

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

February 9, 2006

*Re: Petition of Cinergy Communications  
Company For Designation as an Eligible  
Telecommunications Carrier in the State of  
Tennessee*

Docket No. -00033

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**PETITION OF CINERGY COMMUNICATIONS COMPANY**

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Cinergy Communications Company ("Cinergy"), by its undersigned counsel and pursuant to Section 214(e)(2) of the Communications Act of 1934, *as* amended (the "Act"), hereby submits this Petition for Designation ("Petition") as an Eligible Telecommunications Carrier ("ETC") throughout its licensed service area in the State of Tennessee. Cinergy seeks designation as an ETC for the wire centers of BellSouth, a non rural incumbent LEC. **As** demonstrated below, Cinergy meets all of the requirements for designation as an ETC and while not a prerequisite to qualifying as an ETC, **Cinergy's** designation will serve the public interest.

I. **Cinergy's Universal Service Offering.**

Cinergy is a competitive local exchange carrier ("CLEC") headquartered in Evansville, Indiana that offers a complete line of communications services and products to both business and residential customers in Indiana, Kentucky, Tennessee, and Ohio. Cinergy's offerings include local service, long distance, broadband, Internet access, web hosting, and telephone equipment. Cinergy Corporation, one of the nation's leading diversified energy companies, currently owns a 32% share of the equity of Cinergy's holding company QComm Corporation. Cinergy Corp. licenses the name "Cinergy" to QComm but does not exercise any managerial control over the company.

Cinergy is a CLEC certified by the Tennessee Regulatory Authority (“TRA” or “Authority”) to offer intrastate telecom services in Tennessee.<sup>1</sup> Cinergy intends to obtain high-cost universal service support funding throughout its licensed service area, including areas served by BellSouth, to speed the delivery of communications services to the citizens of Tennessee. Cinergy is a common carrier consistent with the definition in 47 U.S.C. § 153(10) and the requirements of 47 U.S.C. § 214(e)(1).

Cinergy currently provides all the services and functionalities supported by the federal universal service program set forth in 47 C.F.R. § 54.101(a) of the Federal Communications Commission's ("FCC's") rules throughout its service area in Tennessee. Cinergy will provide universal service to its consumers using a combination of unbundled network elements ("UNEs"), Cinergy's own Class V switches utilizing UNE loops, and Cinergy's own wireline facilities, as well as through the resale of BellSouth's local exchange service pursuant to Section 251(c)(4) of the federal Act. Designation of Cinergy as an ETC will benefit Tennessee consumers by promoting Cinergy's ability to construct and improve network facilities, facilitating local competition on a level playing field in rural areas of the state, and giving incumbent local exchange carriers (“ILECs”) incentives to improve their facilities and provide higher quality service due to the beneficial pressure of competition.

## II. Cinergy Satisfies All of the Requirements for Designation as an Eligible Telecommunications Carrier.

The legal standards governing ETC designation proceedings are found in Section 214(e) of the federal Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 214(e); the FCC's rules, principally 47 C.F.R. §§ 54.101 and 54.201; and the governing precedents of the federal

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<sup>1</sup> See TRA Docket No. 01-00112.

courts and the FCC. Under § 214(e), a prospective ETC must show that, upon receiving designation, it will: (1) provide supported services throughout the service area for which it is designated; (2) do so using its own facilities (including unbundled network elements ("UNEs")) and/or a combination of its own facilities and resale of another carrier's facilities; and (3) advertise the availability of these offerings through the media. 47 U.S.C. § 214(e)(1)(A) and (B). The "supported services" are listed in 47 C.F.R. § 54.101(a).<sup>2</sup> Finally, when a carrier seeks ETC designation in an area served by a "rural telephone company" as defined in the Act, the Authority must find that the designation of an additional telephone company is in the public interest.<sup>3</sup> Cinergy satisfies each of the elements required for ETC designation pursuant to Section 214(e) of the Act.

A. Cinergy Offers Each of the Services Supported By the Federal High-Cost Universal Service Program.

Cinergy currently provides (or will provide upon ETC designation) all the services and functionalities supported by the federal universal service program, as set forth in Section 214(e) of the Act and Section 54.101(a) of the FCC's rules, on 100% of the lines it serves throughout the BellSouth service area in Tennessee, the area for which it seeks ETC designation.

In order to be designated as an ETC, a carrier must be a common carrier and both offer and advertise the supported services throughout the designated service area. 47 U.S.C. § 214(e)(1). The FCC has identified the following services and **functionalities** as the core services to be offered by an ETC and supported by federal universal service support mechanisms:

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<sup>2</sup> See *infra* Section II.A.

<sup>3</sup> 47 U.S.C. § 214(e)(2); see also 47 U.S.C. § 153(37) (definition of "rural telephone company"). This requirement does not, however, apply to Cinergy's instant petition as the company is seeking ETC designation in the service area of BellSouth, a **non-rural** ILEC.

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.<sup>4</sup>

For purposes of ETC applications, carriers must certify that they provide each of the supported services, or where appropriate, the functional equivalent.<sup>5</sup> As shown below and in the Affidavit attached as "Exhibit A" hereto, CCC currently provides, or will provide upon designation, each of the required services and functionalities on 100% of the lines it serves, throughout the area for which it seeks designation.

1. Voice-Grade Access To The Public Switched Network.

The FCC has concluded that voice-grade access means the ability to make and receive phone calls, within a specified bandwidth and frequency range.<sup>6</sup> Cinergy meets this requirement by providing voice-grade access to the public switched telephone network. Through its interconnection arrangements with BellSouth and other local exchange carriers, each of

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<sup>4</sup> 47 C.F.R. § 54.101.

<sup>5</sup> *Id.*

<sup>6</sup> Federal-State Joint Board on Universal Service, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776 at 8810-11 (1997) ("First Report and Order").

Cinergy's customers are able to make and receive calls on the public switched telephone network within the specified bandwidth.

2. Local Usage.

ETCs must include local usage beyond providing simple access to the public switched network as part of a universal service offering. Cinergy includes unlimited local usage in each of its local service rate plans, and thereby complies with the requirement that all ETCs offer local usage.

3. Dual-Tone Multi-Frequency ("DTMF") Signaling, or its Functional Equivalent.

DTMF is a method of signaling that facilitates the transportation of call-set up and call detail information.<sup>7</sup> Cinergy provides DTMF signaling consistent with the rules.

4. Single-Party Service Or Its Functional Equivalent.

"Single-party service" means that only one party will be served by a subscriber loop or access line (in contrast to a multi-party service). Cinergy meets the requirement by providing single-party service throughout its service area.

5. Access to Emergency Services.

The ability to reach a public emergency service provider by dialing 911 is required in any universal service offering. Cinergy currently provides its subscribers with access to E-911 emergency services throughout the service area for which designation is sought in accord with this requirement and consistent with FCC regulations.

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<sup>7</sup> 47 C.F.R. § 54.101(a)(3).

<sup>8</sup> First Report and Order, 12 FCC Rcd at 8810.

6. Access to Operator Services.

Access to operator services is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone **call**.<sup>9</sup> Cinergy meets these requirements by providing all of its customers with access to operator services, including customer service and call completion.

7. Access to Interexchange Service.

An ETC must offer consumers access to interexchange service to make and receive toll or interexchange calls. Cinergy meets this requirement by providing all of its customers with the ability to make and receive interexchange calls, including "equal access", which enables customers to reach their interexchange carrier of choice.

8. Access to Directory Assistance.

The ability to place a call to directory assistance is a required service **offering**.<sup>10</sup> Cinergy meets this requirement by providing all of its customers with access to directory assistance by dialing "411" or "555-1212".

9. Toll Limitation for Qualifying Low-Income Consumers.

An ETC must offer either "toll control" or "toll blocking" services to qualifying Lifeline customers at no additional charge. 47 C.F.R. § 54.101 (a)(9). Cinergy currently has no Lifeline customers because only carriers designated as ETCs can participate in the provision of Lifeline service. See 47 C.F.R. §§ 54.400 - .415. Once designated as an ETC, Cinergy will participate in Lifeline as required, and will provide toll control and/or toll blocking capability in satisfaction of the Authority's requirement. Cinergy currently has the technology to provide toll limitation and

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<sup>9</sup> Id. at 8817-18.

<sup>10</sup> Id. at 8821.

will utilize this technology to provide such functionality at no additional charge to Lifeline customers.<sup>11</sup>

B. Cinergy Offers Supported Services Over Its Own Facilities.

A carrier requesting designation must certify that it offers the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services."<sup>12</sup> Cinergy will provide universal service to its consumers using a combination of Cinergy's own Class V switches used together with UNEs, UNE-loops, and resale of BellSouth service. The FCC has made it clear that purchase of UNEs satisfies the facilities requirement, and has specified certain high-cost funding limitations with respect to lines provided using UNEs.<sup>13</sup> An ETC may satisfy the requirement of providing service using resale, but may not claim universal service funding for resold lines. Cinergy is willing and able to serve all customers throughout the area for which it has requested designation.

C. Cinergy Communications Will Advertise Its Universal Service Offering.

Cinergy will advertise 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 its wireline services 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>), and will use the same media to advertise its universal service

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<sup>11</sup> See Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia, Memorandum Opinion and Order, CC Docket No. 96-45, 19 FCC Rcd 1563, 22 (2004) ("Virginia Cellular ETC Order").

<sup>12</sup> 47 U.S.C. § 214(e)(1)(A).

<sup>13</sup> First Report and Order, 12 FCC Rcd at ¶¶ 154-68.

offerings throughout the service area designated by the Authority. Cinergy also commits that, once it receives ETC designation, it will provide notices of its Lifeline and Link Up discounted services at local unemployment, social security, and welfare offices.<sup>14</sup>

D. Cinergy Meets All of the Additional Requirements for ETC Designation Found in 47 C.F.R. § 54.202.

1. Commitment to Provide Service Upon Reasonable Request.

Cinergy commits to provide service to any customer throughout its service area upon request. The specific service deployment requirements set forth in 47 C.F.R. § 54.202 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, but in the event that occurs, Cinergy will notify the requesting party and report the unfulfilled request to the Authority within 30 days after making such determination. In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, ¶ 22 (re. March 17, 2005) ("Designation Standards Order"). 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.* at 69.

2. Cinergy Plans to Use High-Cost Support to Improve Service Quality Over the Coming Years.

Cinergy will use universal service funds to improve service within its ETC service area. As required by Section 214(e) of the Act, Cinergy will use all federal high cost support that it receives for the construction, maintenance and upgrading of facilities used to provide supported service in rural and high-cost areas. The FCC's requirements in 47 C.F.R. § 54.202 regarding the showing that ETCs use universal funds to improve "signal quality, coverage, or capacity" are

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<sup>14</sup> Virginia Cellular ETC Order, 25.



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. at ¶ 25; 47 C.F.R. § 54.202(a)(2). 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. Designation Standards Order at 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 the TRA. As a wireline CLEC, Cinergy is not subject to the Cellular Telecommunications Industry Association's Consumer Code. Id. at ¶¶ 28 & 69; 47 C.F.R. § 54.202(a)(3).

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. Designation Standards Order at 32 & 69; 47 C.F.R. § 54.202(a)(4).

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. Designation Standards Order at ¶¶ 35 & 69; 47 C.F.R. § 54.202(a)(5).

III. Cinergy Requests Designation Throughout the BellSouth Service Area in Tennessee.

Cinergy requests ETC designation for the entire BellSouth service area in Tennessee as depicted on the map attached hereto as "Exhibit B." Pursuant to the Act, a "service area" is a "geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." 47 C.F.R. § 54.207(a). For service areas served by non-rural ILECs, there are no restrictions on how a state commission defines the "service area" for purposes of designating a competitive ETC. *Id.*

Cinergy is not applying for designation as an ETC in an area served by a rural telephone company.

IV. Granting This Petition Will Serve the Public Interest.

A. As BellSouth is a Non-Rural ILEC, There is No Need to Conduct a Public Interest Analysis.

Cinergy notes that BellSouth is not a "rural telephone company" under 47 U.S.C. § 153(37). Section 214(e)(2) of the Act expressly requires that a state commission conduct a public interest analysis "[b]efore designating an additional eligible telecommunications carrier for an area served by a rural telephone company . . . ." As Cinergy is not petitioning for ETC designation in a service area served by a rural telephone company, there is no need for the TRA to determine whether or not designation of Cinergy is in the "public interest."

B. Nevertheless, the Grant of Cinergy Communications' Petition is in the Public Interest.

If the TRA deems it necessary to conduct a public interest analysis, the Authority should find that designating Cinergy as an ETC would serve the public interest, as discussed in more detail below.

The FCC has recognized that "[d]esignation of competitive ETCs promotes competition and benefits consumers in rural high-cost areas by increasing customer choice, innovative services, and new **technologies.**"<sup>15</sup> Cinergy will implement a variety of service offerings and rate plans that will be both competitive with the incumbent LEC service offerings and affordable to Tennessee's consumers.

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 service quality, service availability and rates. 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. The FCC has noted, "we believe that competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its **customers.**"<sup>16</sup>

Designating Cinergy as an ETC will have only a negligible impact on the overall universal service high-cost fund. The funds Cinergy will receive from the Interstate Access

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<sup>15</sup> Western Wireless Corporation, DA 00-2896 (rel. December 26, 2000) ("Wyoming Order"), 16 FCC Rcd 48, 55; affirmed, FCC 01-311, at 17 (rel. October 19, 2001).

<sup>16</sup> Guam Cellular and Paging, Inc. DA 02-174, at 22 (rel. January 25, 2002).

Support (“IAS”) fund will have no impact on the overall size of the fund, since the IAS fund is subject to a nationwide hard cap; and the amounts that Cinergy will receive from the High Cost Model Support fund will have a miniscule impact on the overall \$3.5 billion high-cost universal service fund.

Cinergy is committed to providing excellent service to its customers. Cinergy is subject to the regulatory authority of the TRA and complies with applicable consumer protection rules. Furthermore, Cinergy will, as required by Section 214(e) of the Act, use all federal high cost support that it receives for the construction, maintenance and upgrading of facilities used to provide supported service in rural and high-cost areas. Receipt of universal service high-cost funds will enable Cinergy to accelerate and expand its deployment of wireline network facilities throughout its licensed service area in Tennessee.

V. High Cost Certification.

Under Sections 54.313, 54.314, 54.809, and 54.904 of 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 TRA as part of this petition (see "Exhibit A"). Cinergy respectfully requests that the TRA 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 in order that funding will not be delayed.

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").

VII. Conclusion.

Based on the foregoing, Cinergy respectfully requests that the TRA designate Cinergy as an ETC in Tennessee on an expedited basis.<sup>17</sup>

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: \_\_\_\_\_

H. M. Wer, Esq.  
1600 Division Street, Suite 700  
P.O. Box 340025  
Nashville, Tennessee 37203  
(615) 252-2363

Robert A. Bye  
Vice President and General Counsel  
**CINERGY COMMUNICATIONS COMPANY**  
8829 Bond St.  
Overland Park, KS 66218  
(913) 754-3333  
**bye@cinergycom.com**

*Attorneys for Cinergy Communications Company*

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<sup>17</sup> 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; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Notice of Proposed **Rulemaking**, ¶ 94 (rel. June 30, 2000).

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing is being forwarded via U.S. mail, to:

Guy Hicks  
BellSouth Telecommunications, Inc.  
333 Commerce Street  
Nashville, TN 37201

on this the 9<sup>th</sup> day of February 2006.

H <sup>A</sup> Walk

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## 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 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 Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee ("Petition").
2. I have read the foregoing Petition, and all information therein is true to the best of my knowledge, information, and belief.
3. Cinergy is a common carrier and provides (or will provide upon designation) all the services and functionalities supported by the federal universal service program, as set forth in Section 214(e) of the Act and Section 54.101(a) of the FCC's rules, throughout the service area for which it seeks ETC designation in Tennessee, i.e., the areas served by BellSouth, depicted in "Exhibit B". Cinergy also advertises the availability of the supported services and the corresponding charges through several different media of general distribution, throughout the service areas for which designation is requested. As an ETC, Cinergy will also offer a universal service at reduced rates package to subscribers who are eligible for Lifeline and Link-Up support. The manner in which Cinergy satisfies these requirements is described in greater detail in the Petition.
4. A grant of Cinergy's application will serve the public interest by promoting additional deployment of facilities and services to the high-cost areas served by BellSouth in Tennessee, and bringing consumers in those areas the benefits of additional competitive universal service offerings. Designation of Cinergy as an ETC will enable Cinergy to increase its deployment of network facilities that support provision of both basic telecommunications services and higher-bandwidth and enhanced services to consumers in Tennessee.
5. High-Cost Certification. Cinergy certifies that all high-cost universal service support funding that it receives for Tennessee will be used only for the provision, maintenance, and upgrading of the services and facilities for which the support is intended.
6. 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 862 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

This concludes my affidavit.

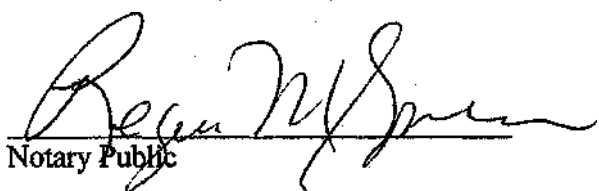
  
\_\_\_\_\_  
Robert A. Bye

STATE OF KANSAS  
COUNTY OF JOHNSON

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Personally appeared before \_\_\_\_\_, the undersigned, a  
Notary Public in and for said County and State **within** Robert A. Bye, with whom I  
am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon  
oath acknowledged that he executed the within instrument for the purposes therein contained.

of  AWI ESS my hand and seal at office in Overland Park, Kansas, on this the \_\_\_\_\_ day  
of \_\_\_\_\_, 2006.

  
Notary Public

Commission Expires:

02-19-2009

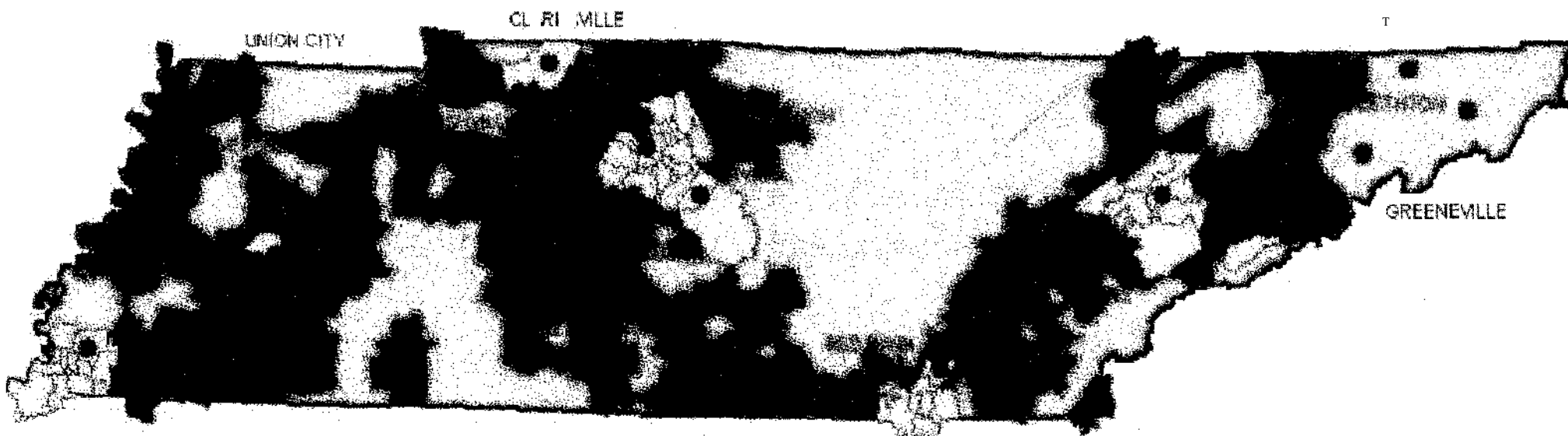
**REGINA M. SPENCER**  
Notary Public - State of **Kansas**  
My **Appt.** Expires 1-7-2009



**EXHIBIT B**

**MAP OF CINERGY'S PROPOSED SERVICE AREA**

# Zones for nte ate Access USF Support



**BellSouth - Tennessee**

Zone 1

■ Zone 2

Zone 3

Areas Not Served

○ City

February 2003

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NO. 10 GREEN RIVER  
105TH BELL SOUTH CO. 1 T.T. 1997  
OTHER 1996

**BELLSOUTH**  
GTS