

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SUPPLEMENTAL PETITION OF CINERGY	)	
COMMUNICATIONS COMPANY FOR	)	
DESIGNATION AS A COMPETITIVE	)	
ELIGIBLE TELECOMMUNICATIONS	)	CASE NO. 2006-00089
CARRIER PURSUANT TO SECTION 214(e)	)	
OF THE TELECOMMUNICATIONS ACT OF	)	
1996	)	

O R D E R

On February 28, 2006, Cinergy Communications Company ("Cinergy"), a Competitive Local Exchange Carrier, filed with the Commission a petition under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier ("ETC") to receive federal universal service support for service offered in additional areas of its service area in the state of Kentucky.<sup>1</sup> Cinergy was designated an ETC for the territory of BellSouth Telecommunications, Inc. ("BellSouth") by the Commission in Case No. 2004-00131.<sup>2</sup>

The petition states that: (1) Cinergy meets all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky;<sup>3</sup> (2) Cinergy requests designation throughout each of the designated areas within its service coverage;<sup>4</sup> (3) in

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<sup>1</sup> Cinergy requests ETC designation in the incumbent service areas of Kentucky Alltel, Inc. (now WindStream Kentucky East, Inc.) and South Central Rural Telephone Cooperative Corporation. See Petition at page 1.

<sup>2</sup> Petition of Cinergy Communications Company for Designation as an Eligible Telecommunications Carrier in the Commonwealth Of Kentucky, June 14, 2004.

<sup>3</sup> Id. at 2 - 3.

<sup>4</sup> Id. at 1.

accordance with 47 U.S.C. § 214(e)(2), Cinergy is entitled to be designated as an ETC in non-rural wirecenters;<sup>5</sup> and (4) designation of Cinergy as an ETC for the designated areas served in Kentucky will serve the public interest.<sup>6</sup>

On April 13, 2006 South Central Rural Telephone Cooperative Corporation, Inc. ("South Central") moved for intervention in the proceeding, the petition was granted on May 4, 2006. South Central is a rural incumbent local exchange carrier for which Cinergy is seeking to be an ETC in its territory. South Central filed comments that questioned the ability of Cinergy to serve customers and its intent to make service available to all customers that are in its service area. On May 8, 2006, South Central issued data requests to Cinergy and Cinergy responded on May 25, 2006. On June 19, 2006, South Central requested a hearing in the matter. On August 11, 2006, the Commission issued an order that held the request for a hearing in abeyance for 30 days so that South Central could apprise the Commission of the nature of the issues that it wished to explore at a public hearing. On September 18, 2006, South Central withdrew its request for a hearing. South Central informed the Commission that it had entered into a resale agreement with Cinergy which alleviates its concerns that Cinergy can meet its obligations to provide service within its territory. South Central however maintained its position that it has concerns regarding Cinergy's willingness to serve customers outside the most profitable areas served by South Central.

Having completed the procedural schedule and given South Central's motion to withdraw its request for a hearing, the matter is ripe for Commission decision.

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<sup>5</sup> Id. at 4.

<sup>6</sup> Id. at 3 - 5.

To receive ETC status, the Federal Communications Commission (“FCC”) requires a common carrier to: (1) offer services that are supported by federal universal support mechanisms<sup>7</sup> throughout its designated service area; (2) provide these services using its own facilities (including unbundled network elements) or a combination of its own facilities and resale of another carrier’s facilities; and (3) advertise the availability of these services through media of general distribution. In addition the FCC rules state that upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible ETC for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of 47 C.F.R. § 54.201. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.<sup>8</sup>

The Commission finds that Cinergy has met the standards established by the FCC. Cinergy currently provides services eligible for support by the federal universal service fund in the service area for which it seeks ETC designation.<sup>9</sup> In its petition requesting ETC designation, Cinergy affirmed that it offers these services using a

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<sup>7</sup> These services are: (1) voice grade access to the public switched network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance services; and (9) toll limitation for qualifying low-income consumers. 47 C.F.R. § 54.101(a).

<sup>8</sup> 47 C.F.R. § 54.201(c)

<sup>9</sup> Cinergy’s Petition at 3 and 5.

combination of its own facilities, unbundled network elements, and resale.<sup>10</sup> Cinergy has begun advertising the availability and price of these services using media of general distribution.<sup>11</sup> Cinergy has complied fully with FCC guidelines regarding ETC designation.

A specific public interest finding is not necessary for the Commission to grant a competitive carrier ETC status in the area of a non-rural company; however, the Commission is required to make a public interest finding prior to designating a competitive carrier ETC status in a rural company study area. Cinergy has shown in its application that granting it ETC status will give consumers the benefits of increased choice of a service provider and will have little impact on the Universal Service Fund. Cinergy has provided sufficient evidence for this Commission to grant the ETC status requested. This designation will benefit consumers in Kentucky by expanding the range of competitive choices and by providing an incentive for incumbent telephone companies to improve their existing networks.

The Commission finds that Cinergy has demonstrated that it is capable of providing service in the requested areas and its designation as an ETC in the rural study area of South Central is in the public interest.

The Commission, having reviewed the evidence of record and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. Cinergy is designated as an ETC for the current service territory of Kentucky Alltel, Inc. (now Windstream Kentucky East, Inc.) and South Central Rural

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<sup>10</sup> Id. at 3 and 9.

<sup>11</sup> Id. at 11.

Telephone Cooperative Corporation. Accordingly, Cinergy is eligible to receive federal Universal Service Fund support.

2. Cinergy shall offer universal support services to consumers in its service area.

3. Cinergy shall offer these services using its own facilities or a combination of its own facilities and resale of another carrier's services, including the services offered by another ETC.

4. Cinergy shall advertise the availability of and charges for these services using media of general distribution.

5. A copy of this Order shall be served upon the FCC and the Universal Service Administrative Company.

Done at Frankfort, Kentucky, this 12<sup>th</sup> day of October, 2006.

By the Commission

ATTEST:

  
Executive Director