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February 15, 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 15 2007  
Federal Communications Commission  
Office of the Secretary

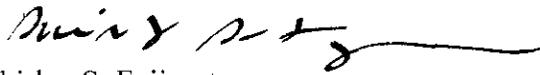
Re: *Arkansas Cable Telecommunications Ass'n, et al. v. Entergy Arkansas, Inc.*, EB Docket  
No. 06-53, EB-05-MD-004; Opposition to Motion for Extension of Time

Dear Ms. Dortch:

Enclosed for filing please find the original and six copies of Entergy Arkansas, Inc.'s ("EAI") Opposition to Complainants' Motion for Extension of Time to File a Response to EAI's Motion to Compel Production of Documents and Answers to Interrogatories by Complainants in the above referenced docket. In addition, we request that you **date-stamp the additional copy provided** and return it with the messenger.

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

No. of Copies rec'd 076  
List A B C D E

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

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

**FILED/ACCEPTED**

**FEB 15 2007**

Federal Communications Commission  
Office of the Secretary

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

**OPPOSITION TO MOTION FOR EXTENSION OF TIME**

Pursuant to Section 1.294(a) of the Rules of the Federal Communications Commission (“FCC” or “Commission”), 47 C.F.R. § 1.294(a), Respondent Entergy Arkansas, Inc. (“EAI”) hereby submits its Opposition to Complainants’ Motion for Extension of Time (“Motion”) to file a Response to EAI’s Motion to Compel.

As set forth herein, EAI supports the grant to Complainants of an extension of time as envisioned in the Parties’ agreement of August 22, 2006 (*see* Exhibit 1), to file their Response to EAI’s Motion to Compel. Accordingly, EAI would not object to a grant of an extension of time to Complainants up to and including February 23, 2007. However, EAI opposes the

extraordinary length of the extension until March 19, 2007, sought by Complainants, which would give Complainants over five weeks to file their Response and cause substantial and undue delay in the conduct of this proceeding.

The materials and information that are the subject of EAI's Motion to Compel are the same as those set forth in EAI's initial production requests served on Complainants on June 20, 2006. Complainants have known of their obligation to produce these documents and responses for nearly eight months, and have failed to explain why they require such a significant amount of additional time to make these long overdue productions. To the extent additional time is required, Complainants have not explained why the extended filing periods agreed to in August 2006 are insufficient or why Complainants should not be expected to abide by procedures that they themselves agreed to and memorialized. Furthermore, if granted, Complainants' requested 30-day extension would make their Response due the same day that the Parties are required to exchange all expert witness reports, thus unfairly prejudicing EAI by denying its expert witnesses any opportunity to review – let alone consider – any of the materials that are the subject of EAI's Motion to Compel.

For these reasons, and in accordance with the Parties' agreement of August 22, 2006, EAI supports the grant of an extension of time up to and including February 23, 2007, for Complainants to file a Response to EAI's Motion to Compel.

**I. COMPLAINANTS FAIL TO SHOW GOOD CAUSE FOR THE REQUESTED 30-DAY EXTENSION**

Complainants contend that they should receive an additional 30 days to respond to EAI's Motion to Compel because the Motion "is 20 pages long and seeks to compel the production of documents and answers to interrogatories on a broad number of subjects." (Complainants' Motion at 2.) This contention ignores the fact that these very same discovery requests were

provided to Complainants on June 20, 2006. Neither the requests nor the “number of subjects” covered are any different than what Complainants received nearly eight months ago, and the length of EAI’s Motion to Compel is attributable to the need to repeat each of these long-standing requests in their entirety. Complainants provide no explanation as to why they now require an additional 30 days – in addition to the seven-plus months they have already had – to provide long-overdue responses to EAI’s initial discovery requests.

Complainants also state that EAI’s Motion to Compel “contains hundreds of pages of exhibits, including materials that Complainants have never before seen. . .” (Complainants’ Motion at 2.) However, these materials consist either of pages from deposition transcripts (where Complainants and/or their counsel were present) or of clearly responsive documents produced by third parties, but not produced by Complainants. These documents were either created or received by Complainants, yet Complainants provide no explanation as to why they “have never before seen” them, let alone why they were not produced. The fact that they were surprised to see their own documents does not warrant the extraordinary extension of time sought by Complainants.

Finally, Complainants assert that a 30-day extension is necessary because there are six different Complainants to whom EAI’s Motion to Compel pertains. (Complainants’ Motion at 3.) Complainants have been aware from the very inception of this case – which they initiated – of the coordination and logistics necessary between six separate entities. Furthermore, as stated above, they have already had nearly eight months to address these issues with respect to EAI’s discovery requests. Their voluntary decision to coordinate their efforts is not sufficient cause to warrant the length of the extension they are now requesting and should not now be relied on as

*an excuse for their failure to adhere to a process and schedule that they themselves advocated and agreed to.*

While EAI agrees that a modest extension of time up to and including February 23, 2007, is appropriate, Complainants have failed to show that good cause exists for their extraordinary request for an extension of 30 days.

**II. BY MUTUAL AGREEMENT, THE PARTIES HAVE FOURTEEN DAYS TO FILE RESPONSES TO MOTIONS TO COMPEL**

All Parties recognized early on that discovery in this proceeding would result in voluminous document productions, and that the anticipated volume of production would likely make it difficult for the Parties to be able to strictly adhere to the relevant deadlines in the Commission's Rules regarding motions to compel and related pleadings. Therefore, the Parties mutually agreed on the procedures that they would honor with respect to motions to compel and responses to such motions. This agreement was memorialized in a letter from J.D. Thomas, counsel for Complainants, to the Administrative Law Judge ("ALJ"), dated August 22, 2006. (*See Exhibit 1*). Pursuant to their mutual agreement, the Parties are to attempt to resolve all discovery issues in a cooperative informal manner and, upon determining that an impasse exists, will have fourteen days to file a motion to compel. (*Id.*) Under the agreement, any opposition or response to a motion to compel would be due fourteen days after the filing of the motion to compel. (*Id.*)

Contrary to the assertions made in Complainants' Motion, EAI has consistently sought informal resolution of the issues raised in its Motion to Compel. EAI expressed concerns with Complainants' production on various occasions during discussions with counsel for Complainants. However, Complainants made clear that they had no interest in reaching any informal resolution when, with only one day's notice to EAI, Complainants filed an

“Emergency” Motion alleging discovery abuse, and subsequently filed a Motion to Compel on additional issues that Complainants never once attempted to resolve through discussions or other informal means.<sup>1</sup> On January 26, 2007, the day after being served with Complainants’ Motion to Compel, counsel for EAI contacted counsel for Complainants to determine whether there was an impasse regarding EAI’s concerns. Upon concluding that an impasse existed, EAI accordingly filed its Motion to Compel on February 9, 2007, pursuant to the terms and procedures of the Parties’ August 2006 agreement.

As described above, the Parties’ agreement explicitly envisioned that additional time would be necessary in this case for a Party to respond to a motion to compel and thus provided for an additional seven days beyond the time provided under the Commission’s Rules for a response to be filed. Pursuant to the terms of the agreement, Complainants’ Response to EAI’s Motion to Compel would therefore be due February 23, 2007. In their Motion for an Extension of Time, Complainants have not explained why they should not be expected to now comply with the terms of agreement they made with EAI. Complainants have not explained why the additional time provided by the agreement is insufficient, nor have they explained why their present circumstances are any different than they were when Complainants adopted the agreement on August 22, 2006, two months after they had already received the discovery requests that are the subject of EAI’s Motion to Compel.

By requesting an extension of 30 days without any acknowledgement whatsoever of the terms – or even the existence – of the Parties’ August 22, 2006 agreement, Complainants are

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<sup>1</sup> / On January 30, 2007, just before EAI’s Response to Complainants’ Motion to Compel was due, J.D. Thomas, counsel for Complainants, contacted counsel for EAI and offered to withdraw the Motion to Compel if EAI would agree to produce everything requested in the Motion to Compel. This last-minute “all-or-nothing” offer was the only direct contact Complainants ever made with EAI regarding the issues raised in Complainants’ Motion to Compel.

effectively renouncing promises and representations made in writing to EAI, the Administrative Law Judge, and the Commission. Therefore, in the interest of preserving the integrity of this proceeding, EAI urges that Complainants be required to adhere to the explicit terms of the Parties' mutual agreement and that Complainants accordingly be granted an extension of time up to and including February 23, 2007, to file their Response to EAI's Motion to Compel.

**III. COMPLAINANTS' REQUESTED 30-DAY EXTENSION WOULD UNFAIRLY PREJUDICE EAI AND THREATENS TO DERAIL THE HEARING SCHEDULE ENTIRELY**

Complainants requested extension would give them up to and including March 19, 2007, to file their Response to EAI's Motion to Compel. Not only would this provide Complainants over five weeks to submit their Response, it would also make Complainants' Response due the same day – March 19, 2007 – that the Parties are required to exchange all expert witness reports pursuant to the ALJ's scheduling order for this hearing proceeding. As set forth in EAI's Motion to Compel, the gaps in Complainants' discovery responses are significant and comprise substantial relevant information essential to EAI's ability to defend itself in this case. If Complainants are not required to even respond to EAI's Motion to Compel until March 19, 2007, EAI's expert witnesses would be effectively prevented from reviewing or considering any of the requested information or materials before their reports must be completed and turned over to Complainants. EAI would thus be substantially and unfairly prejudiced by the effective denial to its experts of access to significant and highly relevant evidence. Moreover, even if, under the most optimistic scenario, EAI were to actually receive all of the documents and responses requested from Complainants on March 19, these materials would be available to EAI's experts only two weeks (at most) before the due date for all expert witness rebuttal reports and the commencement of expert witness depositions, effectively hamstringing EAI during the expert

phase of the discovery process. Accordingly, Complainants requested 30-day extension is unreasonable and prejudicial to EAI.

Finally, EAI is very concerned about the impact of Complainants requested 30-day extension on the hearing schedule overall.<sup>2</sup> Complainants have already succeeded in indefinitely postponing the taking of non-expert depositions that had already been scheduled by mutual agreement. Complainants have subsequently submitted impermissible filings explicitly prohibited by the Commission's hearing rules, thus creating not only additional and unnecessary paper, but additional and unnecessary delay as well. Complainants now seek to delay this process even further for no demonstrable good cause.

Accordingly, while a the grant of a more limited extension of time up to and including February 23, 2007, may be warranted, Complainants' request for an extension of 30 days up to including March 19, 2007, must be denied.

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<sup>2</sup> / EAI notes that the hearing schedule adopted by the ALJ was the schedule that Complainants themselves advocated.

**WHEREFORE, THE PREMISES CONSIDERED**, Entergy Arkansas, Inc. respectfully requests that Complainants' Motion for Extension of Time be granted in part and denied in part to provide Complainants an extension of time up to and including February 23, 2007, to file a Response to EAI's Motion to Compel, 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 15, 2007

## CERTIFICATE OF SERVICE

I, David D. Rines, do hereby certify that on this 15<sup>th</sup> day of February 2007, a single copy (unless otherwise noted) of the foregoing "Opposition to Motion for Extension of Time" 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)  
Administrative Law Judge  
Office of the Administrative Law Judge  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554  
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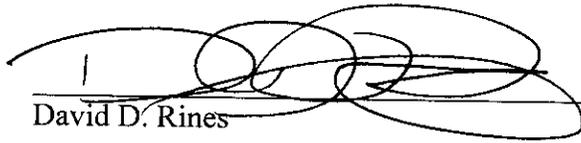
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*Arkansas Public Service Commission (U.S. Mail)*  
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David D. Rines

# **EXHIBIT 1**

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August 22, 2006

J. D. Thomas  
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## *BY HAND DELIVERY*

The Honorable Arthur I. Steinberg  
Administrative Law Judge  
Federal Communications Commission  
Washington, D. C. 20554

**Re: Arkansas Cable Telecommunications Association *et al.* v. Entergy Arkansas, Inc. – EB Docket No. 06-53/EB-05 MD-004**

Dear Judge Steinberg:

The purpose of this letter is to notify you of an agreement that Complainants Arkansas Cable Telecommunications Association, Comcast of Arkansas, Inc., Buford Communications I, L.P. d/b/a/ Alliance Communications Network; WEHCO Video, Inc., CoxCom, Inc. and Cebridge Acquisition, L.P., d/b/a Suddenlink Communications (“Complainants”) and Entergy Arkansas, Inc. have reached with respect to any discovery disputes that may arise in the course of this proceeding. We have discussed this matter with Enforcement Bureau Staff Counsel, Mike Engel, and he has no objection to our agreement.

As the parties anticipated, the document production in this proceeding is voluminous and complex. As such, Complainants and Entergy Arkansas, Inc. have agreed that the production shall occur in stages. However, the parties’ agreement regarding the phases of the production raises a question with respect to the application of Rule 1.325, 47 C.F.R. § 1.325, to our proceeding. Rule 1.325 specifies that motions to compel discovery responses must be filed within five (5) business days of the assertion of an objection or claim of privilege. Under the circumstances of the production in this case, adherence to this rule is extremely difficult if not impossible. Thus, the parties have reached the following agreement:

1. Consistent with the ALJ’s direction at the pre-hearing conference, counsel for the parties will first attempt to resolve all discovery issues in a cooperative informal manner; and
2. To the extent that the parties reach impasse on a disputed item, they agree that (a) they will have fourteen (14) business days from the time that such impasse occurs to file a motion to compel; (b) any opposition to such motion shall be filed within

Judge Arthur I. Steinberg

August 22, 2006

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fourteen (14) business days after that; and (c) the non-moving party shall not oppose nor otherwise object to a motion to compel on the basis that it is or may have been untimely filed under Rule 1.325.

If you have any questions or concerns about this matter please do not hesitate to call me at 202.637.5675 or Gordon Rather at 501.212.1267.

Sincerely,

A handwritten signature in black ink, appearing to be "J. D. Thomas", written in a cursive style.

J. D. Thomas

cc: Gordon S. Rather, Jr., Esq.  
Mike Engel, Esq.