S
POST-HEARING BRIEF**

Ballard Rural Telephone Cooperative Corporation, Inc. ("Ballard Rural"), by counsel, and pursuant to the briefing schedule established by the Public Service Commission of the Commonwealth of Kentucky (the "Commission") at the close of the formal hearing in the above-referenced case on July 20, 2006, hereby submits its post-hearing brief.

INTRODUCTION

This matter concerns the pole attachment rates Jackson Purchase Energy Corporation ("Jackson Purchase") charges Ballard Rural, and the methodology used to establish those rates. Jackson Purchase proposes to impose rates based on a so-called "avoided cost methodology" that, upon examination, does nothing more than divide the weighted average cost of the poles in half. Such a methodology would result in Ballard Rural paying pole attachment rates five times higher than those paid by CATV operators. The Commission may only approve such discriminatory rates upon finding a significant difference exists between Ballard Rural and

CATV operators “such that the distinction does not amount to an arbitrary exercise of power.” *Womack v. City of Flemingsburg*, 102 S.W.3d 513, 516 (Ky. Ct. App. 2002). No such distinction exists. As Ballard Rural shall demonstrate, there are no material differences in the use, size and appearance of Ballard Rural’s pole attachments as compared to CATV pole attachments. Moreover, due to advances in technology, Ballard Rural and CATV operators now compete to provide telephone, video and Internet services to Kentucky customers. Thus, Kentucky constitutional and statutory law, as well as sound public policy, require that Ballard Rural and CATV operators be treated equally. **Accordingly, the Commission should apply Jackson Purchase’s CTAT rates to Ballard Rural.**

STATEMENT OF FACTS

Ballard Rural provides local exchange carrier telephone services to almost 7,000 customers in Ballard and McCracken Counties. Ballard Rural also provides digital video and Internet/broadband services. Jackson Purchase is an electric utility providing electric service to over 27,000 customers in Ballard, Carlisle, Graves, Marshall, McCracken, and Livingston Counties. (Pre-filed Direct Testimony of Richard Sherrill (“Sherrill Pre-filed Testimony”) pp. 2-3). For 50 years, Ballard Rural and Jackson Purchase provided each other with pole attachment services pursuant to a general agreement for joint use of wood poles executed by the parties on June 5, 1954 (the “1954 Agreement”). (Sherrill Pre-filed Testimony, p. 3). Pursuant to the 1954 agreement, Jackson Purchase charged Ballard Rural between \$.60 to \$1.30 per pole to attach its facilities. (Pre-filed Direct Testimony of Harlon E. Parker (“Parker Pre-filed Testimony”), p. 5). In 1974, the rates were adjusted to a maximum of \$3.00 per pole regardless of height. (Parker Pre-filed Testimony, p. 5). Ten years later, the Commission approved a similar rate for Jackson Purchase to charge cable television companies. Specifically, the Commission approved Jackson

Purchase's Cable Television Attachment Tariff ("CTAT"), which provided for pole attachment rates for cable television ("CATV") companies ranging from \$1.75 to \$3.10. (Jackson Purchase CTAT, P.S.C. No. 7, First Revised Sheet No. 10.0, canceling P.S.C. No. 6, original sheet No. 10).¹ The parties continued to operate under the \$3.00-per-pole rate until Jackson Purchase unilaterally proposed to increase its rates by almost 500% in September of 2002 to \$13.79 or \$17.75 per pole. (Sherrill Pre-filed Testimony, pp. 4-5).

Rather than enter into negotiations with Ballard Rural to amend the rates charged under the 1954 Agreement, Jackson Purchase attempted to force the unprecedented increase in pole attachment rates on Ballard Rural. (Sherrill Pre-filed Testimony, p. 5, lines 10-12). Jackson Purchase did not meet with Ballard Rural to discuss the proposed rates until April 2003, seven months after Jackson Purchase first informed Ballard Rural of the significant increase in pole attachment rates. (Sherrill Pre-filed Testimony, p. 5, lines 10-12). About that same time, Jackson Purchase informed Ballard Rural that it was terminating the 1954 agreement and that Ballard Rural should remove all of its attachments from Jackson Purchase's poles. (*See* April 23, 2003 letter from G. Kelly Nuckols to Harlon E. Parker ("Termination Letter"), attached as Exhibit 9 to Ballard Rural's Complaint).

Accordingly, please allow this to serve as notice, pursuant to Article XX of the current joint-use agreement between our companies, of Jackson Purchase Energy Corporation's ('JPEC') intent to terminate this Agreement. As per the terms of the joint use agreement, the current agreement will terminate effective three years from the date of your receipt of this letter. You should begin removal of your attachments from our poles no later than six months from the date of your receipt

¹ The Commission recently approved new CATV rates for Jackson Purchase in Case No. 2004-00319. The new tariffed pole attachment rates are \$4.84 for a 2-party pole, \$4.09 for a 3-party pole, \$5.88 for anchor attachments, \$0.24 for a 2-party pole ground attachment, and \$0.16 for a 3-party pole ground attachment. (*See* Order, *In the matter of: Application of Jackson Purchase Energy Corporation for Adjustments in Existing Cable Television Attachment Tariff*, Case No. 2004-00319, September 14, 2005, Appendix A).

of this letter. All attachments should be removed from JPEC's poles prior to the expiration of the three-year period.²

(Transcript of Evidence, p. 97, ln. 24 – p. 98, ln. 10). Further discussions ensued following Jackson Purchase's notice of termination of the 1954 Agreement; however, they ended in failure. Accordingly, Ballard Rural was forced to file a complaint with the Commission seeking an order permitting Ballard Rural to attach to Jackson Purchase's poles at just, reasonable, and nondiscriminatory rates as established by Jackson Purchase's CTAT rates.

Pursuant to the Commission's February 8, 2006 and March 8, 2006 orders in the present case, the parties proceeded to a formal hearing on July 20, 2006. During the hearing, Jackson Purchase's sole witness testified that he "see[s] no difference in cable TV and the telephone companies or other joint users." (Testimony of Richard T. Sherrill, Transcript of Evidence, p. 137, lns. 2-3). Mr. Sherrill testified further that "all joint users, if you will – and, in that definition, that's anyone that uses a pole – should have the same methodology to apply to them" (*Id.* at lns. 7-10). Mr. Harlon Edward Parker, General Manager of Ballard Rural, concurred.

Q. Is it the position of Ballard Rural today that Ballard Rural would like to see the Public Service Commission determine that the pole attachment rates for Ballard Rural that it pays to Jackson Purchase should be set pursuant to the methodology established by the Commission in Administrative Case No. 251?

A. Yes. I would say yes.

(Testimony of Harlon Edward Parker, Transcript of Evidence, p. 107, lns. 17-23). Given both parties agree that the Commission should apply the same methodology to all pole users, the Commission should apply the only uniform (and fully developed) methodology approved by the

² This three-year period has now expired.

Commission for pole attachment rates—the methodology established in Administrative Case No. 251.

ARGUMENT AND ANALYSIS

Pursuant to KRS 278.040, the Commission has exclusive jurisdiction over the rates and services of regulated utilities within the Commonwealth of Kentucky. The Commission is charged with ensuring that the rates are fair, just and reasonable, and that the services are adequate, efficient, and reasonable. KRS 278.030. In addition, the Commission has jurisdiction over any claims that a utility is discriminating with regard to rates or services. KRS 278.170. Service is defined as “any practice or requirement in any way relating to the service of any utility” KRS 278.010(13). The broad statutory definition of service includes pole attachments. (Order, Case Nos. 8040 and 8090, August 26, 1981 p. 8) (“While . . . [pole attachments] may not be one of the ‘services’ contemplated when the statutory definition was created in 1934, nor even a ‘public utility’ activity generally, it is clearly a ‘service’ within the broad definition set forth in KRS 278.010.”).

Upon appeal of the Commission’s Order of August 26, 1981, the Kentucky Court of Appeals affirmed the Commission’s jurisdiction over pole attachment rates. “We must agree with the finding by the Commission that the rates charged for pole attachments are ‘rates’ within the meaning of KRS 278.040, and that the pole attachment itself is a ‘service’ within the meaning of the statute.” *Kentucky CATV Association v. Volz*, 675 S.W.2d 393, 396 (Ky. App. 1983). The court recognized that the Commission has jurisdiction over pole attachment rates with regard to utilities: “We have already concluded that the Kentucky statutes authorize 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.” *Volz*, 675 S.W.2d at 397 (emphasis added).

Any remaining question regarding the Commission’s jurisdiction over pole attachment rates, including those of joint pole users, was extinguished by the Commission in its March 23, 2005 order entered in this case.

After reviewing the record, the applicable statutes and case law, we find it unquestionable that we have jurisdiction over pole attachments. The *Volz* Court unambiguously stated that the Commission “has jurisdiction over the utility companies, and that jurisdiction extends to their poles and the ‘services’ and ‘rates’ generated by pole attachment agreements.” Any argument that the Court’s decision in that case was limited to pole attachments of cable television operators fails in light of the Court’s own interpretation of that decision in *Elec. & Water Plant Board v. South Central Bell Telephone Co.*, 805 S.W.2d 141 (Ky. App. 1990).

(Order, Case No. 2004-00036, March 23, 2005, p. 6).

In accordance with Kentucky statutes, the Commission’s Orders and *Kentucky CATV Association v. Volz*, the Commission has exclusive jurisdiction over the pole attachment rates and services provided by Jackson Purchase to all pole users, including Ballard Rural. Because Jackson Purchase’s pole attachment rates constitute a rate for service by a regulated utility, the Commission must ensure that Jackson Purchase’s pole attachment rates are fair, just, reasonable, and non-discriminatory. KRS 278.030. Thus, the Commission should apply Jackson Purchase’s CTAT rates to Ballard Rural, and Ballard Rural’s CTAT rates to Jackson Purchase.

I. JACKSON PURCHASE CANNOT DEMONSTRATE THAT ITS PROPOSED POLE ATTACHMENT RATES ARE FAIR, JUST, REASONABLE AND NON-DISCRIMINATORY.

Jackson Purchase has failed to provide any evidence that its proposed pole attachment rates are fair, just, reasonable and non-discriminatory. Therefore, the Commission should reject Jackson Purchase’s proposed rates, and apply its CTAT rates to Ballard Rural.

“[E]ach utility shall file with the Commission . . . schedules showing all rates and conditions for service established by it and collected or enforced.” KRS 278.160(1). “No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that described in its filed schedules” KRS 278.160(2). Moreover, the utility bears the burden to establish that its proposed rates are just and reasonable. (*See Order*, Case No. 2003-00284, October 16, 2003, p. 1) (“The utility has the burden of proof to show that the requested change of rate is just and reasonable,”); *see also Kentucky American Water Company v. Commonwealth of Kentucky, ex rel.*, 847 S.W.2d 737, 741 (Ky. 1993).

Pursuant to the Commission's orders and Kentucky case law, Jackson Purchase has the burden to demonstrate that its proposed pole attachment rates are just, reasonable and non-discriminatory. Jackson Purchase has not satisfied that burden. There is absolutely no evidence of record to justify the proposed rates.

A. Jackson Purchase failed to establish that the rates it proposed in September 2002 are just and reasonable.

At the commencement of this action, Jackson Purchase provided Ballard Rural with an ultimatum—accept a 460% increase in pole attachment rates, or remove your attachments from all of our poles. Specifically, Jackson Purchase proposed to increase the rates from \$3.00 per pole to \$13.79 or \$17.75 per pole without providing any economic justification for the new rates.

Q22 Can the new rates proposed by JPEC for Ballard be cost justified?

A22 Yes.

Q23 What economic factors can be used to cost justify the new rates?

A23 The embedded cost of the pole facilities being occupied by the joint user, the annual carrying costs associated with maintaining these pole facilities which

include depreciation, interest expense, operations and maintenance items, customer service expenses related to the joint users, and administrative and overhead expenses of JPEC in general. In addition, there is an avoided cost component that arises when there is a significant deviation from the ownership percentages anticipated in a joint use relationship. Finally, there are other, more subjective costs that arise when the ownership percentage gets skewed too far. Examples of these would be additional emergency replacements of poles destroyed by accidents, increasing burden on one entity to maintain records of the others pole use, and return trips to remove old poles after the joint user has transferred its facilities.

Q24 Do you feel these new rates are excessive?

A24 No.

Q25 Does this conclude your testimony?

A25 Yes.

(Sherrill Pre-filed Testimony, p. 6).

The testimony quoted above is the only evidence of record presented by Jackson Purchase to justify the rates proposed by Jackson Purchase at the commencement of this action. The testimony does nothing more than identify economic factors used in calculating pole attachment rates. There is absolutely no evidence of record demonstrating why the proposed rates are the right rates—the just, reasonable and non-discriminatory rates.

B. Jackson Purchase failed to establish that rates calculated under “an avoided cost methodology” would be fair, just and reasonable.

During the July 20, 2006 formal hearing, Jackson Purchase proposed that the Commission calculate pole attachment rates according to a nebulous methodology purportedly based upon avoided costs. Jackson Purchase could not explain, however, how rates could be calculated under such a methodology.

Q. Will you explain how this avoided cost component is calculated and what the rate is?

A. Well, that cost that we were referring to there cannot be calculated. It's a subjective cost. For example, if one party owns most of the poles, as Jackson Purchase does, then one party is going to be paying most of the expenses in the middle of the night to go out and replace poles, repair poles, deal with issues such as that, filing claims against parties that may have damaged poles, and so forth.

Q. The costs that you said that were being avoided that you referred to as subjective costs, sounds to me like some of those costs are actual real costs. How come they cannot be calculated?

A. Well, they could be calculated over the course of a year for Jackson Purchase. So, in that respect, they're avoided – Ballard Rural is avoiding those costs by not having to deal with them. Those costs would be calculated, but whether or not they would be applicable to the overall situation I don't know.

(Testimony of Richard T. Sherrill, Transcript of Evidence, p. 132, lns. 5-14, p. 133, lns. 11-20.)

As Jackson Purchase's witness, Mr. Sherrill, indicated, the "avoided cost methodology" promoted by Jackson Purchase is very subjective and difficult to implement. Further evidence of this is found in Jackson Purchase's response to the Commission's post-hearing data request for avoided cost calculations. Those calculations bear no resemblance to the description of avoided costs provided by Mr. Sherrill in his hearing testimony. Nowhere in the calculations is there any reference to the cost of repairing and replacing poles which, according to Mr. Sherrill, are the "most significant" examples of avoided costs. (*Id.* at 132-133, ln. 10). Rather, Jackson Purchase's avoided cost calculations appear to be nothing more than an attempt to foist half of the cost of the poles on Ballard Rural by assigning half of the weighted average cost of the poles to Ballard Rural. Simply dividing the cost of the pole in half is not indicative of the costs incurred by Jackson Purchase in permitting Ballard Rural to attach to poles that Jackson Purchase already erected.

Even if one could calculate the so-called avoided costs identified by Mr. Sherrill in his testimony, Mr. Sherrill himself questions whether “they would be applicable to the overall situation.” (*Id.* at 133, lns. 19-20). His skepticism is well-founded. The purpose of pole attachment rates is to allow utilities to recover reasonable and non-discriminatory rates for the *provision* of a utility service. Basing those rates on so-called avoided costs (i.e. the alleged costs Ballard Rural avoids in not having to erect more of its own poles) is not indicative of how much it reasonably costs Jackson Purchase to permit Ballard Rural to attach to poles that Jackson Purchase already erected to provide service to its own customers.

Moreover, the Commission should not attempt to blend Jackson Purchase's unique avoided cost calculations with the methodology established in Administrative Case No. 251. If the Commission were to use Jackson Purchase's post-hearing calculations of the weighted average cost of poles assessed to Ballard Rural as the basis for calculating rates under Administrative Case No. 251, Jackson Purchase's pole attachment rate would be \$19.17, nearly five times the CTAT rate approved by the Commission less than one year ago.

Finally, if Jackson Purchase is concerned about the pole attachment rates reflecting the cost of operating and maintaining pole facilities, Jackson Purchase would best be served by the Commission applying the parties' CTAT rates. The uniform methodology established by the Commission in Administrative Case No. 251 incorporates the costs of operation and maintenance expenses in the development of the annual carrying charge.

Jackson Purchase has failed to satisfy its "burden of proof to show that the requested change of rate is just and reasonable." (*See Order*, Case No. 2003-00284, October 16, 2003, p. 1). Jackson Purchase has presented no evidence to support the rates it originally proposed in September 2002, and as Mr. Sherrill admits, its proposed “avoided cost methodology” for

establishing pole attachment rates is not operational. (Testimony of Richard T. Sherrill, Transcript of Evidence, pp. 132 -33). In addition, the proposed methodology grossly inflates Jackson Purchase's costs in providing pole attachment services. Therefore, the Commission should reject the rates and methodology proposed by Jackson Purchase.

II. THE COMMISSION SHOULD ORDER JACKSON PURCHASE TO CHARGE BALLARD RURAL ITS CTAT RATES.

The Commission recently approved revised CTAT rates for Jackson Purchase in Case No. 2004-00319. (*See Order, In the Matter of: Application of Jackson Purchase Energy Corporation for Adjustments in Existing Cable Television Attachment Tariff, Case No. 2004-00319, September 14, 2005, Appendix A*). Given these rates were calculated pursuant to the only uniform methodology approved by the Commission for calculating pole attachment rates—the methodology established in Administrative Case No. 251—the Commission should order Jackson Purchase to apply its CTAT rates to Ballard Rural.

A. There is no material difference between the pole attachments of Ballard Rural and CATV operators.

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)*). Jackson Purchase and Ballard Rural agree. CATV operators and telephone companies are now competitors. They both provide, or have the capability to provide, telephone, Internet and video services. (Testimony of Richard T. Sherrill, Transcript of Evidence, p. 158, lns. 6-8; *see also* Testimony of Harlon Edward Parker, Transcript of Evidence, p. 104, ln. 24 – p. 105, ln. 3). Electric companies also have the capability of competing with cable operators and telephone companies. Jackson Purchase admits that due to advances in technology, there are no

differences between CATV operators and telephone companies. “I see no difference in cable TV and the telephone companies or other joint users. . . . I think that all joint users, if you will – and, in that definition, that’s anyone that uses a pole – should have the same methodology to apply to them” (Testimony of Richard T. Sherrill, Transcript of Evidence, p. 137, lns. 2-3, 7-10 (emphasis added); *see also id.* at pp. 155-56).

In addition, there are no material differences between CATV and Ballard Rural’s pole attachments.

Q. You state, “Ballard Rural’s pole attachments are not materially different than CATV pole attachments.” Will you state for us what you mean by “not materially different?”

A. Basically, you’ve got one attachment and that’s it.

Q. And your attachments are exactly the same as CATV attachments?

A. I would say it would be very hard to distinguish any difference.

(Testimony of Harlon Edward Parker, Transcript of Evidence, p. 88, ln. 18 – p. 89, ln. 1). In addition to the physical resemblance of telephone and CATV pole attachments, the attachments occupy approximately the same amount of space on the pole, one foot. (*Id.* at p. 87, ln. 5 – p. 88, ln. 4).

Q. Now, if you would, look at Exhibit No. 2, and you’ve got it there before you, and Exhibit No. 2 shows at the top—whose facilities are those?

A. Those are CATV facilities.

Q. CATV facilities?

A. Yes.

Q. And at the bottom?

A. That’s Ballard Rural Telephone’s facilities.

Q. Okay, and from looking at the photograph that you have before you and that I've kind of blown up here, just to help, does it appear to you that they occupy about the same amount of space on the pole?

A. It would appear to me that they do; yes.

(*Id.* at p. 103, lns. 11 – 23).³

Even Mr. Sherrill could not articulate a material difference between the pole attachments of Ballard Rural and CATV operators. The only purported difference he articulated is that a cable is overlashed to the Ballard Rural attachment shown in the photograph marked Ballard Rural Exhibit No. 2. (Testimony of Richard T. Sherrill, Transcript of Evidence, p. 158, lns. 15-21; *see* Exhibit 1 attached hereto). The overlashed cable, however, remains within the one foot of space allocated for the attachment. Moreover, Mr. Sherrill admits that CATV operators have one foot of space for their attachments and that “they can put basically as much in there as they can cram in there, subject to pole loadings, and stuff like that, and it’s just one attachment.” (*Id.* at p. 154, lns. 13-16). Thus, even Mr. Sherrill’s overlashing argument fails to yield a material difference between the pole attachments of Ballard Rural and CATV operators.

B. Constitutional law prohibits discrimination against Ballard Rural.

Given there are no significant differences between Ballard Rural and CATV operators, the Commission must subject them to uniform pole attachment rates. Section 2 of the Kentucky Constitution prohibits the exercise of arbitrary and capricious power. *American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission*, 379 S.W.2d 450, 456 (Ky. 1964). “[D]iscrimination which does not have a reasonable basis is obviously arbitrary.” *Womack v. City of Flemingsburg*, 102 S.W.3d 513, 516 (Ky. Ct. App. 2002). There must be “substantial differences” between the entities to justify the kind of discriminatory rates

³ The photograph, marked as Ballard Rural’s Exhibit No. 2, is attached hereto as Exhibit 1.

Jackson Purchase seeks the Commission to endorse. *Id.* As demonstrated above, there are no significant differences between Ballard Rural and CATV operators, the services they provide, and their pole attachment facilities. Accordingly, pursuant to Section 2 of the Kentucky Constitution, the Commission should apply Jackson Purchase's existing CTAT rates to Ballard Rural.

C. Statutory law prohibits discrimination against Ballard Rural.

The Commission established a uniform methodology for calculating CATV pole attachment rates to protect 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).

Ballard Rural receives pole attachment services from Jackson Purchase just as CATV operators do, and it is at the mercy of Jackson Purchase's monopolistic power just as CATV operators were prior to Administrative Case No. 251. Jackson Purchase abused its monopoly power and discriminated against Ballard Rural when it issued an ultimatum forcing Ballard Rural to choose between a 460% increase in rates or vacating 3,292 poles. This is a classic example of a monopolist abusing its power, and further evidence of why the Commission asserted jurisdiction over pole attachment rates in the first place. "Because of their monopoly status, such services should be regulated in the public interest." (*Order, Case Nos. 8040 and 8090, p. 8*). Jackson Purchase continued to flex its monopolistic power at the hearing when it cross-examined

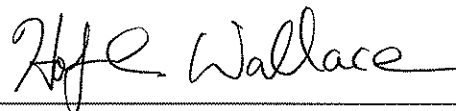
Mr. Parker regarding Ballard Rural's net income since 2001, an issue that has no bearing on Jackson Purchase's cost of providing pole attachment services. One is left to surmise that Jackson Purchase seeks to recover a portion of Ballard Rural's profits by charging Ballard Rural exorbitant pole attachment rates. This position is consistent with monopolistic pricing, and not the fair, just and reasonable rates of a competitive or regulated monopolist. The Commission should not permit Jackson Purchase to so blatantly discriminate against Ballard Rural.

Jackson Purchase has not offered any evidence that justifies charging Ballard Rural substantially higher pole attachment rates than those it charges CATV operators. Jackson Purchase did not offer evidence that the facilities Ballard Rural attaches to its poles are materially different than the facilities attached by CATV operators. Jackson Purchase did not offer evidence that it incurs higher costs in providing pole attachment services to Ballard Rural than to CATV operators, nor did it offer evidence that the services it provides Ballard Rural are substantially different from the services it provides CATV operators. 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, 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. Jackson Purchase has failed to provide any justification for treating Ballard Rural and CATV operators disparately. Accordingly, the Commission should order Jackson Purchase to charge Ballard Rural its CTAT rates.

CONCLUSION

For the reasons set forth above, the Commission should order Jackson Purchase to charge Ballard Rural its tariffed CTAT rates for the right to occupy one foot of space on Jackson Purchase's poles under the same terms and conditions as CATV operators. Kentucky constitutional and statutory law, as well as sound public policy, require that Ballard Rural and CATV operators be treated equally. As demonstrated above, there are no significant differences between Ballard Rural and CATV operators; therefore, it would be a violation of Section 2 of the Kentucky Constitution for Ballard Rural to be subjected to higher pole attachment rates than cable television companies. In addition, KRS 278.170 prohibits Jackson Purchase from subjecting any person to unreasonable prejudice or disadvantage. The rates proposed by Jackson Purchase would unreasonably prejudice Ballard Rural. Finally, sound public policy requires that Ballard Rural and CATV operators be treated equally because they are competitors that must be permitted to compete for customers on a level playing field. Accordingly, the Commission should order Jackson Purchase to apply its CTAT rates to Ballard Rural.

Respectfully submitted,



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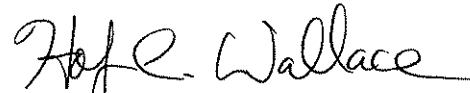
**COUNSEL TO BALLARD RURAL
TELEPHONE COOPERATIVE
CORPORATION, INC.**

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 5th day of September, 2006:

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

