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February 2, 2007

VIA MESSENGER

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek, Inc., Inc.
236 Massachusetts Avenue, N.E.
Suite 110
Washington, DC 20002

FILED/ACCEPTED

FEB - 2 2007

Federal Communications Commission
Office of the Secretary

Re: *Arkansas Cable Telecommunications Ass'n, et al. v. Entergy Arkansas, Inc.*, EB Docket
No. 06-53, EB-05-MD-004; Motion to Strike

Dear Ms. Dortch:

Enclosed for filing please find the original and six copies of Entergy Arkansas, Inc.'s ("EAI") Motion to Strike Complainants' filing on February 1, 2007, of a Reply to EAI's Response to Complainants' Emergency Motion in the above referenced docket. In addition, we request that you date-stamp the additional copy provided and return it with the messenger.

Thank you for your assistance in this matter. Should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,



Shirley S. Fujimoto

Counsel for Entergy Arkansas, Inc.

Enclosures

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

FILED/ACCEPTED

FEB - 2 2007

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Arkansas Cable Telecommunications) EB Docket No. 06-53
Association; Comcast of Arkansas, Inc.;)
Buford Communications I, L.P. d/b/a)
Alliance Communications Network;)
WEHCO Video, Inc.; and TCA Cable) EB-05-MD-004
Partners d/b/a Cox Communications,)
)
Complainants,)
)
v.)
)
Entergy Arkansas, Inc.,)
)
Respondent.)
)

To: Office of the Secretary
Attn: The Honorable Arthur I. Steinberg
Administrative Law Judge

MOTION TO STRIKE

Pursuant to Section 1.291 of the Rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.291, Respondent Entergy Arkansas, Inc. ("EAI") hereby moves the Presiding Officer to strike in its entirety Complainants' Reply to EAI's Response to Complainants' Emergency Motion for Hearing on Discovery Abuses filed on February 1, 2007 ("Complainants' Reply"). As set forth herein, Complainants' Reply is an impermissible filing explicitly prohibited from consideration by the Commission's Rules on hearing proceedings. Complainants' Reply must therefore be rejected and excluded from the record and from consideration in this proceeding, and/or must be stricken in its entirety.

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I. PROCEDURAL BACKGROUND

On January 5, 2007, Complainants filed an interlocutory pleading styled as an “Emergency Motion” in which Complainants requested a hearing on alleged discovery abuses. Pursuant to the Commission’s Rules on interlocutory pleadings in hearing proceedings, 47 C.F.R. §§ 1.291 – 1.298, EAI was required to file its response within four days after this pleading was filed, *i.e.*, by January 11, 2007. *See* 47 C.F.R. § 1.294(b). In order to be able to adequately respond to the allegations set forth in the Emergency Motion, EAI filed a motion on January 9, 2007, requesting a modest extension of two weeks up to and including January 25, 2007, to file its Response to Complainants’ Emergency Motion. On January 10, 2007, an Order was issued by the Administrative Law Judge (“ALJ”) granting EAI’s requested extension of time.¹ Accordingly, EAI filed its Response on January 25, 2007.

Subsequently, on February 1, 2007, Complainants filed the Reply that is the subject of the instant Motion to Strike.

II. THE COMMISSION’S RULES DO NOT PERMIT COMPLAINANTS’ REPLY, AND COMPLAINANTS’ REPLY MUST ACCORDINGLY BE EXCLUDED AND/OR STRICKEN FROM THE RECORD IN ITS ENTIRETY

Because the Commission’s Rules contain no specific provisions regarding so-called “Emergency Motions,” Complainants’ Emergency Motion is governed by the Commission’s procedural rules on interlocutory pleadings in hearing proceedings, as set forth in 47 C.F.R. §§ 1.291 – 1.298. Under these rules, any party to a hearing may file a response or opposition to an interlocutory request – such as Complainants’ Emergency Motion – filed in that proceeding. *See* 47 C.F.R. § 1.294(a). However, Section 1.294(b) of the Commission’s Rules states that “replies to oppositions *will not be entertained.*” 47 C.F.R. § 1.294(b) (emphasis added). Thus,

¹ / *Arkansas Cable Telecommunications Association, et al., v. Entergy Arkansas, Inc.*, EB Docket No. 06-53, File No. EB-05-MD-004, Order, FCC 07M-04 (rel. Jan. 12, 2007).

Complainants are explicitly barred by the Commission's Rules from filing a reply to EAI's response to Complainants' initial interlocutory pleading (*i.e.*, their "Emergency Motion").

The only exception to this bar on the filing of replies may be found in Section 1.294(d) of the Commission's Rules, which states "Additional pleadings may be filed *only if specifically requested or authorized* by the person(s) who is to make the ruling." 47 C.F.R. § 1.294(d) (emphasis added). However, EAI is unaware of any such request or authorization having been issued by the ALJ with respect to Complainants' Reply, nor is EAI aware of any motion having been filed by Complainants requesting such authorization.² Complainants' Reply must therefore be excluded or stricken from the record and its contents disregarded. *See La Fiesta Broadcasting Co., et al.*, 2 FCC 2d 255, 256 – 257 (Rev. Bd. 1965) (unless specifically requested or authorized, a reply to an opposition in an interlocutory matter will be stricken and its contents disregarded).

In the alternative, because Complainants' Emergency Motion includes discovery demands, it could arguably be considered a motion to compel even though it was not presented as such to the Commission. However, the Commission's rules on motions to compel provide only that a response to a motion to compel may be filed within seven days and explicitly state that, after a response has been filed, "Additional pleadings should not be submitted and will not be considered." *See* 47 C.F.R. § 1.323(c). Therefore, Complainants' Reply would be barred from consideration even if Complainants' initial Emergency Motion were treated as a motion to compel rather than as a general interlocutory pleading. Either way, the filing of Complainants' Reply is impermissible, and Complainants' Reply thus cannot be accepted, entertained, or considered under the plain language of the Commission's hearing rules.

² / EAI notes that, were Complainants to file such a motion, EAI would be entitled to file a response pursuant to Section 1.294(a) of the Commission's Rules, 47 C.F.R. § 1.294(a).

Accordingly, Complainants' Reply must be rejected and excluded from the record and from consideration in this proceeding and/or must be stricken in its entirety.

WHEREFORE, THE PREMISES CONSIDERED, Entergy Arkansas, Inc.

respectfully requests that Complainants' Reply to Entergy Arkansas, Inc.'s Response to Complainants' Emergency Motion be excluded from the record and from consideration in this proceeding and/or stricken in its entirety, and that that the Administrative Law Judge grant EAI all other appropriate relief consistent with the views expressed herein.

Respectfully submitted,



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Attorneys for Entergy Arkansas, Inc.

Dated: February 2, 2007

CERTIFICATE OF SERVICE

I, David D. Rines, do hereby certify that on this 2nd day of February 2007, a single copy (unless otherwise noted) of the foregoing "Motion to Strike" was delivered to the following by the method indicated:

Marlene H. Dortch (hand delivery) **(ORIGINAL PLUS 6 COPIES)**

Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

Hon. Arthur I. Steinberg (overnight delivery, fax, e-mail)

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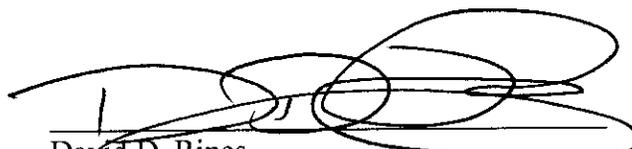
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