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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. 2006-00342**

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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In the Matter of:

BRANDENBURG TELEPHONE COMPANY )  
 )  
COMPLAINANT )  
 ) CASE NO. 2006-00342  
v. )  
 )  
CINERGY COMMUNICATIONS COMPANY )  
 )  
DEFENDANT )

MOTION TO DISMISS

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

I. Chapter 278 Does Not Provide for Complaints Against a Utility’s Customer

1. Brandenburg’s complaint is styled as an action under KRS 278.260. In reality, it is an action to collect \$2,523.55 for services Brandenburg alleges it has provided under its access tariffs. To put it simply, Brandenburg 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 offers no complaint about Cinergy’s rates or service. Cinergy is not providing service to Brandenburg.

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 is simply shopping for a forum since it could not possibly file this complaint with the FCC.

## II. An Access Tariff Dispute Exists

4. This complaint is a heavy-handed response to an access customer which dared to challenge Brandenburg's traffic measurement. As Brandenburg admits in paragraphs 9 and 10 of its complaint, there is a billing dispute between the parties relating to Cinergy's traffic.

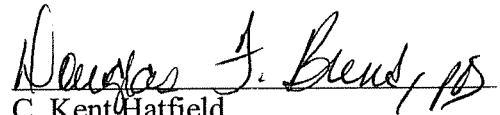
5. Cinergy is not only a toll provider but also a CLEC which exchanges local traffic with Brandenburg. A cursory glance at the complaint and exhibits reveals that several months ago Cinergy questioned the accuracy of a \$400.00 invoice for feature group access and asked Brandenburg to provide switch data in electronic format to allow Cinergy to compare Brandenburg's billing to Cinergy's own traffic records. As Exhibit 5 to the complaint makes clear, Cinergy questioned whether Brandenburg is treating certain terminating local traffic

(which by agreement is “bill and keep”) as toll traffic subject to access charges.

6. Brandenburg’s response was to insist that Cinergy pay \$500.00 just to see the data to support the \$400.00 invoice. Cinergy naturally refused. Cinergy does not charge its own access customers for CDRs and denies that it is “usual and customary” for any carrier to do so. Cinergy has made it quite clear that until usage can be verified Cinergy will withhold payment for disputed charges. Brandenburg has simply exacerbated the matter by bringing a frivolous complaint.

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

Respectfully submitted,

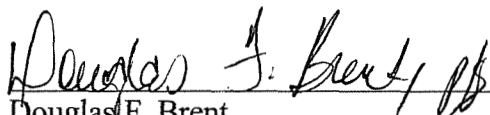


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*COUNSEL FOR CINERGY COMMUNICATIONS COMPANY*

CERTIFICATE OF SERVICE

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

  
\_\_\_\_\_  
Douglas F. Brent

Edward T. Depp (by hand)  
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