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PUBLIC SERVICE
COMMISSION

2650 AEGON Center
400 West Market Street
Louisville, KY 40202-3377
(502) 568-9100
Fax: (502) 568-5700
www.skofirm.com

DOUGLAS F. BRENT
502-568-5734
douglas.brent@skofirm.com

February 28, 2006

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

Case No. 2006-00089

**RE: Supplemental Petition of Cinergy Communications Company for Designation
as an Eligible Telecommunications Carrier in Additional Service Areas**

Dear Ms. O'Donnell:

Enclosed are an original and ten copies of Cinergy Communications Company's Supplemental Petition for Designation as an Eligible Telecommunications Carrier in Additional Service Areas.

An additional copy of this filing is enclosed. 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

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PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of)
)
Supplemental Petition of Cinergy Communications)
Company For Designation as an Eligible)
Telecommunications Carrier In Additional Service Areas)
)

Case No. 2006- 00089

**SUPPLEMENTAL PETITION OF CINERGY COMMUNICATIONS CO.
FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER
IN ADDITIONAL SERVICE AREAS**

Cinergy Communications Company ("Cinergy"), pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the "Act"), hereby submits this Supplemental Petition for Designation ("Petition") as an Eligible Telecommunications Carrier ("ETC") in portions of Kentucky not included in Cinergy's initial petition. On June 14, 2004, the Commission designated Cinergy as an ETC for the territory served by BellSouth. *Petition of Cinergy Communications Co. for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky*, Case No. 2004-00131 (June 14, 2004) ("*Cinergy Designation Order*"). Cinergy now seeks designation as an ETC in additional areas: the entire Kentucky service areas of Kentucky ALLTEL, Inc., a non-rural incumbent local exchange carrier ("ALLTEL"), and South Central Rural Telephone Cooperative Corporation ("South Central"), a rural ILEC.

As demonstrated below, Cinergy meets all of the requirements for designation as an ETC in those geographic areas, and Cinergy's designation will serve the public interest. Cinergy is a competitive local exchange carrier ("CLEC") that offers a complete line of

communications services and products to both business and residential customers in Illinois, Indiana, Kentucky, Ohio, and Tennessee, using a combination of facilities owned by Cinergy, facilities that Cinergy leases from other providers, and resale of other carriers' services.

Cinergy's offerings include local service, long distance, broadband, Internet access, web hosting and telephone equipment. A full description of Cinergy and its offerings can be found in Cinergy's original Petition for Designation as an Eligible Telecommunications Carrier (PSC Case No. 2004-00131, filed April 12, 2004).

I. CINERGY OFFERS EACH OF THE SERVICES SUPPORTED BY THE FEDERAL HIGH-COST UNIVERSAL SERVICE PROGRAM AND SATISFIES ALL OF THE REQUIREMENTS FOR ETC DESIGNATION

In the *Cinergy Designation Order*, the Commission found that Cinergy satisfies the criteria for ETC designation in 47 U.S.C. § 214(e). Cinergy is a common carrier that (1) provides all the services and functionalities supported by the federal universal service program – i.e., the “supported services” listed in 47 C.F.R. § 54.101(a) – throughout its service area in Kentucky; (2) provides those services using either its own facilities or a combination of its own facilities, leased facilities, and resale of another carrier's services; and (3) advertises the availability and price of its services using media of general distribution. *Cinergy Designation Order* at 2-3.

Cinergy satisfies all these criteria in the additional areas for which it now seeks ETC designation, as well as in the areas for which it has already been designated as an ETC. In particular, in the areas for which it seeks designation, Cinergy is a common carrier, and both advertises and provides, using its own facilities or a combination of its own facilities, leased facilities, and resale of another carrier's services, the following services and functionalities: (1) voice-grade access to the public switched telephone network; (2) local usage; (3) dual-tone,

multi-frequency (“DTMF”) signaling, or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange service; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. Cinergy satisfies these criteria in precisely the same manner that the Commission found acceptable in the *Cinergy Designation Order*.

Cinergy provides these services using its own facilities – *i.e.*, facilities that it owns, including traditional circuit switches, Internet-protocol (“IP”) based soft-switches, and other network facilities, and facilities that Cinergy leases from other carriers, including but not limited to incumbent local exchange carriers (“ILECs”) – as well as resale of other carriers’ services. Cinergy is willing and able to serve all customers throughout the area for which it has requested designation within a commercially reasonable time frame upon request. Cinergy advertises the availability of the supported services and the corresponding charges in a manner that informs the general public within the designated service area of both the services available and the corresponding charges. Cinergy advertises through several different media of general distribution throughout the service area for which designation is requested, including newspapers, other periodicals, radio, and an Internet web site (<http://www.cinergycom.com>).

II. GRANTING THIS PETITION WILL SERVE THE PUBLIC INTEREST

A. The Commission Has Established A Standard for Considering When ETC Designation is In the Public Interest

In the *Cinergy Designation Order*, the Commission found that designating Cinergy as an ETC in BellSouth’s service area “will benefit consumers in Kentucky by expanding the range of competitive choices and by providing an incentive for incumbent telephone companies to improve their existing networks.” *Cinergy Designation Order* at 2. The same is true in the service areas that are the subject of this Supplemental Petition. Since

Kentucky ALLTEL is not a “rural telephone company” under 47 U.S.C. § 153(37), there is no need under 47 U.S.C. § 214(e)(2) for the Commission to conduct a detailed analysis before determining that designation of Cinergy is in the “public interest” in that ILEC’s service area.

A specific public interest finding is required, however, with respect to the areas served by rural ILECs such as South Central. In past cases involving ETC designation in rural ILEC service areas, the Commission has required applicants to show that “the benefits of an additional ETC in such study areas outweigh any potential harm” and has considered “the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor’s service offering, any commitments made regarding quality of telephone service, and the competitive ETC’s ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.”

Petition of Bluegrass Wireless, LLC, et al., for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky, Case Nos. 2005-00017 *et al.*, Order at 5 (July 5, 2005) (“*Bluegrass Designation Order*”)¹. Competitive ETCs have also committed to “submit records and documentation on an annual basis detailing: (1) [their] progress towards meeting [their] build-out plans; (2) the number of complaints per 1,000 handsets; and (3) information detailing how many requests for service from potential customers were unfulfilled for the past year” and to “make available to the Commission any other information as it relates to service.” *Id.* at 7.

This Commission has not adopted any rules governing the public interest standards for designating ETCs in rural ILEC service areas. Although the FCC recently promulgated a set of public interest rules, it specifically stated that those rules apply only to

¹ Notably, in the *Bluegrass Designation Order* the Commission found that it was in the public interest to grant ETC status to a carrier proposing to serve within the exchange territory of South Central.

carriers seeking ETC designation by the FCC. *Federal-State Joint Board on Universal Service*, 20 FCC Rcd 6371, ¶ 17 (2005) (“*FCC Designation Standards Order*”); 47 C.F.R. § 54.202. The FCC encouraged, but did not require, the state commissions to utilize similar standards. *FCC Designation Standards Order*, ¶ 19. Moreover, many of the FCC’s new standards are specifically oriented to wireless carriers, and are inapplicable to wireline carriers like Cinergy.

The Commission should utilize its established public interest framework rather than the standards adopted for ETC designation petitions before the FCC. Consistently, the Commission applied the public interest framework supported by its own framework in the *Bluegrass Designation Order*, rather than the approach that the FCC had adopted a few months earlier. However, Cinergy’s application would advance the public interest under either set of standards.

B. Designating Cinergy as an ETC is In the Public Interest Under The Commission’s Existing Standards

1. *Benefits of Increased Consumer Choice.* Designating Cinergy as an ETC will bring to consumers the benefits of competition, including increased choices, higher quality service, and lower rates. In a competitive market, consumers will be able to choose the services that best meet their communications needs. With a choice of service providers, the consumer is able to select a provider based on the service type, service quality, service availability and rates. The carriers previously granted ETC status in South Central’s service area are wireless carriers. Designating Cinergy as an ETC will satisfy the public interest by providing an important additional choice for wireline service. In addition, designating Cinergy as an ETC will also provide an incentive to the incumbent LEC to improve its existing network in order to remain competitive, resulting in improved services to consumers.

2. *Impact on the Universal Service Fund.* Designating Cinergy as an ETC will have only a negligible impact on the overall universal service high-cost fund. The funds Cinergy will receive will have a miniscule impact on the overall \$3.5 billion federal high-cost fund.

3. *Advantages of Cinergy's Offering, Commitments Regarding Quality of Service, and Ability to Satisfy its Obligations Expeditiously.* Cinergy is committed to providing excellent service to its customers, and can provide the services and functionalities supported by the federal universal service program immediately throughout its proposed ETC area. Cinergy is subject to the regulatory authority of the Commission and complies with applicable consumer protection and service quality rules. Moreover, Cinergy will, as required by Section 254(e) of the Act, use all federal high cost support that it receives for the construction, maintenance and upgrading of facilities and services for which the support is intended. Like other Kentucky ETCs, Cinergy will submit annual reports to the Commission regarding: (1) its progress towards meeting its build-out plans; (2) the number of complaints per 1,000 lines; and (3) the number of requests for service from potential customers unfulfilled for the past year (if any). Receipt of universal service high-cost funds will enable Cinergy to accelerate and expand its deployment of network facilities throughout its service area in Kentucky.

C. Cinergy Is Prepared to Demonstrate That It Satisfies the Recently-Adopted Additional Requirements for FCC Commission Designation of ETCs

As noted above, the Commission is not required to, and should not, apply the FCC's recently adopted additional ETC eligibility requirements to Cinergy's application. Nonetheless, if the Commission were to use those standards, Cinergy is prepared to make the required showings, as further described below.

1. *Commitment to Provide Service Upon Reasonable Request.* Cinergy commits to provide service to any customer throughout its service area within a commercially reasonable

time frame upon request. The specific service deployment requirements set forth in the *FCC Designation Standards Order* (§ 22) pertain to wireless technology and are not directly applicable to wireline carriers like Cinergy. Cinergy does not anticipate that it will be unable to provide service to a requesting customer in its service territory within a commercially reasonable time frame, but in the event that occurs, Cinergy will notify the requesting party and report the unfulfilled request to the Commission within 30 days after making such determination. *Id.* Furthermore, Cinergy will file an annual report detailing how many requests for service were unfulfilled for the past year, if any, and how Cinergy attempted to provide service to those potential customers. *Id.*, § 69.

2. *Cinergy Plans to Use High-Cost Support to Improve Service Quality.* Cinergy will use universal service funds to improve service within its ETC service area. As required by Section 254(e) of the Act, Cinergy will use all federal high cost support that it receives for the construction, maintenance and upgrading of facilities and services for which the support is intended. The FCC's requirements regarding the showing that ETCs use universal service funds to improve "signal quality, coverage, or capacity" are oriented to wireless carriers and do not apply to wireline CLECs like Cinergy. Nonetheless, Cinergy commits that it will use the universal service high-cost funds it receives to accelerate its deployment of network facilities throughout its designated ETC service area over the next five years.

3. *Cinergy Can Remain Functional In Emergency Situations.* Cinergy has the ability to remain functional in emergency situations. Cinergy has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. *Id.*, § 25. If desired, Cinergy is prepared to certify on an annual basis that it is able to

function in emergency situations and to submit data concerning outages in its designated service areas. *Id.*, ¶¶ 27 & 69.

4. *Cinergy Satisfies Applicable Consumer Protection and Service Quality Standards.* As further described above, Cinergy is dedicated to building strong customer relationships by providing customers with services that exceed expectations. Cinergy will comply with applicable consumer protection and service quality requirements of this Commission. As a wireline CLEC, Cinergy is not subject to the Cellular Telecommunications Industry Association's Consumer Code. *Id.* ¶¶ 28 & 69.

5. *Cinergy Offers a Comparable Local Usage Plan.* Cinergy offers local usage plans that are identical (or superior) to those offered by ILECs in the proposed ETC service area. *Id.* ¶¶ 32 & 69.

6. *Cinergy Provides Equal Access.* Cinergy already provides equal access to enable its switched local exchange customers to reach the long distance carrier of their choice. This wireless-oriented requirement adopted by the FCC does not apply to wireline CLECs like Cinergy. *Id.*, ¶¶ 35 & 69.

D. Expeditious Grant of This Application is In the Public Interest.

The public interest is further served by the expeditious grant of this Petition. The FCC has recognized that "excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas."

Federal-State Joint Board on Universal Service, Twelfth Report and Order, 15 FCC Rcd 12208, ¶ 94 (2000). Cinergy requests that the Commission proceed to grant this petition expeditiously.

IV. STUDY AREA REDEFINITION

Cinergy proposes to operate as an ETC throughout South Central's rural telephone company study area. Therefore, no study area redefinition needs to be considered.

V. HIGH COST CERTIFICATION.

Under the FCC's rules, carriers seeking high cost support must either be certified by the appropriate state commission or, where the state commission does not exercise jurisdiction, must self-certify with the FCC and the Universal Service Administrative Company as to their compliance with Section 254(e) of the Act. Therefore, Cinergy submits its high-cost certification with the Commission as part of this petition (*see* Exhibit A). Cinergy respectfully requests that the Commission issue a finding that Cinergy has met the high-cost certification requirement and that Cinergy is, therefore, entitled to begin receiving high-cost support as of the date it receives a grant of ETC status.

VI. ANTI-DRUG ABUSE CERTIFICATION.

Cinergy certifies that no party to this petition is subject of a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862. (*See* Exhibit A).

CONCLUSION

For the reasons stated above, Cinergy respectfully requests that the Commission designate it as an ETC in the requested service areas expeditiously.

Respectfully submitted,

CINERGY COMMUNICATIONS COMPANY

By:



C. Kent Hatfield
Douglas F. Brent
STOLL KEENON OGDEN PLLC
2650 AEGON Center
400 West Market Street
Louisville, Kentucky 40202
(502) 568-9100
kent.hatfield@skofirm.com
douglas.brent@skofirm.com

David L. Sieradzki
HOGAN & HARTSON, LLP
555 – 13th St., N.W.
Washington, DC 20004
(202) 637-6462
dlsieradzki@hhlaw.com

February 28, 2006

Exhibit A

Affidavit of Robert A. Bye

Robert A. Bye, being first duly sworn upon oath, deposes and states as follows:

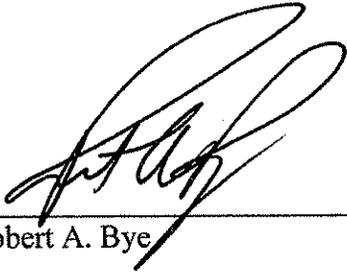
1. My name is Robert A. Bye and I serve as Secretary, Vice President, and General Counsel of Cinergy Communications Company ("Cinergy"). My business address is 8829 Bond St., Overland Park, Kansas 66214. I am an authorized representative of Cinergy with respect to the foregoing Application for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky ("Application").

2. I have read the foregoing Application, and all information therein is true to the best of my knowledge, information, and belief.

3. High-Cost Certification. Cinergy certifies that all high-cost universal service support funding that it receives for Kentucky will be used only for the provision, maintenance, and upgrading of the services and facilities for which the support is intended.

4. Anti-Drug Abuse Certification. To the best of my knowledge, the applicant referred to in the foregoing Application, including all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or non-voting) of the applicant as specified by Section 1.2002(b) of the FCC's rules, are not subject to a denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

This concludes my affidavit.



Robert A. Bye

