

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 6, 2006

IN RE:

PETITION FOR ARBITRATION OF AENEAS
COMMUNICATIONS, LLC WITH BELL SOUTH
TELECOMMUNICATIONS, INC.

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DOCKET NO.
04-00017

ORDER DENYING SUPPLEMENTAL PETITION FOR ARBITRATION

This matter came before the Pre-Arbitration Officer of the Tennessee Regulatory Authority ("Authority" or "TRA") upon the filing of the *Supplemental Petition for Arbitration by Aeneas Communications, LLC* ("Supplemental Petition") on November 7, 2005

BACKGROUND

On January 21, 2004, Aeneas Communications, LLC ("Aeneas") filed a *Petition for Arbitration of Aeneas Communications, LLC* ("Petition for Arbitration") pursuant to 47 U.S.C. § 252 seeking the arbitration of unresolved issues in the interconnection negotiations between Aeneas and BellSouth Telecommunications, Inc. ("BellSouth"). According to the *Petition for Arbitration*, Aeneas and BellSouth agreed that the arbitration window opened on December 23, 2003 and closed on January 17, 2004. BellSouth filed a response to the *Petition for Arbitration* on February 17, 2004. At a regularly scheduled Authority Conference held on February 9, 2004, the voting panel assigned to this docket voted unanimously to appoint the Authority's General Counsel or his designee as the Pre-Arbitration Officer for the purpose of identifying issues and preparing the matter for hearing. On April 28, 2004, the parties filed a letter to the Pre-Arbitration Officer stating their agreement to waive the nine-month deadline for arbitration and stating that the parties were continuing to negotiate the

issues submitted to the TRA for arbitration.¹ On June 30, 2004, Aeneas filed a status report stating that Aeneas had agreed with BellSouth to put their “talks on hold until the regulatory environment settled down.”² On December 13, 2004, the parties filed a letter to the Pre-Arbitration Officer stating that the parties had agreed that the negotiations were on hold pending the issuance of new rules by the Federal Communications Commission (“FCC”) and the TRA’s decision in Docket No 04-00381.³

THE SUPPLEMENTAL PETITION

On November 7, 2005, Aeneas filed the *Supplemental Petition*, stating that Aeneas had proposed an amendment to BellSouth in August 2004 “which BellSouth refuses to negotiate.”⁴ According to Aeneas, BellSouth charges Aeneas, and Aeneas pays, \$19.95 each time a telephone number is ported from BellSouth to Aeneas via an order referred to as a “Local Service Request” or “LSR.” Aeneas proposed to change the parties’ interconnection agreement to provide for BellSouth to pay Aeneas the same amount each time a number is ported from Aeneas to BellSouth. Aeneas asserts it is entitled to reimbursement for “providing this valuable service to BellSouth on a quantum meruit basis retroactive to the date it proposed the amendment.”⁵ Aeneas also contends it is entitled to alter the interconnection agreement to provide for LSR charges under Tenn. Code Ann. § 65-4-115, 122 and 124 which prohibit unjust, unreasonable, unduly preferential or discriminatory practices. According to Aeneas, this is a stand-alone issue and there is no need to wait on the outcome of Docket No 04-00381 to address it. In the *Supplemental Petition*, Aeneas requests a

¹ Letter from Guy M. Hicks to Kim Beals, Hearing Officer (April 28, 2004)

² Letter from Paul F. Rice to Richard Collier, General Counsel (June 30, 2004)

³ Letter from Henry Walker to Jean A. Stone, Pre-Arbitration Officer (December 13, 2004). Docket No 04-00381 is the generic “change-of-law” proceeding to address recent decisions of the Federal Communications Commission and the United States Court of Appeals for the District of Columbia Circuit. See *In re BellSouth’s Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law*, Docket No 04-00381.

⁴ *Supplemental Petition for Arbitration by Aeneas Communications, LLC*, p. 2 (November 7, 2005)

⁵ *Id.*

declaratory ruling to the effect that it is entitled to LSR charges retroactive to August 1, 2004, an injunction prohibiting BellSouth from refusing to pay the charges until an amendment or new interconnection agreement is executed by agreement or order, and an expedited hearing on the issue

In its response filed on November 29, 2005, BellSouth requests that the Authority not grant Aeneas' request to amend the *Petition for Arbitration*. BellSouth argues that the issue regarding porting charges was not raised in the *Petition for Arbitration* or in BellSouth's response to the *Petition for Arbitration* and, therefore, should be denied based on 47 U.S.C. § 252(b)(4)(A). BellSouth cites the Hearing Officer's ruling in TRA Docket No. 03-00585⁶ as support for this contention. In addition, BellSouth asserts that it has previously notified Aeneas that it is willing to consider Aeneas' request in the context of negotiating a new interconnection agreement, but that Aeneas has "declined to negotiate a new TRO- and TRRO-compliant agreement."⁷

On December 7, 2005, Aeneas filed its *Reply to BellSouth's Response to Supplemental Petition for Arbitration by Aeneas Communications, LLC*. ("Reply"). Aeneas contends that supplemental pleadings are allowed in arbitration cases pursuant to TRA Rule 1220-1-1-.02 and TRA Rule 1220-1-2-.22(2). Aeneas distinguishes Docket No. 03-00585, where the request was to supplement the final joint issues matrix after extensive activity in the docket. In this proceeding, Aeneas argues, no litigation activity has taken place and there is no prejudice possible by adding an issue. Aeneas contends that a TRO/TRRO compliant agreement is the objective of the arbitration. Finally, Aeneas suggests in the alternative that, if the Authority deems it appropriate, the Authority could assign the allegation that the parties' current interconnection agreement is in violation of anti-discrimination statutes its own docket number for treatment as a contested case.

⁶ *In re: Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless, Petition for Arbitration of BellSouth Mobility LLC, BellSouth Personal Communications, LLC, Chattanooga MSA Limited Partnership, Collectively d/b/a Cingular Wireless, Petition for Arbitration of AT&T Wireless PCS, LLC d/b/a AT&T Wireless, Petition for Arbitration of T-Mobile USA, Inc., Petition for Arbitration of Sprint Spectrum L.P. d/b/a Sprint PCS*, Docket No. 03-00585, *Order Denying Request to Add Issues to the Final Joint Issues Matrix* (August 2, 2004).

⁷ *BellSouth's Response to Aeneas' Request to Supplement Its Petition for Arbitration with a New Issue*, p. 3 (November 29, 2005).

FINDINGS AND CONCLUSIONS

Section 252(b)(4)(A) of the Telecommunications Act of 1996 reads:

(A) The State commission **shall limit** its consideration of any petition under paragraph (1) (and any response thereto) **to the issues set forth in the petition and in the response**, if any, filed under paragraph (3) (Emphasis added)⁸

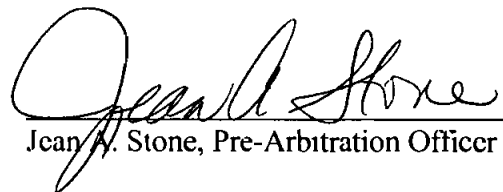
After review of the *Petition for Arbitration* and BellSouth's response thereto, the Pre-Arbitration Officer finds that the porting charge issue is not set forth in either the *Petition for Arbitration* or the response. Aeneas cites TRA Rule 1220-1-1-.02 and TRA Rule 1220-1-2-.22(2) as authority for the proposition that the TRA can add issues in an arbitration proceeding. TRA Rule 1220-1-1-.02 states that "[t]hese rules apply to arbitration proceedings . . . unless otherwise specified." TRA Rule 1220-1-2-.22(2) allows the Authority in a contested case to "allow amendments" or to "permit additional claims." The Pre-Arbitration Officer finds that the Authority's procedural rules are made applicable to arbitration proceedings to provide guidance to the parties on practice and procedural matters, such as timelines for filings, motions and discovery procedures. The Authority's rules are not designed to, nor can they, expand the Authority's jurisdiction in a Section 252 arbitration beyond what has been delegated to the Authority under the Federal Telecommunications Act. Because Section 252(b)(4)(A) limits the Authority's consideration only to those issues raised in the *Petition for Arbitration* or the response, the Pre-Arbitration Officer concludes that that the request to add the porting charge issue to this arbitration should be denied. Because this issue is not appropriate for arbitration in this docket, the Pre-Arbitration Officer also finds that it is inappropriate to consider the request for a declaratory ruling, an injunction and an expedited hearing in this arbitration docket. As a result, the Pre-Arbitration Officer concludes that the request for a declaratory ruling, an injunction and an expedited hearing should be denied.

⁸ 47 U.S.C. § 252(b)(4)(A)

In its *Reply*, Aeneas has suggested that, if the Authority deems it appropriate, the Authority could assign the allegation that the parties' current interconnection agreement is in violation of anti-discrimination statutes its own docket number for treatment as a contested case. Nothing in this decision precludes Aeneas from filing its allegation as a complaint before the Authority; however, such a complaint is not appropriate for consideration in this docket and will not be considered in this docket.

IT IS THEREFORE ORDERED THAT:

1. The *Supplemental Petition for Arbitration by Aeneas Communications, LLC* is denied
- 2 Any party aggrieved by the Pre-Arbitration Officer's decision in this matter may file a Petition for Reconsideration with the Pre-Arbitration Officer within fifteen (15) days from the date of this Order.
3. Any part aggrieved by the decision of the Pre-Arbitration Officer in this matter may file a Petition for Appeal with the Tennessee Regulatory Authority within fifteen (15) days from the date of this Order.


Jean A. Stone, Pre-Arbitration Officer