



Federal Communications Commission
Washington, D.C. 20554

April 10, 1998

DA 98-704

George Dwight II
Senior Counsel, Cinergy Corp.
139 East Fourth Street
Cincinnati, Ohio 45202

Re: Cinergy Communications
File No. ETC-96-18

Dear Mr. Dwight:

On April 3, 1998, you filed with the Commission an application on behalf of Cinergy Communications, Inc. ("Cinergy") seeking a new determination of exempt telecommunications company ("ETC") status under Section 1.5006(a) of our rules. According to the application, Cinergy requests a new determination of ETC status because it believes that a "material change in fact" has occurred since the Commission granted Cinergy's original application for a determination of ETC status. As explained below, we find there has been no material change in fact and, therefore, Cinergy is not required to file for a new determination of ETC status under Section 1.5006(a) of our rules.

In its original application, Cinergy identified not only certain permitted activities in which it was engaged, but also represented to the Commission that it may provide additional permitted services and products as opportunities arose and markets developed for such services and products beyond the activities described precisely in its application.¹ Based on the good faith representations contained in the original application, the General Counsel granted Cinergy's application for a determination of ETC status on October 28, 1996.² In its current application, Cinergy repeats the same representations contained in its original application and expands the description of activities to include an Internet-based information

¹ See Cinergy Communications, Inc., September 27, 1996 Application at 2-3.

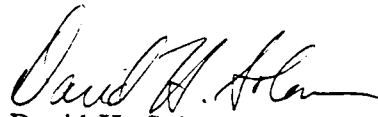
² *Cinergy Communications Inc.*, 11 FCC Rcd 12283 (OGC 1996).

service which, according to Cinergy, is generally similar to the permitted activities engaged in by an entity to which the Commission recently granted a determination of ETC status.³

Under our rules, a "material change in fact" occurs "only when, in the ETC's judgment, its activities fall outside of the scope of the criteria for ETC status set forth in Section 34(a)(1)."⁴ A "material change in fact" has not occurred, however, whenever an ETC engages in permitted activities not otherwise mentioned specifically in its original application.⁵ Moreover, based on the representations contained in the April 6 application, Cinergy makes clear that it plans to continue to engage in permitted activities, and does not intend to engage in activities that would fall outside the scope of Section 34(a)(1). Accordingly, a "material change of fact" has not occurred and, therefore, Cinergy need not file for a new determination of ETC status under Section 1.5006(a) of our rules.

Because no "material change in fact" has occurred, Cinergy's original ETC determination continues to remain in full force. As such, we dismiss Cinergy's application.

Sincerely,



David H. Solomon
Deputy General Counsel

³ Cinergy's April 6, 1998 Application at 3 n.2. *See e.g.* Energy.com Corporation, ETC-98-1, __ FCC Rcd __, DA 98-311 (OGC Feb. 20, 1998).

⁴ *See Implementation of Section 34(a)(1) of the Public Utility Holding Company Act of 1935, as added by Section 103 of the Telecommunications Act of 1996*, GC Docket No. 96-101, Report & Order, 11 FCC Rcd 11377 at ¶ 66 (1996).

⁵ *See id.* (the term "material change in fact" does not apply to the "brief description of activities" required in Rule 1.5002).