BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 30, 2007

IN RE:	)	
	)	**DOCKET NO.**
GENERIC DOCKET TO DEVELOP	)	**05-00327**
POLICY FOR THE SUBMISSION AND	)	
REVIEW OF CLEC-TO-CLEC	)	
INTERCONNECTION AGREEMENTS	)	

DISSENTING OPINION OF DIRECTOR RON JONES

This docket came before a panel of the Tennessee Regulatory Authority ("Authority") during an Authority Conference on January 8, 2007. At that conference, a majority of the panel declined to initiate a new policy or rulemaking regarding review and approval of interconnection agreements between competitive local exchange carriers ("CLECs").[1] For the reasons stated herein, I respectfully dissent from this decision and provide this opinion in support of my vote.

The decision of the majority is based on three findings. The first finding is that there is no need to develop a formal policy or rulemaking at this time.[2] The second finding is that a mandate to submit CLEC-to-CLEC interconnection agreements would be unduly burdensome to the companies involved.[3] The third finding is that any problems that arise between the parties can be brought through a complaint to the Authority for resolution.[4] I specifically address the first and third findings below. I do not disagree with the second finding, and, in fact, I believe that creating a rule would serve to relieve the regulatory burdens currently sustained by CLECs.

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[1] *Order Declining Rulemaking*, p. 2 (Nov. 30, 2007); Transcript of Authority Conference, p. 43 (January 8, 2007).
[2] *Order Declining Rulemaking*, p. 2 (Nov. 30, 2007); Transcript of Authority Conference, p. 42 (January 8, 2007).
[3] *Order Declining Rulemaking*, p. 2 (Nov. 30, 2007); Transcript of Authority Conference, p. 43 (January 8, 2007).
[4] *Order Declining Rulemaking*, p. 2 (Nov. 30, 2007); Transcript of Authority Conference, p. 43 (January 8, 2007).

I. FINDING NUMBER ONE: THERE IS NO NEED TO DEVELOP A FORMAL POLICY OR RULEMAKING AT THIS TIME.

Comments were filed in this docket by eight entities. The commenters generally agreed that there are no federal or state requirements for CLECs to file CLEC-to-CLEC interconnection agreements with the Authority and that the Authority should refrain from imposing such a requirement.[5] I agree with these comments as did my colleagues. But unlike my colleagues, I do not conclude from this agreement that no rulemaking is needed. To the contrary, it is my opinion that the creation of a rule that specifically provides that certain CLEC interconnection agreements do not have to be filed with the Authority would go a long way to clarify CLECs' regulatory obligations. CLECs should not have to expend finite resources in an attempt to determine whether to file or not to file. In short, adopting a rule does not have to create a burden – it can, in fact, alleviate a burden.

I was not a member of the panel that decided to open this docket, but I am of the opinion that the filing before that panel at that time and the filings made since that time demonstrate that the decision was a wise one. To explain, since the decision was made to open a "generic docket to develop policy and guidelines for the submission and review of CLEC-to-CLEC interconnection agreements,"[6] agreements between a CLEC and a wireless carrier and a CLEC and several non-Tennessee certificated Georgia rural local exchange carriers have been filed with

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[5] Several minority comments were provided as well. Time Warner Telecom of the Mid-South, LLC ("Time Warner"), Level 3 Communications, Inc. ("Level 3"), and Aeneas Communications, LLC ("Aeneas") offer specific comments with regard to CLEC-to-CLEC interconnection agreements involving a municipally-owned CLEC. Aeneas advocates a mandatory filing requirement for these agreements when they impact network access or transport. *Comments of Aeneas Communications, LLC*, p. 5 (Sept. 15, 2006). Time Warner and Level 3 do not advocate a mandatory filing requirement for this type of interconnection agreement, but instead assert that at the request of a party to such an agreement the Authority should review the agreement by applying a different standard of review than when no municipality is involved. *Comments of Time Warner Telecom of the Mid-South, LLC and Level 3 Communications, Inc.*, p. 4 (Sept. 15, 2006). Aeneas also contends that interconnection agreements should not include terms and conditions for retail operations, as opposed to network operations, and every interconnection agreement should include opt-in or pick-and-choose provisions. *Comments of Aeneas Communications, LLC*, pp. 5-6 (Sept. 15, 2006).

[6] *In re: Petition for Approval of the Interconnection Agreement between Jackson Energy Authority and Aeneas Communications, LLC*, Docket No. 04-0128, *Order Approving Interconnection Agreement*, p. 5 (July 19, 2005).

the Authority. These most recent agreements were assigned docket numbers and a panel. In all instances, the agreements were filed either "out of an abundance of caution" or "for informational purposes or, in the alternative, for approval."[7] In short, the parties were uncertain as to the need to file the agreements and chose, in order to avoid negative consequences, to bear the necessary expense of making a filing. It is my opinion that a newly-opened rulemaking would present an optimal opportunity for this agency to set out its filing requirements for interconnection agreements between CLECs as well as agreements between a CLEC and any non-ILEC party or non-Tennessee entity. Such a rule would provide useful and definitive guidance to interconnecting parties. In conclusion, while I agree that it is not appropriate at this time to develop rules imposing filing obligations, I am of the opinion that it would be beneficial to craft a rule addressing the types of agreements that do not have to be filed.

II. FINDING NUMBER THREE: ANY PROBLEMS THAT ARISE BETWEEN THE PARTIES CAN BE BROUGHT THROUGH A COMPLAINT TO THE AUTHORITY FOR RESOLUTION.

I do not disagree as a matter of fact with this finding. It is true that disputes between CLECs can be brought to the Authority for resolution through the filing of a complaint. I do, however, construe a different result from this fact. Rather than recognize this fact as a basis for declining to proceed with a rulemaking, why not recognize it along with the fact that the existing complaint process is often long and cumbersome as a basis for streamlining the complaint process? In a rulemaking docket, the Authority could take a forward-looking approach and recognize that there are different entities out there with different types of complaints and improve on what has been the legacy response to the complaint process.

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[7] *See In re: Petition for Approval of an Interconnection Agreement Between Comcast Phone, LLC and Cellco Partnership d/b/a Verizon Wireless*, Docket No. 06-00074, *Joint Petition*, p. 1 n.2 (Mar. 17, 2006) (regarding an interconnection agreement between a wireless provider and a CLEC); *In re: Petition for Traffic Exchange Agreement Between Charter Fiberlink-Tennessee, LLC and Trenton Telephone Company*, Docket No. 06-00266, Letter to Chairman Sara Kyle from Charles A. Hudak, Counsel for Charter Fiberlink – Tennessee, LLC (Oct. 24, 2006) (regarding an interconnection agreement between a CLEC and a Georgia rural local exchange carrier).

III. CONCLUSIONS

Based on the foregoing comments and analysis, it is my decision that the panel should open a rulemaking docket to be assigned to all directors. Given that this decision is contrary to the position of the majority, I respectfully dissent.

Ron Jones, Director