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May 20, 2010

Jeffrey DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40601

RE: The Petition of Bellerud Communications, LLC's for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky Case No. 2010- 00069

Dear Mr. DeRouen:

Enclosed please find the original and ten copies of Bellerud Communications, LLC's Response to Commission Order Dated April 20, 2010.

Please indicate receipt of this filing by placing your file stamp on the extra copy and returning to me via our runner.

Sincerely yours,

Douglas F. Brent

c: Lance Steinhart

DFB: jms
Enclosures

112958.135552/616747.1

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF

PETITION OF BELLERUD COMMUNICATIONS FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE COMMONWEALTH OF KENTUCKY	))))	**CASE NO. 2010 - 00069**

RESPONSE OF BELLERUD COMMUNICATIONS
TO COMMISSION ORDER DATED APRIL 20, 2010

Bellerud Communications ("Applicant"), by counsel, files the following response to the Commission's Order dated April 20, 2010 and issued simultaneously in a number of cases concerning eligible telecommunications status. In that Order, the Commission questioned its own jurisdiction to grant the requested relief, based on certain decisions of the United States District Court of Eastern Kentucky.

1. First, with respect, the Commission mischaracterizes the holding of the Court in *BellSouth Telecommunications, Inc. v. Kentucky Public Service Comm'n,* 3:08-cv-00007-DCR (Feb. 22, 2010). In its April 20, 2010 Order, the Commission states that the Court "held that regional Bell Operating Companies do not have affirmative, ongoing obligations to permit the commingling of certain elements under 47 U.S.C. § 251 and 47 U.S.C. § 271." The holding of the Court is not, however, so broad or so clear.[1] In fact, the Court's decision is most reasonably

[1] The Court in its Memorandum Opinion and Order, at 22, discussing 47 C.F.R. § 51.309**(e)** ***only***, says that subsection (e) "does not place any affirmative obligations on AT&T Kentucky." That is accurate. That subsection of the FCC's commingling regulation merely requires an incumbent to "permit" a competitor to commingle elements. The Court's discussion of 47 C.F.R. § 51.309**(f)** -- which states that an incumbent must "perform the functions necessary" to commingle Section 251 elements with wholesale services – is very different, and appears in the next paragraph of the Memorandum Opinion and Order, as discussed above.

read to mean that regional Bell Operating Companies *do* have an affirmative, ongoing obligation to commingle Section 251 and Section 271 elements pursuant to 47 C.F.R. § 51.309(f). The Court expressly held that "AT&T Kentucky must, upon request, perform the functions necessary for a competitive LEC to connect, attach, or otherwise link § 251 elements with wholesale services" [Memorandum Opinion and Order at 23]. The Court then defined Section 271 elements as "wholesale services" [Memorandum Opinion and Order at 22] ("any network element provided by AT&T Kentucky to a competitive LEC is a 'wholesale service'"). AT&T Kentucky, which argues that it is not obligated to commingle Section 251 with Section 271 elements, has appealed the District Court's holding on this issue. *See* Notice of Appeal, attached hereto. It would not have done so if it believed that it had already prevailed.

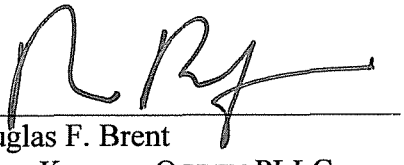
2. More essentially, the question pursuant to 47 U.S.C. §§ 251 and 214(e) is whether unbundled network elements *are actually being provided* to the Applicant, not whether the Commission can order an incumbent carrier to provide elements, or to provide them at any particular price or configuration. As Applicant's petition makes clear, those unbundled network elements are being provided to the Applicant. Moreover, they are required by federal law to be provided, regardless of whether the Commission has jurisdiction to enforce that law. Consequently, the Commission's jurisdiction over unbundled network elements or pricing is not relevant to Applicant's request for ETC status. There is no question that the Commission retains authority under federal law to certify eligible telecommunications carriers, and there is no indication to the contrary in any of the court opinions the Commission cites in its April 20, 2010 Order.

3. Finally, Applicant requests only low income, and not high cost, federal universal service support. This important federal funding follows the eligible customer and is not linked to

infrastructure. Under this circumstance, the Federal Communications Commission has indicated that the "facilities" requirement loses its significance, as there cannot possibly be a concern that both the providing carrier and the underlying carrier will continue to receive any high-cost universal service support for the facilities themselves.[2] Refusal to granting ETC status as requested in the Application will serve no legal or policy principle. It will only limit the choices of low-income Kentuckians.

Dated: May 20, 2010

Respectfully submitted,



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[2] *TracFone Wireless Petition for Designation as an Eligible Telecommunications Carrier,* 23 FCC Rcd 6206 (2008).