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August 28, 2006

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

RECEIVED  
AUG 29 2006  
PUBLIC SERVICE  
COMMISSION

**RE: Case No. 2006-00342**

Dear Ms. O'Donnell:

Enclosed please find an original and ten copies of Cinergy Communications Company's Reply in Support of 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

In the Matter of:

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

**REPLY OF CINERGY COMMUNICATIONS COMPANY**  
**IN SUPPORT OF MOTION TO DISMISS**

Cinergy Communications Company (“Cinergy”), by counsel, for its Reply in Support of Motion to Dismiss, states as follows:

**BACKGROUND**

Cinergy has been brought before the Commission in its capacity as a customer of Brandenburg Telephone Company (“Brandenburg”). Brandenburg’s access tariffs include rates for the switched access services it sells to Cinergy.

Brandenburg claims Cinergy has not paid its utility bills. However, as outlined in the Motion to Dismiss, Cinergy has legitimate questions with regard to the accuracy of recent access billing from Brandenburg and sought to obtain the call detail records (“CDR”) necessary to reconcile the bill. In response, Brandenburg filed this Complaint.

Brandenburg would have accomplished more by working with its customer to reconcile the billing dispute. The Complaint is non-jurisdictional pursuant to clear Commission precedent. Chapter 278 provides a customer with a forum for complaints against a utility. It

most emphatically does not provide a utility with a forum to complain against its customers. The Complaint must be dismissed.

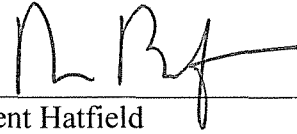
### ARGUMENT

Brandenburg tries to distinguish the seminal Commission decision which extinguishes Brandenburg's complaint, *Kentucky Power Co.*, 2000 Ky. PUC LEXIS 1337 (2000), by pointing out that the Kentucky Power customer which refused to pay a tariffed charge, AK Steel, was not a utility. But it does not matter that Cinergy is a utility. KRS 278.260 gives the Commission authority to investigate and remedy customer "complaints as to *rates or service* of any utility." Brandenburg has no complaint about Cinergy's rates or service. Accordingly, the Commission's analysis in *Kentucky Power Co.* applies with equal force here: "[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."

Brandenburg's attempt to torture the language of the complaint statute fares no better. Cinergy has done nothing unreasonable, unsafe, insufficient or unjustly discriminatory (*cf.* KRS 278.260(1)), and there is simply no way for Brandenburg to bootstrap itself into having standing to bring a collections complaint under any provision of Chapter 278. This complaint is non-jurisdictional and must be dismissed.

Finally, Brandenburg takes exception to Cinergy's characterization of the complaint as frivolous. Cinergy disagrees. Brandenburg has formally complained to this very busy Commission over a \$400 CABS dispute, in a year in which Brandenburg's total operating revenue will likely exceed \$20,000,000.00. Whether or not such behavior should be called "frivolous," it certainly is extraordinary - particularly as it is wholly without foundation in KRS Chapter 278, which makes no provision whatsoever for this type of attack upon a customer.

Respectfully submitted,

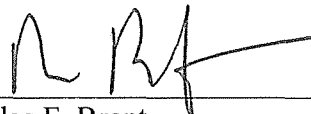
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*COUNSEL FOR CINERGY COMMUNICATIONS COMPANY*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served all parties in this case this 28th day of August, 2006.

A handwritten signature in black ink, appearing to read 'D. Brent', written over a horizontal line.

Douglas F. Brent

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