BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

September 15, 2006

In re: Generic Docket to Develop Policy for the Submission and Review of CLEC-TO-CLEC Interconnection Agreements	)))	Docket No. 05-00327

COMMENTS OF BRISTOL TENNESSEE ESSENTIAL SERVICES

Bristol Tennessee Essential Services ("BTES")[1] submits the following comments in response to the "Notice of Filing Comments" issued by the Tennessee Regulatory Authority ("TRA" or "Authority") on August 24, 2006.

Background

The Notice describes the agency's proceedings in Docket 04-00128 in which two competing local exchange carriers, Jackson Energy Authority and Aeneas Communications, LLC, jointly petitioned the Authority for approval of an interconnection agreement between the two CLECs. In an Order issued July 19, 2005, the Authority held that it had jurisdiction under state law to review and approve the agreement pursuant to T.C.A. §65-4-124. The agency added, however, that its approval of the JEA-Aeneas contract "is not intended to establish a requirement that all future agreements negotiated between competitive local exchange carriers be submitted to the Authority for review." Order, at 5. The Authority announced that it would open a generic docket "to develop policy and guidelines for the submission and review of CLEC-to-CLEC interconnection agreements." Id. The "Notice of Filing Comments," issued August 24, 2006, begins that generic docket.

[1] BTES is a certified, competitive local exchange carrier authorized to provide local telephone service in and around Bristol, Tennessee. See TRA Docket 05-00251, Order issued March 21, 2006.

Discussion

BTES respectfully suggests that the Authority reaffirm its earlier decision "not . . . to establish a requirement" that all CLEC-to-CLEC agreements must be approved by the Authority. There is no such requirement in state[2] or federal law[3] and the TRA should not create one. Any problems that may arise between one CLEC and another can and have been handled by the Authority upon the filing of a complaint pursuant to T.C.A. §65-4-124 or §65-4-117(a).[4]

To the knowledge of BTES, no state commission in the country requires CLECs to submit CLEC-to-CLEC contracts for agency review and approval. No agency has interpreted the federal Telecommunications Act to require such filings and, although most states have broad jurisdiction under state law to address CLEC-to-CLEC complaints, no state has apparently found it necessary to order that all CLEC-to-CLEC agreements be submitted for approval under state law. This is not surprising. Absent a complaint or the inability of the CLECs to negotiate an interconnection agreement, there is no reason for state regulators to review and approve every agreement between two, non-incumbent carriers, neither of which is presumed to have any unfair bargaining power over the other. Given the TRA's power to address any CLEC-to-CLEC problems as they arise, a rule requiring that all CLEC-to-CLEC interconnection agreements be submitted for review would be unnecessary and burdensome to the carriers and the agency.

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[2] State law requires that all telecommunications carriers provide reasonable, non-discriminatory interconnection to other carriers (T.C.A. §65-4-124(a)) and requires the TRA to "promulgate rules and issue such orders" to implement that requirement. T.C.A. §65-4-124(b). Pursuant to this statute, the TRA has promulgated a rule requiring non-discriminatory and reasonable interconnection agreements among carriers. TRA Rule 1220-4-8-.04(3)(c)(2). But nothing in the statute or the rule requires carriers to file such arrangements with the TRA.

[3] See footnote 5, infra.

[4] The agency has jurisdiction under state law to review a CLEC-to-CLEC agreement when requested to do so by both parties, as occurred in the Aeneas-JEA case, or when necessary to resolve a complaint by one CLEC against another. See T.C.A. §65-4-124(b) and §65-4-117(a).

During the decade since the passage of the federal Telecommunications Act, the Authority has addressed complaints between CLECs and ILECs, ILECs and ILECs, and CLECs and CLECs, all without going beyond the filing requirements of the federal Act, which requires only that interconnection agreements between CLECs and ILECs be filed with state regulators.[5] Given that the TRA has jurisdiction under state law to review CLEC-to-CLEC agreements when requested by the parties or when necessary to resolve a complaint, there is no good reason to alter ten years of policy and begin now ordering that all such agreements be submitted to the agency for review and approval.

Conclusion

For these reasons, BTES urges the Authority to reaffirm its earlier ruling in the JEA-Aeneas case and "not . . . establish a requirement" that all CLEC-to-CLEC agreements be filed with and approved by the TRA.

Respectfully submitted,

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[5] The federal Act refers to interconnection agreements as contracts between incumbents and competitive carriers, not contracts between one CLEC and another. See, for example, Sections 252(a)(1) and (b)(1), which refer to contracts negotiated or arbitrated between an ILEC and a CLEC. Section 252(e) requires the filing of interconnection agreements with state commissions. Although Section 252(e) starts by referring to "[a]ny interconnection agreement," the sentence continues by saying "adopted by negotiation or arbitration." Therefore, when the statute describes "any interconnection agreement adopted by negotiation or arbitration," the statute is presumably referring to agreements negotiated between a CLEC and an ILEC under 252(a)(1) or arbitrated between a CLEC and an ILEC pursuant to 252(b)(1). Thus, Section 252(e) applies only to interconnection agreements between ILECs and CLECs.