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March 21, 2003

Mr. Thomas M. Dorman
Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

**RE: Inquiry Into the Use of Contract Service Arrangements by
Telecommunications Carriers in Kentucky
Case No. 2002-00456**

Dear Mr. Dorman:

Enclosed for filing in the above-captioned case please find an original and five (5) copies of the Response of Cinergy Communications Company to Commission Order Dated December 19, 2002 as Amended by Order Dated January 28, 2003. Also enclosed please find one CD-ROM containing the requested documents per the Order of January 28, 2003.

If you have any questions regarding this filing, please do not hesitate to contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. A. Bye", written over a white background.

Robert A. Bye

Vice President and
General Counsel

Encl.

cc: Parties of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INQUIRY INTO THE USE OF)	
CONTRACT SERVICE ARRANGEMENTS)	Administrative Case No.
BY TELECOMMUNICATIONS CARRIERS)	2002-00456
IN KENTUCKY)	

**RESPONSE OF CINERGY COMMUNICATIONS COMPANY
TO COMMISSION ORDER DATED DECEMBER 19, 2002,
AS AMENDED BY ORDER DATED JANUARY 28, 2003**

On December 19, 2002, the Kentucky Public Service Commission (“Commission”) initiated Administrative Case No. 2002-00456 for the purpose of examining the use of contract service arrangements (“CSAs”) by telecommunications carriers in Kentucky. In initiating PSC Case No. 2002-00456, the Commission included an exhaustive data request as Appendix C to that Order. The data request was amended by the Commission’s Order of January 28, 2003. This response is provided by Cinergy Communications Company (“CCC”) in response to the aforementioned data requests by the Commission.

Request No. 1: Provide full and complete copies of all CSAs entered during 2001 and 2002, or, in the alternative, if such CSAs are on file with the Commission, a list of those CSAs and their effective dates.

Response No. 1: Attached hereto as Schedule “A” is a random sample of ten percent (10%) of the CSAs as referenced in the Order of January 28, 2003, along with a summary sheet for each customer responding to the specific information requested.

Request No. 2: Provide a narrative description of your policies regarding entry into CSAs with specific customers, including a description of the manner in which those CSAs are filed or reported to the commissions for the states in which you operate. If you operate in multiple jurisdictions, compare and contrast applicable state requirements. Provide citations to applicable rules in other jurisdictions.

Response No. 2: Our company policy is to provide rates based upon the filed tariff. However, in order to attract high volume customers or to attract new customers in an increasingly competitive marketplace, it is necessary to adjust terms or prices as necessary to attract a particular customer. These decisions are made on an individual case basis and are recorded for future reference. These deviations from the tariff are closely analyzed to insure that an acceptable profit margin is maintained. Our policy provides that because the margin is acceptable, a similarly situated customer would be entitled to a similar offering.

CCC does not file CSAs with the Kentucky Commission. Pursuant to the August 8, 2000 Order in Administrative Case 370, CLECs were relieved of all regulatory burdens other than the specific requirements enumerated in that Order. This policy was based upon the competitive environment in Kentucky and the need to relieve CLECs of regulatory burdens in order to foster competition. Our experience is that this policy is successful. As a practical matter, similarly situated CLEC customers are afforded competitive offerings and are not discriminated in terms of price because the market will not support such discrimination.

Prior to the initiation of this case, our company was in the intermediate stages of preparing to file a summary of Special Contracts to the Tennessee Regulatory Authority

(“TRA”). However, due to the labor intensive nature of these requests and the uncertain outcome of this case, we suspended work on that project. In Tennessee, the rules and regulations for Special Contracts, as stated in the Tennessee Regulatory Authority’s Rule 1220-4-2-.55(f), provide that such Special Contracts are permitted so long as the company files a summary and allows each customer in similar circumstances to obtain the same contract.

In Indiana, the rules and criteria for CSOs, (the Indiana equivalent of a CSA) as stated in the Indiana Utilities Regulatory Commission (“IURC”) Cause No. 38561, appear to set more specific criteria. However, our company has only recently started providing service in Indiana. As such, we do not have sufficient experience to comment.

Request No. 3: To what extent should a telecommunications carrier be permitted to price its services differently depending on the existence of a competitor that is willing to serve some customers but not others?

Response No. 3: To the extent this request refers to the WinBack situation, CCC does not believe that differentiated pricing is appropriate. The incumbent asserts that a competitive offer is necessary to match competition, but in reality these offers are intended to stifle competition and eventually drive competition from the market. It is only the customer who has taken a risk with an upstart competitor that receives the benefit of the lower WinBack price. There is no general lowering of prices across the entire customer base as would be the case in a truly competitive market. Therefore, the benefit to the consumer is short term and the effect on competition is negative. A good example of this type of activity is American Airlines which is the incumbent airline in Dallas, Texas. When upstart airline Vanguard entered the market and offered

competitive prices, American dropped its prices so that Vanguard could not compete. Vanguard declared bankruptcy and flights to Dallas increased from the \$100 range to the \$500 range and up. The same result will be true in telecommunications if there are no controls on this WinBack activity. CCC would encourage the Commission to open a generic docket to fully investigate the WinBack phenomenon as other states such as Indiana have done. This issue is too significant to be resolved in the context of CSAs.

The financial impact to incumbent monopolists is the wrong question for the Commission to ask. The Supreme Court in Verizon v. FCC recently indicated that the purpose of the Telecommunications Act of 1996 was to foster competition at the expense of the monopolies. It is axiomatic that in order for competition to flourish, the monopoly must lose market share to competitors. Certainly, there will be some financial impact on the incumbent monopolist.

The Commission should foster a competitive environment for all telecommunications providers, not insure the well-being of incumbent monopolies. To the extent the incumbent is allowed to cut off competition at the roots, no competition can take hold and the entire market will be returned to the incumbent. The incumbent has advantages other than price: market share, brand loyalty, stability, ownership of the network, and access to ratepayer subsidized data services to name a few. These advantages more than compensate for the incumbent's ability to readily undercut competitive price.

Request No. 4: Would you support or oppose a policy requiring that all customers for regulated services in the same geographic area or market receive the same prices, on the

theory that if a competitor is in the area it may reasonably be assumed that a competitive offer is available to all customers in the area?

Response No. 4: CCC would support such a policy provided that CCC could meet the special needs of individual customers by means of a CSA. The geographic area or market should be defined by the UNE zones which have already been determined in Administrative Case No. 382.

Request No. 5: Would a requirement that all CSAs be filed publicly with the Commission ensure transparency and permit both customers and CLECs the access necessary to buy, resell, and notify the Commission of alleged violations of law?

Response No. 5: CCC is not a reseller and does not actively look for CSAs that are available for resale; however, the Supreme Court in Verizon v. FCC made clear that all 3 forms of competitive entry must be fostered. CCC supports the needs of resellers to have ready access to this information, and would support the filing of CSAs for incumbents. CCC is interested in seeing that incumbents continue to file CSAs as a mechanism to protect against predatory pricing, abuse of market power and other violations of law. These issues are inapplicable to CLECs. Therefore, the filing of CSAs should remain a nullity for CLECs.

Request No. 6: What criteria should govern whether a regulated service should be sold by tariff only or by CSA?

Response No. 6: CCC requires all of its customers to sign a contract and sees no benefit to the tariff process for CLECs. CCC would support detariffing of local service for CLECs in order to decrease the regulatory burden for both CLECs and the Commission. Detariffing would allow CLECs to dedicate resources to serving customers and building

alternative networks. CLECs do not need to be restrained because they have no market power. CCC would support the filing of an informational tariff in the same fashion that the FCC has required for long distance detariffing.

ILECs must be required to continue filing tariffs and CSAs to insure that market power is not abused.

Request No. 7: Discuss the impact on competition in particular and on the telecommunications industry in Kentucky in general that would result from deregulation of CSAs.

Response No. 7: It is the position of CCC that the act of filing the CSA creates a record and keeps the incumbent honest. CCC envisions a day in which deregulation of CSAs would be appropriate. However, a competitive market has yet to emerge and it may take an additional year or two to develop. Perhaps the Commission could review this issue in two years, or sooner if the incumbents can establish a loss of market power.

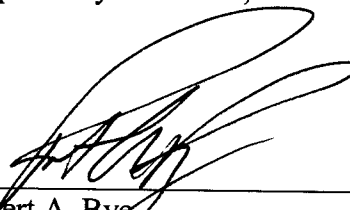
Request No. 8: At what level of availability of competitive alternatives in a given market should a service be deregulated pursuant to KRS 278.512? Is it feasible to deregulate service in one market area of Kentucky and not in another?

Response No. 8: Services should be deregulated only after a hearing on the particular service and a finding of public interest as required in the statute. CCC believes that there can be deregulation in one market and not another. In fact, reason dictates that Louisville will necessarily be deregulated before Morton's Gap due to the relative availability of competitive alternatives. Moreover, this was the finding of the D.C. Circuit in its finding that an impairment analysis must be granular.

Request No. 9: What procedures should take place during a Commission case to determine whether a service is sufficiently competitive to be deregulated?

Response No. 9: The burden of proof should be on the party seeking deregulation. The public interest should be represented by experts to insure that competition is actually present and not simply statistically or theoretically available. For example, in the UNE-P area, just because there are switches available does not mean that there are viable competitors that actually have access to those switches to serve real customers.

Respectfully submitted,

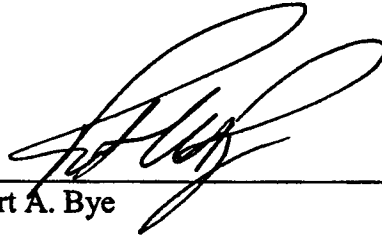


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. mail to the parties indicated on the attached service list on this 24th day of March, 2003.

A handwritten signature in black ink, appearing to read 'R. Bye', is written over a horizontal line.

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