

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

MARCH 3, 2008

*In re: Petition of CII Holdco, Inc., Memphis)
Networx, LLC, Memphis Light Gas & Water Division)
and Memphis Broadband, LLC for Approval of)
Change of Control of Memphis Networx, LLC)*

Docket No. 07-00178

**OBJECTIONS OF PETITIONERS TO DISCOVERY REQUEST
OF THE CITY OF MEMPHIS**

Zayo Bandwidth, Inc. ("Zayo"), Memphis Light Gas & Water Division ("MLG&W"), and Memphis Broadband, LLC ("Broadband"), the Petitioners in this proceeding, jointly file the following objections to the first set of discovery filed by the City of Memphis (the "City").

In sum, the Hearing Officer has already ruled (pre-hearing conference November 27, 2007) that the discovery in this proceeding would be limited to the issues relevant to the statutory criteria set forth in T.C.A. §65-4-113 regarding the transfer of a utility's operating authority from one entity to another.¹ The Hearing Officer further noted that the Authority had opened a separate docket, TRA Docket 07-00183, "Request for Investigation of the Business Partnership Between Memphis Light Gas & Water and Memphis Networx, LLC" and that questions concerning the operations of Memphis Networx prior to the involvement of Zayo should be raised in the "Investigation" docket, not his one. The Authority Staff has already issued two sets of data request in the Investigation proceeding.

¹ Because this transaction does not involve the transfer of operating authority from one entity to another but only involves the indirect transfer of control of the operating entity, the Petitioners do not believe that T.C.A. §65-4-113 is applicable. See petition at 1, footnote 1. Nevertheless, the Petition and pre-filed testimony of the Petitioners' witness contains the information described in T.C.A. §65-4-113 and demonstrates that Zayo is fully qualified to control the operations of the certificated entity

Zayo completed the purchase of all of the issued and outstanding equity of Zayo Tennessee on July 30, 2007² and has exercised indirect control of Zayo Tennessee since that time. Some of the discovery requests submitted by the City concern the operations of Zayo Tennessee and statements made by various people before Zayo purchased the company and changed its name from Memphis Networx to Zayo Tennessee. Based on the Hearing Officer's prior ruling, those questions may (or may not) be relevant to the Investigation proceeding but are clearly not relevant to Zayo's fitness to assume indirect control of the company on the criteria described in T.C.A. §65-4-113.

The majority of the discovery questions asked by the City relate to a long and ongoing dispute between the city and Memphis Networx (and now between the City and Zayo Tennessee) over various provisions of the twenty-year franchise agreement granted by the City to Memphis Networx on December 5, 2000. If the parties cannot amicably resolved those issues, these disputes will ultimately be addressed by a court of competent jurisdiction.³ Those are not matters within the agency's purview and are therefore irrelevant to this proceeding.

Finally, there is a third category of questions asking about the cost of building the network used by Zayo Tennessee, the current value of that network, evidence of ownership of the network and the revenue from each customer. It is not clear whether these questions relate to the franchise dispute or, perhaps, the Investigation docket. In any even, these questions appear to have no relevance to Zayo's qualifications to assume indirect control of the operating authority held by Zayo Tennessee.

Zayo Bandwidth Tennessee, LLC (Zayo Tennessee formerly known as Memphis Networx.)

² See Petitioner Response to Staff Data Request, Sept. 25, 2007.

³ A similar dispute between the City and BellSouth Telecommunications, Inc. over the payment of franchise fess has already been resolved in BellSouth's favor by the Tennessee Court of Appeals. See 160 S.W.3d 901, BellSouth Telecommunications, Inc. v. City of Memphis, Tenn (Tenn.Ct.App., 2004).

In summary, some of these questions may be relevant to the Investigation docket. Most of the questions, however, relate to the franchise dispute between the City and Zayo Tennessee. None of these questions is relevant to Zayo's managerial, technical, and financial ability to exercise indirect control of Zayo Tennessee. The City's discovery requests should be denied.

Listed below are all of the questions asked by the City. The questions have been grouped into the three categories discussed above.

I. Questions Relating to the Operations of and Statements by Memphis Networkx:

REQUEST FOR ADMISSION NO. 1: Please admit that the statements contained in the Petition of Memphis Networkx, LLC filed with the TRA and docketed under case number 01-00091 were truthful statements and contained in a true and exact copy of the Franchise Agreement.

REQUEST FOR ADMISSION NO. 4: Please admit that BellSouth Telecommunications, Inc. sought to and was granted permission to intervene in TRA docket No. 01-00091.

REQUEST FOR ADMISSION NO. 12: Please admit that the statements, representations and agreements in the application of Memphis Networkx, LLC for a certificate of public convenience and necessity to provide intrastate telecommunications services and joint petition of Memphis Light Gas and Water Division, a division of the City of Memphis, Tennessee and A&L networks – Tennessee LLC (A&L) for approval of agreement between MLGW and A&L regarding Joint Ownership of Memphis Networkx, LLC filed with the TRA under Docket 99-00909, including all amendments and prefiled testimony of William Larry Thompson, Andrew P. Seamons and Ward Huddleston, Jr. were truthful.

REQUEST FOR ADMISSION NO. 13: Please admit that Memphis Networkx, LLC made a commitment to the TRA and agreed in the proceeding docketed under TRA Docket No. 99-00909 that it would within two years from the TRA approval install telecommunications fibers in certain locations in and near St. Jude's Hospital and the housing developments known as Jefferson Square, R.Q. Vincent and Barry Holmes and that in fiscal years in which the company had net operating profits would commit 1% of its net operating profits not to exceed \$1 million per fiscal year to the development and enhancement of telecommunications services in the low income areas of Shelby County, Tennessee.

INTERROGATORY NO. 4: Please describe Petitioner's efforts to comply with and satisfy its commitment and agreement to the TRA as described in the proceeding discovery request, including each and every activity or accomplishment made by Petitioner in the furtherance of such commitments and agreements.

INTERROGATORY NO. 5: Please describe CII Holdco's intention to satisfy Memphis Networx, LLC's commitments and agreements to the TRA in the proceedings docketed under TRA Docket No. 99-00909 as described in the TRA's Final Order.

II. Questions Relating to the Franchise Dispute:

REQUEST FOR ADMISSION NO. 2: Please admit the Memphis City Council approved the Franchise Agreement by Ordinance No. 4744 on December 5, 2000 and that the Grantee of the Franchise Agreement was Memphis Networx, LLC, a joint venture between Memphis Light, Gas and Water Division and Memphis Broadband, LLC ("Grantee") and that the copies of said Ordinance and Agreement, attached hereto as Exhibit "1" and "2," respectively, may be admitted into evidence in these proceedings.

REQUEST FOR ADMISSION NO. 3: Please admit that the Grantee accepted the terms and conditions contained in Ordinance No. 4404, which were incorporated into the Franchise Agreement by reference and that Grantee agreed that the Franchise Agreement would be deemed to constitute a contract by and between Grantee and the City of Memphis and shall be enforceable in accordance with its terms even if Ordinance No. 4404 or any subsection, sentence, clause, phrase, term, provision, condition, covenant or portion thereof is held invalid or unenforceable by a court of competent jurisdiction.

REQUEST FOR ADMISSION NO. 5: Please admit that Petitioner in TRA docket No. 01-00091 sought approval of its Franchise with the City notwithstanding BellSouth's Petition to Intervene and that Grantee did not adopt BellSouth's position that Grantee's Franchise Agreement was an illegal Franchise and unenforceable.

REQUEST FOR ADMISSION NO. 6: Please admit that prior to September 16, 2007 Grantee did not object in any way to the City that the Franchise Agreement was illegal, invalid or unenforceable in accordance with its terms or file suit against the City to declare the Franchise Agreement illegal and unenforceable.

REQUEST FOR PRODUCTION NO. 1: To the extent your response to the preceding request for admission way anything but an unqualified admission, please produce any and all documents which evidence your objection in any way to the City that the Franchise Agreement was illegal, invalid or unenforceable in accord with its terms.

REQUEST FOR ADMISSION NO. 7: Please admit that Grantee, represented by counsel knowledgeable in telecommunications matters, actively sought, solicited and lobbied for the City's approval of the Franchise Agreement.

REQUEST FOR ADMISSION NO. 8: Please admit that the City performed all of its Agreements under the Franchise Agreement and that the City allowed Grantee full access to its streets and PROW to construct its telecommunications system.

REQUEST FOR ADMISSION NO. 9: Please admit that Grantee accepted and received all of the benefits its bargained for from the City in the Franchise Agreement.

REQUEST FOR ADMISSION NO. 10: Please admit that Grantee received gross revenues from the operation of its telecommunications network as defined in section 3 (§2.14 of Ordinance No. 4404) of the Franchise Agreement between January 3, 2001 and February 22, 2008.

INTERROGATORY NO. 1: Please list for each calendar quarter from January 3, 2001 through and including February 22, 2008 the amount of all gross revenues received by Grantee from the operation of its telecommunications network as defined in section 3 (§ 2.14 of Ordinance No. 4404) of the Franchise Agreement.

REQUEST FOR ADMISSION NO. 11: Please admit that Grantee has not paid any general compensation to the City as Grantee agreed in section 3 (§21 of Ordinance No. 4404) of the Franchise Agreement.

REQUEST FOR PRODUCTION NO. 2: If your response to request for admission No. 11 was anything but an unqualified admission please produce all documents which evidence your payments of general compensation to the City as required by section 3 (§ of Ordinance No. 4404) of the Franchise Agreement.

INTERROGATORY NO. 6: Please describe and list each and every payment made by you since June 7, 2007 to any person or entity to whom Memphis Networx, LLC owed or was obligated to pay any money, debt, obligation or trade payable, including tax or franchise compensation to the City.

INTERROGATORY NO. 7: To the extent you have not made all payments of any money, debt, obligation or trade payable, including tax or franchise compensation to any person that Memphis Networx, LLC owed or was obligated to pay on or after June 7, 2007, please describe your intentions to pay and satisfy any such debt, obligation or trade payable, including tax or franchise compensation to the City.

REQUEST FOR ADMISSION NO. 14: Please admit that Grantee has not filed any of the reports that Grantee agreed to file in section 3 (§22 of Ordinance No 4404) of the Franchise Agreement.

REQUEST FOR PRODUCTION NO. 3: If your response to request for admission No. 14 was anything but an unqualified admission, please produce all documents which evidence your reports filed with the City as required by section 3 (§22 of Ordinance 4404) of the Franchise Agreement.

REQUEST FOR ADMISSION NO. 15: Please admit that Grantee has not obtained prior written consent of the Memphis City Council to the transfer of Grantee's rights as Grantee agree in section 3 (§§26 and 28.1(8) of Ordinance No. 4404) of the Franchise Agreement.

REQUEST FOR ADMISSION NO. 16: Please admit that Grantee and the City agreed in the Franchise Agreement that the Franchise Agreement shall be subject to revocation or termination in accordance with the terms and conditions and procedures of sections 27 and 18 of Ordinance No. 4404.

REQUEST FOR ADMISSION NO. 17: Please admit that you received a letter dated August 31, 1007 via hand delivery and certified mail no 7006 0100 0002 5196 2340 from a representative of the City, a copy of which is attached hereto as Exhibit 3, and that the copy of said letter attached hereto maybe admitted into evidence in this proceeding.

REQUEST FOR ADMISSION NO. 18: Please admit that you responded to the letter described in the preceding discovery request on September 16, 2007, a copy of which response is attached hereto as Exhibit 4, and that the copy of said letter attached hereto may be admitted into evidence in this proceeding.

INTERROGATORY NO. 11: Please list each year from and including 2001 through 2007 any and all City of Memphis franchise fees billed and/or collected from your customers pursuant to Tennessee Code Annotated §65-4-105(e).

INTERROGATORY NO. 12: Please describe your intentions to comply with and specifically perform the Franchise Agreement.

III. Questions Relating to the Ownership, Cost and Value of System:

INTERROGATORY NO. 8: Please describe and list the original capitalized cost, before depreciation or amortization, of your telecommunications system and/or infrastructure, as defined in any federal law or in section 3 (§21 of Ordinance No. 4404) of the Franchise Agreement.

INTERROGATORY NO. 9: Do you own the telecommunications system and/or infrastructure reflected in bold on Exhibit 5 attached hereto?

INTERROGATORY NO. 10: If your answer to the preceding discovery request was no, please list each and every customers of yours who is connected to the telecommunications system described on Exhibit 5 including a listing of all revenue you have received from each such customer.

REQUEST FOR PRODUCTION NO. 4: If your answer to Interrogatory No. 9 was yes, please produce any and all agreements, documents or evidence to establish your ownership of the telecommunications systems and/or infrastructure reflected in bold on Exhibit 5 attached hereto.

REQUEST FOR PRODUCTION NO. 5: Please provide any and all reports, appraisals, assessments or calculations performed by you or by anyone on your behalf which estimates, determines or values Grantee's Telecommunications Systems.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 

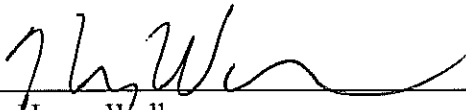
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served, via the method(s) indicated below, on the following counsel of record, this the 3rd day of March, 2008

<input type="checkbox"/> Hand	Jamie Hollin
<input type="checkbox"/> Mail	Farris Mathews Branan
<input type="checkbox"/> Fax	Bobango Hellen & Dunlap, PLC
<input type="checkbox"/> Fed. Ex.	Historic Castner-Knott Building
<input type="checkbox"/> E-Mail	618 Church Street, Ste. 300 Nashville, TN 37219

<input type="checkbox"/> Hand	Allan J. Wade
<input type="checkbox"/> Mail	Law Offices of Allan J. Wade, PLLC
<input type="checkbox"/> Fax	One Commerce Street, Ste. 2275
<input type="checkbox"/> Fed. Ex.	Memphis, TN 38103
<input type="checkbox"/> E-Mail	



Henry Walker