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July 1, 2005

ELECTRONIC FILING

Ms. Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
P.O. Box 615
Frankfort, KY 40602

**RE: 2004-00427 – Cinergy Communications' Motion Related to the
 Embedded Base**

Dear Ms. O'Donnell:

Cinergy Communications Company ("Cinergy"), by counsel, files this letter in response to BellSouth's filing of June 28, 2005, in which it touted a Texas Public Utility Commission ruling of June 17, 2005,¹ as support for its opposition to Cinergy's Petition for Declaratory Ruling with regard to BellSouth's continuing obligation to process new UNE-P orders for Cinergy's embedded customer base during the transition period prescribed by the FCC in the TRRO.

It is somewhat puzzling that BellSouth would cite this ruling in support of its position that Section 251 UNE-P orders for new additions, moves, and changes for embedded base customers are prohibited by the TRRO. The Texas Commission clearly does not subscribe to that interpretation. As BellSouth admits, CLECs in Texas are permitted to submit, and the local RBOC is required to process, new UNE-P orders until October 1, 2005. Thus, it is apparent that the Texas P.U.C. does not consider itself preempted from requiring embedded base customers to be eligible for new UNE-P lines beyond the effective date of the TRRO.

Moreover, like the FCC, the Texas P.U.C. recognizes that an extension of time in which moves, adds, and changes will be provided is necessary to "minimize customer impacts" [Texas

¹ Arbitration of Non-Costing Issues for Successor Interconnection Agreements to the Texas 271 Agreement, Tex. P.U.C. Docket No. 28821 (June 17, 2005) (the "Texas P.U.C. Order").

Ms. Elizabeth O'Donnell
July 1, 2005
Page 2

P.U.C. Order at 24]. That is precisely the reason that Cinergy has urged this Commission to issue its Order clarifying that BellSouth may *not* refuse new Section 251 UNE orders necessary to serve Cinergy's embedded base customers. The fact that the Texas P.U.C. has chosen to limit the transition period for embedded base customers in Texas has no bearing on whether this Commission should limit that transition period in Kentucky.

Moreover, even the October cutoff for new *additions* specified by the Texas P.U.C. does not affect a CLEC's right in Texas to obtain moves or changes to UNE-P service for its embedded customer base: The Texas P.U.C. explicitly specified that its October 1 cutoff for CLEC Section 251 UNE orders applies to customers for whom "new ports must be added." No "new port" is needed when a customer moves. In addition, the Texas P.U.C. concluded that the embedded base is entitled to "new features" that may be "added or deleted upon request."

Cinergy also notes that the Texas P.U.C. in the June 17 Order explicitly rejected SBC Texas's proposal that, in the 271 Agreement, the term "lawful UNES" be used to describe UNES that must still be offered under Section 251 of the Act, finding that such nomenclature would imply that UNES sought under other provisions of the FTA are somehow "illegal" [Texas P.U.C. Order at 17]. The P.U.C. then stated its intention to continue monitoring SBC Texas's compliance with the Section 271 checklist [Texas P.U.C. Order at 26].

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Sincerely,

/s/ Deborah T. Eversole

Deborah T. Eversole
Counsel for Cinergy Communications Company

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