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May 3, 2006

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PUBLIC SERVICE
COMMISSION

Ms. Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40601

RE: 2006-00089

Dear Ms. O'Donnell:

Enclosed please find an original and ten copies of Cinergy Communications Company's Response to Comments of South Central Rural Telephone Cooperative Corp. Please accept the original and return one stamped copy of this letter in the enclosed envelope.

Very truly yours,

STOLL KEENON OGDEN PLLC

Douglas F. Brent

Enc.

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

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MAY 4 2006

PUBLIC SERVICE
COMMISSION

In the Matter of)
)
Supplemental Petition of Cinergy Communications)
Company For Designation as an Eligible) Case No. 2006-00089
Telecommunications Carrier In Additional Service Areas)
)

**CINERGY COMMUNICATIONS CO. RESPONSE TO COMMENTS OF
SOUTH CENTRAL RURAL TELEPHONE COOPERATIVE CORP.**

Cinergy Communications Company (“Cinergy”) respectfully submits this response to the comments filed by South Central Rural Telephone Cooperative Corp. (“South Central”) on April 18, 2006 regarding Cinergy’s Supplemental Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) filed on Feb. 28, 2006 (“Supplemental Petition”). While the Commission’s March 29, 2006 procedural order in this case does not require any additional filing by Cinergy, Cinergy respectfully requests leave to submit this response in order to address the issues raised by South Central’s comments and to assist the Commission by clarifying the issues in this proceeding.

Cinergy demonstrated in its Supplemental Petition that it satisfies all of the Commission’s established criteria for ETC designation, with respect to the entire Kentucky service areas of both Kentucky ALLTEL, Inc. and South Central. In these service areas, as in the BellSouth areas for which Cinergy is already an ETC, Cinergy provides all the services and functionalities supported by the federal universal service program, using its own facilities (and occasionally using resale of other carriers’ facilities). Cinergy also demonstrated that ETC designation would advance the public interest

All of South Central's arguments against designating Cinergy as an ETC are misplaced and should be dismissed by the Commission. South Central raises four substantive arguments:^{1/} (1) that Cinergy's services are not adequately publicized or advertised; (2) that Cinergy has not yet obtained nor pursued customers in South Central's rural exchanges other than the exchange that overlaps the City of Glasgow; (3) that Cinergy's commitment to serve rural customers is somehow "vague" or improper; and (4) that the Commission should utilize the inapplicable standards that the FCC recently adopted for *wireless* carriers' ETC applications *filed with the FCC*. None of these arguments has merit.

First, Cinergy's services in South Central's service area are extensively publicized and advertised both by Cinergy itself and by the Glasgow Electric Plant Board ("EPB"), Cinergy's marketing partner for telecommunications offerings in the area served by both Kentucky ALLTEL and South Central. The Glasgow EPB aggressively publicizes Cinergy's local telecommunications offerings. For example, the Glasgow EPB website provides detailed consumer information regarding a variety of offerings of interest to EPB customers, including Cinergy's local and long distance voice services.^{2/} Moreover, Cinergy publicizes its offerings in the South Central area using media of general distribution similar to those that it uses to

^{1/} South Central complains about the procedure followed by Cinergy in filing its Supplemental Petition. Cinergy respectfully declines to address this matter. Cinergy was under no obligation to serve South Central with a copy of the ETC petition.

^{2/} See, e.g., <http://www.glasgow-ky.com/phone/> (Glasgow EPB website regarding telecommunications service offerings). That website prominently displays Cinergy's logo and makes it clear that Cinergy is the telecommunications provider. Glasgow EPB also has widely distributed flyers promoting the telecommunications service that Cinergy offers. See Attachment A.

publicize in the BellSouth territory, which the Commission has already found to satisfy the ETC advertising criterion.^{3/} The same finding is equally applicable here.

Second, the Commission should reject South Central's anti-competitive argument that Cinergy has not yet obtained nor pursued customers in certain areas, since that argument would preclude the emergence of competition. In fact, the same argument was thoroughly considered and firmly rejected by the FCC six years ago in an order holding that a state public service commission erred when it found that a carrier could not receive ETC designation until *after* it had obtained customers in a particular high cost area:^{4/}

13. No competitor would ever reasonably be expected to enter a high-cost market and compete against an incumbent carrier that is receiving support without first knowing whether it is also eligible to receive such support. We believe that it is unreasonable to expect an unsupported carrier to enter a high-cost market and provide a service that its competitor already provides at a substantially supported price. Moreover, a new entrant cannot reasonably be expected to be able to make the substantial financial investment required to provide the supported services in high-cost areas without some assurance that it will be eligible for federal universal service support. In fact, the carrier may be unable to secure financing or finalize business plans due to uncertainty surrounding its designation as an ETC.

14. In addition, we find such an interpretation of section 214(e)(1) to be contrary to the meaning of that provision. Section 214(e)(1) provides that a common carrier designated as an eligible telecommunications carrier shall "offer" and advertise its services. The language of the statute does not require the actual provision of service prior to designation. We believe that this interpretation is consistent with the underlying congressional goal of promoting competition and access to telecommunications services in high-cost areas. In addition, this interpretation is consistent with the Commission's conclusion that a carrier must meet the section 214(e) criteria as a condition of its being designated an eligible carrier "and *then* must provide the designated services to customers pursuant to the terms of section 214(e) in order to receive support."

^{3/} *Petition of Cinergy Communications Co. for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky*, Order, Case No. 2004-00131 (June 14, 2004).

^{4/} *Federal-State Joint Board on Universal Service; Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, 15 FCC Rcd 15168, ¶¶ 13-15 (2000).

15. In addition, we note that ETC designation only allows the carrier to become *eligible* for federal universal service support. Support will be provided to the carrier only upon the provision of the supported services to consumers. We note that ETC designation prior to the provision of service does not mean that a carrier will receive support without providing service....

Third, contrary to South Central's unsupported assertions, Cinergy is committed to serving all customers throughout the area for which it seeks designation, "either using its own facilities or a combination of its own facilities and resale of another carrier's services," as the law requires.^{5/} South Central criticizes Cinergy's commitment to provide service within a reasonable time frame as "fatally vague." South Central Comments at 3. But South Central's critique flies in the face of this Commission's decisions granting ETC designations to carriers that have demonstrated their "ability to satisfy [their] obligation to serve the designated service areas within a reasonable time frame."^{6/} Similarly, the FCC recently opined that ETC designations should be granted to carriers even if they cannot immediately provide service, as long as they can "provide service within a reasonable period of time [and] if service can be provided at reasonable cost."^{7/}

Finally, the Commission should reject South Central's ironic suggestion that it apply to Cinergy the standards that the FCC adopted *only* with respect to ETC applications filed with the FCC. The Commission approved South Central Telcom's recent application for designation as a wireline competitive ETC in Kentucky ALLTEL's service area without applying or even

^{5/} 47 U.S.C. § 214(e)(1)(A).

^{6/} *Petition of Bluegrass Wireless, LLC, et al., for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky*, Case Nos. 2006-00017 *et al.*, Order at 5 (July 5, 2005) ("*Bluegrass Designation Order*").

^{7/} *Federal-State Joint Board on Universal Service*, Order, 20 FCC Rcd 6371, ¶ 2 (2005) ("*FCC Designation Standards Order*"); *see also* 47 C.F.R. § 54.202(a)(1)(i)(A) & (B). As discussed in the text, these FCC standards, while instructive in certain regards, do not apply to this Commission.

considering applying the FCC's recently adopted standards.^{8/} This was appropriate given that the FCC never required state commissions to utilize these standards, so it would not be appropriate for the Commission to apply them as substantive requirements in Kentucky without having conducted a rulemaking proceeding applicable to all ETCs.

Finally, nearly all of the ETC petitions before the FCC have involved wireless carriers, and the FCC's standards are almost exclusively focused on wireless technologies. For example, the FCC's rules include expectations that ETCs, to provide service, will engage in activities such as "deploying a roof-mounted antenna or other equipment," "adjusting the nearest cell tower," and "employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment."^{9/} It obviously makes no sense to apply these standards to wireline CLECs like Cinergy and South Central Telcom, and South Central's self-serving suggestion that these standards be applied to Cinergy, while not to itself, must be rejected.

For the reasons stated above and in the Supplemental Petition Cinergy respectfully submits that the Commission should reject South Central's unfounded arguments and designate Cinergy as an ETC in the requested service areas expeditiously.

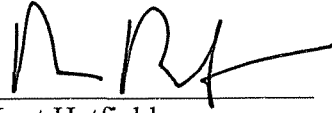
^{8/} *Petition of South Central Telcom, LLC For Designation As a Competitive Eligible Telecommunications Carrier Pursuant to Section 214(e) Of The Telecommunications Act of 1996*, Case No. 2005-00541, Order (May 2, 2006).

^{9/} *FCC Designation Standards Order*, ¶ 22; see also 47 C.F.R. § 54.202(a)(1)(i)(B)(2), (3), and (6).

Respectfully submitted,

CINERGY COMMUNICATIONS COMPANY

By:



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May 3, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. mail to the following on this the 3rd day of May, 2006.

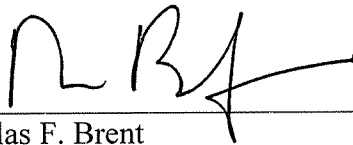
Hon. Robert A. Bye
VP and General Counsel
Cinergy Communications Company
8829 Bond Street
Overland Park, KS 66214

Daniel Logsdon
Kentucky Alltel, Inc.
130 West New Circle Road
Suite 170
Lexington, KY 40505

Hon. David L. Sieradski
Hogan & Hartson, L.L.P.
555 Thirteenth Street, S.W.
Washington, DC 20004-1109

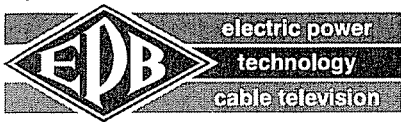
Forest Wilson
South Central Rural Telephone
Cooperative Corporation, Inc.
1399 Happy Valley Road
P.O. Box 159
Glasgow, KY 42141-0159

Edward T. Depp
Dinsmore & Shohl
1400 PNC Plaza
500 West Jefferson Street
Louisville, KY 40202

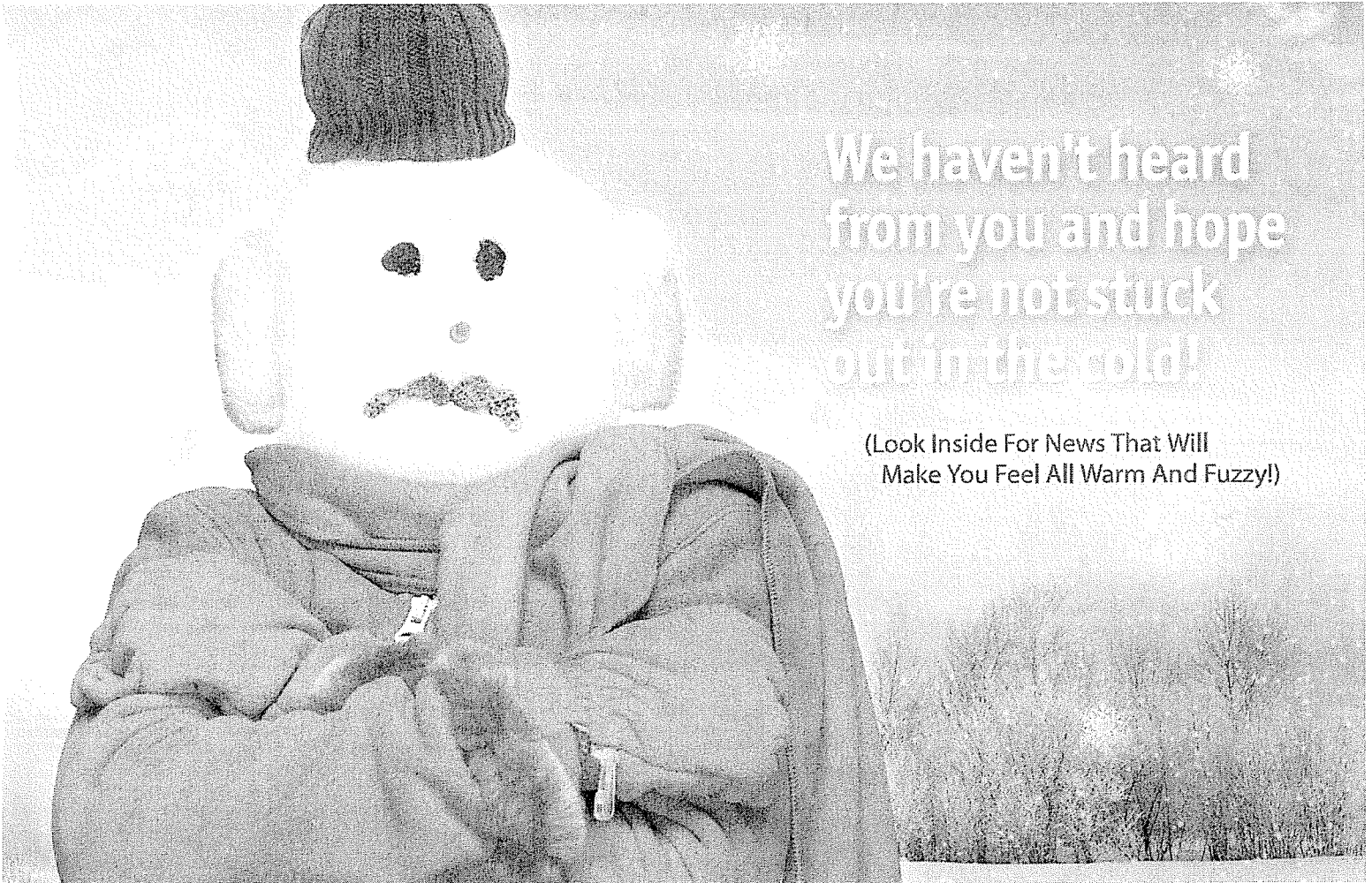


Douglas F. Brent

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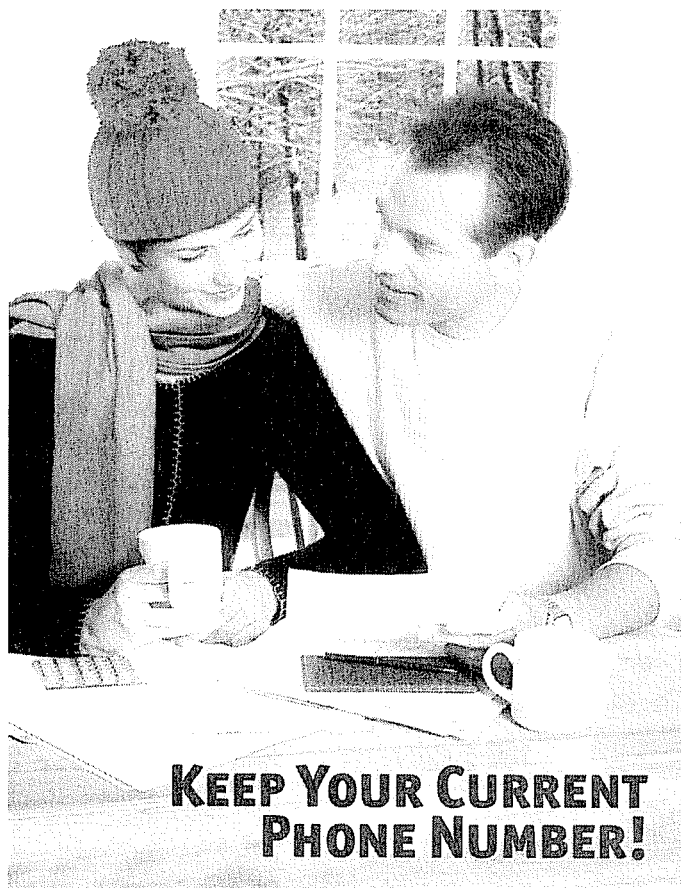


Glasgow Electric Plant Board
100 Mallory Drive
Glasgow, KY 42141



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Maybe the dog locked you out of the house or your keys fell in the lake. Whatever the case, we just wanted you to know that the EPB and Cinergy® Communications now offer **great phone service** and that **we would love to hear from you!** Low cost. Lots of features. All combined on your utility bill. Even free long distance calls to Bowling Green¹. **Really!**



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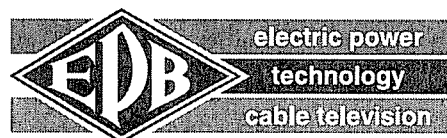
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COMMUNICATIONS

(1) You must have Cinergy Communications long distance service to receive unlimited free calling to Bowling Green. (2) Line rates may vary depending on your location. Regulatory taxes and fees are not included in price shown. This offer is available to residential customers only. (3) You must provide the correct equipment to use Caller ID. Terms & conditions subject to change without notice. ©2006, Glasgow Electric Plant Board. All Rights Reserved. Cinergy Communications Company is a wholly-owned subsidiary of Q-Comm Corporation. Although Cinergy Corp. has licensed the use of its name to Q-Comm, it has no management oversight, control or responsibility for Cinergy Communications Company. (E004)