

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**September 21, 2009**

**IN RE:**

**COMPLAINT BY AENEAS COMMUNICATIONS, LLC  
AGAINST BELL SOUTH TELECOMMUNICATIONS  
ALLEGING ANTICOMPETITIVE BUSINESS  
PRACTICES**

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**DOCKET NO.  
02-01274**

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**ORDER ADMINISTRATIVELY CLOSING DOCKET**

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On December 5, 2002, the Tennessee Regulatory Authority (“TRA”) opened the instant docket upon the filing of a letter of complaint by Aeneas Communications, LLC (“Aeneas”) alleging certain anti-competitive conduct or business practices against BellSouth Telecommunications, Inc. (“BellSouth”).<sup>1</sup> BellSouth filed its response to Aeneas’ complaint letter on January 21, 2003. Thereafter, on August 4, 2003, among other things, the Authority ordered the parties to initiate discussions in an attempt to resolve the matters in dispute between them. Over the next three years, the parties consistently requested that the Authority maintain a static posture in this docket pending the outcome of their ongoing settlement negotiations.

Then, on September 13, 2006, Aeneas filed a status report admitting, “. . . relief for most of the specific violations alleged was no longer practicable” and requested leave to dismiss the time-dated claims and permission to file a Restated Petition.<sup>2</sup> On October 16, 2006, BellSouth filed its response to Aeneas’ Restated Petition. Thereafter, the parties made no filings in the docket for the next two years.

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<sup>1</sup> Following the initial complaint filing, Aeneas has alleged new or additional claims and allegations to the Authority for resolution in this docket on at least three separate occasions; See, Aeneas’ filings on April 4, 2003, September 1, 2004, and August 18, 2005.

<sup>2</sup> Cover Letter dated September 13, 2006, filed with the Restated Petition of Aeneas Communications, LLC (September 15, 2006).

On October 3, 2008, in an effort to move the docket to a final resolution, the Hearing Officer issued an Order directing the parties to file a joint-issues matrix and a proposed procedural schedule. On October 27, 2008, the parties filed a joint-issues matrix setting forth the parties' respective positions on a total of three issues proffered to the Authority for resolution. An Order, issued on November 3, 2008, adopted the parties' proposed schedule setting deadlines for the filing of pre-filed testimony without modification,<sup>3</sup> and further acknowledged the parties' assurances "to conduct whatever discovery maybe needed and to continue negotiations" in the three months interim to the first filing deadline.<sup>4</sup>

On January 30, 2009, the parties filed a joint request for a sixty-day suspension of the Procedural Schedule in order to continue their discussions concerning a settlement that they anticipated would resolve all remaining issues in the docket. The Authority granted the request of the parties in an Order entered on February 2, 2009; thereby, resetting the first deadline for filing pre-filed testimony to April 3, 2009. Subsequently, upon expiration of the April 3, 2009 deadline for the filing of Aeneas' initial pre-filed testimony, and having heard nothing from either party, on April 20, 2009 and on June 2, 2009, the Hearing Officer requested that the parties provide a status report on the issues remaining before the Authority. On June 12, 2009, counsel for Aeneas responded, stating, "[T]he parties are in active settlement discussions, which, if successful, will result in the withdrawal of the complaint," and again requested that the docket remain open.<sup>5</sup>

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<sup>3</sup> Pursuant to the Procedural Schedule the filing of Aeneas' Pre-filed Direct Testimony, the first filing deadline noted therein, was February 3, 2009; AT&T's Pre-filed Direct Testimony was due March 3, 2009; and Aeneas' Pre-filed Rebuttal Testimony, the final filing by the parties, was due March 18, 2009. The parties further indicated that following the filing of pre-filed testimony the docket would be ready to proceed to a Hearing on the Merits. Nevertheless, no testimony was ever filed.

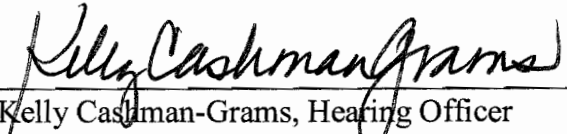
<sup>4</sup> See, Letter of the parties to the Hearing Officer (October 31, 2008). See also, *Order Adopting Procedural Schedule* (November 3, 2008).

<sup>5</sup> Letter of Aeneas to the Hearing Officer (June 12, 2009).

At the request of the parties, this matter has remained dormant before the Authority in anticipation of the conclusion of the parties' impending settlement negotiations for over six years. As demonstrated by the procedural history and perpetual requests for continuances by the parties, the matters alleged in the docket either do not require or are not yet ripe for resolution by the Authority.

**IT IS THEREFORE ORDERED THAT:**

1. This docket is **ADMINISTRATIVELY CLOSED**.
2. In the event that the parties reach a settlement, the docket may be reopened upon the joint motion of the parties for the purpose of the Authority's consideration of the settlement agreement.
3. In the event that settlement negotiations ultimately fail, this Order shall not bar either party, once ready to proceed, from filing a new petition. The filing of such petition, shall initiate a new docket.

  
Kelly Cashman-Grams, Hearing Officer