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PUBLIC SERVICE
COMMISSION

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August 1, 2006

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

RE: Case No. 2006-00340

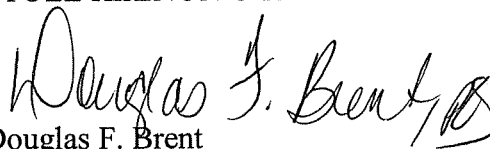
Dear Ms. O'Donnell:

Enclosed please find an original and ten copies of Cinergy Communications Company's Motion to Dismiss in the above referenced case.

Please indicate receipt of this filing by your office by placing your file stamp on the extra copy and returning to me via the enclosed, self-addressed stamped envelope.

Very truly yours,

STOLL KEENON OGDEN PLLC


Douglas F. Brent

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

BRANDENBURG TELECOM LLC)
)
COMPLAINANT)
) CASE NO. 2006-00340
v.)
)
CINERGY COMMUNICATIONS COMPANY)
)
DEFENDANT)

MOTION TO DISMISS

Cinergy Communications Company (“Cinergy”), by its undersigned counsel, hereby moves the Commission to dismiss Brandenburg Telecom LLC’s (“Brandenburg Telecom”) complaint, for the reasons set forth below.

1. Brandenburg Telecom’s complaint is styled as an action under KRS 278.260. In reality, it is an action to collect money for services Brandenburg Telecom alleges it has provided under its access tariffs. To put it simply, Brandenburg Telecom is asking the Commission to become its collection agent. However, neither KRS 278.260 nor any other section of Chapter 278 gives the Commission jurisdiction to adjudicate a complaint by a utility *against a customer*, as the Commission has properly held. *In the Matter of the Tariffs of Kentucky Power Co.*, 2000 Ky. PUC LEXIS 1337 (2000), *infra*. Instead, KRS 278.260 gives the Commission authority to investigate and remedy customer “complaints as to rates or service of any *utility*.” See Complaint, ¶ 5 (emphasis added). But Brandenburg Telecom offers no complaint about Cinergy’s rates or service. Cinergy is not providing service to Brandenburg Telecom.

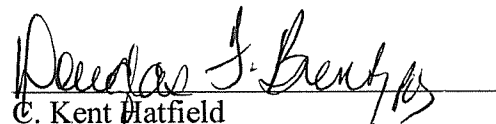
2. The Commission does not have a basis to hear a complaint by a utility against its

customer. In Case No. 2000-062, a case involving a customer billing dispute over tariffed charges, the Commission denied an electric utility's request that it force a customer to pay amounts allegedly due under tariff, finding: "[n]o provision of KRS Chapter 278 extends the Commission's jurisdiction to a customer of a utility or otherwise empowers the Commission to direct a customer to take, or refrain from taking, any action." *Kentucky Power*, 2000 Ky. PUC LEXIS 1337 (2000).

3. In similar disputes involve billing for interstate service, the FCC has determined that it "does not act as a collection agent for carriers with respect to unpaid tariffed charges. . ." *U.S. Telepacific Corp. v. Tel-America of Salt Lake City*, 19 FCC Rcd. 24552 (2004). No one can reasonably dispute that the FCC has no authority under the Communications Act to conduct adjudications of carrier's rights against their customers. *See Id.*, n. 26. Brandenburg Telecom is simply shopping for a forum since it could not possibly file this complaint with the FCC.

Wherefore, Cinergy respectfully requests that the Commission dismiss this complaint and grant all other relief to which Cinergy may be entitled.


Respectfully submitted,


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COUNSEL FOR CINERGY COMMUNICATIONS COMPANY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served all parties in this case this 1st day of August, 2006.



Douglas F. Brent

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