

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

APRIL 23, 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

**PETITIONER'S REPLY TO "RESPONSE OF CITY OF MEMPHIS TO ZAYO'S
OBJECTIONS TO THE CITY'S DISCOVERY REQUESTS"**

Pursuant to the instructions of the Hearing Officer, the Joint Petitioners¹ submit this reply to the arguments raised by the City of Memphis (the "City") concerning the City's discovery requests. As explained below, the City appears not to have accepted the Hearing Officer's determination that disputes over such matters as the legality of portions of the City's franchise agreement with Memphis Networx, the operations of Memphis Networx prior to its sale, and the circumstances surrounding the sale are irrelevant to the statutory criteria governing the transfer of authority as set forth in T.C.A. § 65-4-113 and are therefore beyond the scope of this docket.

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

RESPONSE TO ZAYO'S OBJECTION

¹ The Joint Petitioners are Zayo Bandwidth, Inc. ("Zayo"), Memphis Light Gas & Water Division ("MLG&W") and Memphis Broadband, LLC ("Broadband").

This request seeks to establish that the agreements and representations made by representatives of Networkx to the Authority were true and correct statements that bind Networkx and its successors or assigns; any change in Networkx's agreements would not be in the public's interest.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

The Hearing Officer has already ruled (pre-hearing conference, Nov. 27, 2007) that questions about the operations of Memphis Networkx prior to its sale to Zayo are not relevant to this transfer proceeding. Those issues may be considered, if at all, in Docket 07-00183, "Request for Investigation of the Business Partnership Between Memphis Light Gas & Water and Memphis Networkx, LLC."

This Request for Admission asks about statements made by employees of Networkx and MLG&W to the TRA eight years prior to the purchase of Networkx by Zayo. Unless those statements were incorporated as conditions in the TRA's order granting Networkx a certificate or were made binding on Networkx and its successors through some other TRA action, those statements have no bearing on Zayo's capability to take over the operations of Networkx.

The Request also asks for information about the franchise contract between Networkx and the City of Memphis. As the Petitioners have previously explained ("Objections of Petitioners" filed March 3, 2008), the arguments raised by the City concerning the franchise agreement (i.e., whether the franchise agreement requires that Zayo seek approval of the City in order to consummate this transaction and whether the 5% franchise fee is enforceable) are matters for a court to resolve, not the TRA. See BellSouth v. City of Memphis, 160 S.W.3d 901 (Tenn. Ct. App. 2004) (holding that the Memphis 5% franchise fee is excessive and unenforceable). The Joint Petitioners, of course, will fully comply with all lawful requirements of the franchise agreement. The Joint Petitioners are aware of no case in which the TRA has been ordered to adjudicate a dispute between a local government and a regulated utility over a franchise agreement. Such disputes, when they occur, are

resolved in a court.²

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 Exhibits “1” and “2”. respectively, may be admitted into evidence in these proceedings.

RESPONSE TO ZAYO’S OBJECTION

This request seeks to establish that a joint venture between MLGW and Networx entered into a lawful and valid franchise agreement with the City of Memphis, which Zayo has expressed an intention to disavow. This request is related to Zayo’s financial responsibility and suitability.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 1.

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, terms, provision, condition, covenant or portion thereof is held invalid or unenforceable by a court of competent jurisdiction.

² While the TRA is required to approve a local franchise, (T.C.A. § 65-4-117), the agency has no statutory power to enforce such a franchise, order the payment of franchise fees, take away a utility's franchise, or rule on the enforceability of a franchise provision. A court could impose those remedies but not the TRA.

RESPONSE TO ZAYO'S OBJECTION

This request seeks to establish that a joint venture between MLGW and Networx entered into a lawful and valid franchise agreement within the City of Memphis, which Zayo has expressed an intention to disavow. This request is related to Zayo's financial responsibility and suitability.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 1.

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.

RESPONSE TO ZAYO'S OBJECTION:

This request seeks to establish that BellSouth contended the Networx's franchise agreement with the City did not constitute a valid and binding agreement and that this was a contention that was rejected by Networx further evidencing the fact that Networx's franchise agreement with the City was intended to be a valid and binding agreement, which should be honored.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

While the original purpose of this Request was unclear, the City's Response states that the question concerns the legality of the franchise agreement. Therefore, see Response to the City's Request for Admission No. 1.

REQUEST FOR ADMISSION NO. 5: Please admit that Zayo 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.

RESPONSE TO ZAYO'S OBJECTION

This request seeks to establish that BellSouth contended the Networx's franchise agreement with the City did not constitute a valid and binding agreement and that this was a contention that was rejected by Networx further evidencing the fact that Networx's franchise agreement with the City was intended to be a valid and binding agreement, which should be honored.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 1.

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.

RESPONSE TO ZAYO'S OBJECTION

This request seeks to establish that Networx's franchise agreement with the City was intended to be a valid and binding agreement, which Networx should honor.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 1.

REQUEST FOR PRODUCTION NO. 1:

To the extent your response to the preceding request for admission was 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.

RESPONSE TO ZAYO'S OBJECTION

This request seeks to establish that Networkx's franchise agreement with the City was intended to be a valid and binding agreement, which Networkx should honor

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 1.

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.

RESPONSE TO ZAYO'S OBJECTION:

This requests seeks to establish that Networkx's franchise agreement with the City was intended to be a valid and binding agreement, which Networkx should honor.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 1.

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.

RESPONSE TO ZAYO'S OBJECTION:

This request seeks to establish that Networkx's franchise agreement with the City was intended to be a valid and binding agreement, which Networkx should honor.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 1.

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

RESPONSE TO ZAYO'S OBJECTION:

This request seeks to establish that Networx's franchise agreement with the City was intended to be a valid and binding agreement, which Networx should honor.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 1.

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

RESPONSE TO ZAYO'S OBJECTION:

This request seeks to establish the Networx breached its valid and lawful franchise agreement with the City and that Zayo does not intend to fulfill these agreements thereby indicating its lack of financial responsibility and suitability to be an approved transferee of Networx's operating authority.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 1. Zayo has already demonstrated in the Petition and will demonstrate at the hearing that Zayo has the financial capability to assume control of Networx and meets the requirements of the transfer statute.

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 Networkx as defined in section 3 (§ 2.14 of Ordinance No. 4404) of the Franchise Agreement.

RESPONSE TO ZAYO'S OBJECTION:

This request seeks to establish the Networkx breached its valid and lawful franchise agreement with the City and that Zayo does not intend to fulfill these agreements thereby indicating its lack of financial responsibility and suitability to be an approved transferee of Networkx's operating authority.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 1.

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.

RESPONSE TO ZAYO'S OBJECTION:

This request seeks to establish the Networkx breached its valid and lawful franchise agreement with the City and that Zayo does not intend to fulfill these agreements thereby indicating its lack of financial responsibility and suitability to be an approved transferee of Networkx's operating authority.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 1.

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 (§ 21 of Ordinance No. 4404) of the Franchise Agreement.

RESPONSE TO ZAYO'S OBJECTION:

This request seeks to establish the Networkx breached its valid and lawful franchise agreement with the City and that Zayo does not intend to fulfill these agreements thereby indicating its lack of financial responsibility and suitability to be an approved transferee of Networkxs operating authority.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 1.

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 Networkx 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 No. 99-00909, including all amendments and prefiled testimony of William Larry Thompson, Andrew P. Seamons and Ward Huddleston, Jr. were truthful.

RESPONSE TO ZAYO'S OBJECTION:

This request seeks to establish that the agreements and representations made by representatives of Networkx to the authority were true and correct statements that bind Networkx and its successors or assigns, This request relates to whether the elimination of Networkx's agreements with the TRA are in the public's interest.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

In its Response, the City asserts that Zayo's position on certain "commitments" and goals of Memphis Networkx in Docket No. 99-00909 are relevant to the Authority's consideration of the Petition in this Docket. The Petitioners submit that the City's characterizations are incorrect and that these matters are not relevant to any proceeding at the TRA.

Although the City seems to suggest that these commitments and goals were conditions to

Memphis Networkx' certificate of convenience and necessity, that is simply not the case. Paragraph 4 of the ordering clause of the certificate of convenience and necessity included extensive conditions relating to cost allocation and related matters. *See CCN Order* at pp. 39-40. None of these conditions include requirements relating to the intentions expressed in Section 2.5 of the Memphis Networkx operating agreement.

REQUEST FOR ADMISSION NO. 13: Please admit that Memphis Networkx, LLC made a commitment to the TRA and agreed in the proceedings docketed under TRA Docket No. 99-00909 that it would within two years from the TRA approval install telecommunication 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.

RESPONSE TO ZAYO'S OBJECTION:

This request seeks to establish that the agreements and representations made by representatives of Networkx to the authority were true and correct statements that bind Networkx and its successors or assigns. This request relates to whether the elimination of Networkx's agreements with the TRA are in the public's interest.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 12.

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

RESPONSE TO ZAYO'S OBJECTION:

This request seeks to establish that the agreements and representations made by representatives of Networkx to the authority were true and correct statements that bind Networkx and its successors or assigns. This request seeks to discovery Zayo's intentions to honor these agreements in the future. The City contends this request relates to addresses Zayo's financial responsibility and suitability to assume control of Networkx.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 12.

INTERROGATORY NO.5: Please describe CII Holdco's intention to satisfy Memphis Networkx, 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. per fiscal year to the development and enhancement of telecommunications services in the low income areas of Shelby County, Tennessee.

RESPONSE TO ZAYO'S OBJECTION:

This request seeks to establish that the agreements and representations made by representatives of Networkx to the authority were true and correct statements that bind Networkx and its successors or assigns. This request seeks to discovery Zayo's intentions to honor these agreements in the future. The City contends this request relates to addresses Zayo's financial responsibility and suitability to assume control of Networkx.

ZAYO'S REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 12. Furthermore, whatever statements Networkx executives made to the TRA in 1999 about the carrier's intentions and business plans are not contained in the ordering requirements of Networkx 's certificate, are not mandated by statute or other TRA-approved agreement, and are not binding on Zayo.

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 Networkx, LLC owed or was

obligated to pay any money, debt, obligation or trade payable, including tax or franchise compensation to the City.

RESPONSE TO ZAYO'S OBJECTION

This request relates to Zayo's agreement to assume and pay all trade payables of Networx as a part of the purchase price. The City is informed and believes that Zayo may have failed to pay these obligations and that Zayo intends to repudiate the lawful obligations of Networx. This intent is suggested in its objections to the City's discovery requests when it refers to these obligations as .. statements made by various people before Zayo purchased the company and changed its name from Memphis Networx to Zayo Tennessee This statement suggests that Zayo does not intend to honor Networx's obligations and commitments if they were incurred before it purchased the equity of MLGW and Broadband. Zayo's Intention if proven is certainly not in the public's interest, reflects on the suitability of Zayo to operate Networx in the future and its suitability to serve the public's interest.

ZAYO'S REPLY TO THE CITY'S RESPONSE:

Any dispute between Zayo and current vendors or vendors of Networx will be addressed in the normal course of business and are not relevant to this transfer proceeding. Zayo has complied and will continue to comply with its contractual obligations resulting from its purchase of the equity interests of Memphis Network held by Broadband and MLG&W. Zayo has demonstrated in its Petition and will demonstrate at the hearing that Zayo has the financial resources to operate this competitive local exchange carrier. To allow the City to examine "each and every payment" made by Zayo to a vendor of Networx is burdensome, irrelevant, and far afield from the statutory criteria or the purposes of this docket. The City's Response clearly indicates that this Interrogatory is a classic "fishing expedition."

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.

RESPONSE TO ZAYO'S OBJECTION:

This request relates to Zayo's agreement to assume and pay all trade payables of Networx as a part of the purchase price. The City is informed and believes that Zayo may have failed to pay these obligations and that Zayo intends to repudiate the lawful obligations of Networx. This intent is suggested in its objections to the City's discovery requests when it refers to these obligations as statements made by various people before Zayo purchased the company and changed its name from Memphis Networx to Zayo Tennessee." This statement suggests that Zayo does not intend to honor Networx's obligations and commitments if they were incurred before it purchased the equity of MLGW and Broadband. Zayo's intention if proven is certainly not in the public's interest, reflects on the suitability of Zayo to operate Networx in the future and its suitability to serve the public's interest.

ZAYO'S REPLY TO THE CITY'S RESPONSE:

See Response to the City's Interrogatory No. 6.

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.

RESPONSE TO ZAYO'S OBJECTION:

The City intends to show that Zayo's express repudiation of Networx's lawful contractual obligations bears on suitability and financial responsibility to operate Networx in the future.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

This question apparently relates to the payment of franchise fees. See Response to the City's Request for Admission No. 1.

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 No. 4404) of the Franchise Agreement.

RESPONSE TO ZAYO'S OBJECTION:

The City intends to show that Zayo's express repudiation of Networx's lawful contractual obligations bears on suitability and financial responsibility to operate Networx in the future.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 1.

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

RESPONSE TO ZAYO'S OBJECTION:

This discovery request relates to whether Networx has the lawful authority to use and occupy the City's public's rights of way. Tenn. Code Ann. § 65-4-107 as interpreted by the Tennessee Supreme Court establishes that a public utility must have permission from the municipality to use the streets and public ways and approval from the Authority. While the former is not a condition precedent to TRA approval, it is a necessary requirement before a utility can exercise operating authority granted by the TRA. In this case, the City has notified Networx and Zayo that it has not approved the transfer of the privileges in franchise agreement from Networx, a joint venture between MLGW and Broadband, to Zayo.

The City intends to show that Zayo's express repudiation of Networx's lawful contractual obligations bears on suitability and financial responsibility to operate Networx in the future.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 1.

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 28 of Ordinance No. 4404.

RESPONSE TO ZAYO'S OBJECTION:

This discovery request relates to whether Networkx has the lawful authority to use and occupy the City's public's rights of way. Tenn. Code Ann. § 654107 as interpreted by the Tennessee Supreme Court establishes that a public utility must have permission from the municipality to use the streets and public ways and approval from the Authority. While the former is not a condition precedent to TRA approval, it is a necessary requirement before a utility can exercise operating authority granted by the TRA. In this case, the City has notified Networkx and Zayo that it has not approved the transfer of the privileges in franchise agreement from Networkx, a joint venture between MLGW and Broadband, to Zayo.

This request seeks to establish that Networkx's franchise agreement with the City was intended to be a valid and binding agreement. The City intends to show that Zayo's express repudiation of Networkx's lawful contractual obligations bears on its financial responsibility and suitability to operate Networkx in the future.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 1. As previously noted, the TRA has no power to revoke or terminate the local franchise held by Networkx. These arguments have no place in this forum.

REQUEST FOR ADMISSION NO. 17: Please admit that you received a letter dated August 31, 2007 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 may be admitted into evidence in this proceeding.

RESPONSE TO ZAYO'S OBJECTION:

This request seeks to establish that the City has exercised its right to acquire the telecommunications facilities of Memphis Networkx and that Zayo does not have to present ability

to assume operations of Memphis Networx.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 1.

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.

RESPONSE TO ZAYO'S OBJECTION:

The City intends to show that Zayo's express repudiation of Networx's lawful contractual obligations bears on its financial responsibility and suitability to operate Networx in the future.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 1.

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.

RESPONSE TO ZAYO'S OBJECTION:

As the Authority recognized in its final order approving the certificate of necessity and convenience for Networx, state law prohibits cost subsidization by the governmental joint venturer, MLGW, for the benefit of the private owners of Networx. The Authority went to great lengths to ensure that such cost subsidization would not occur. The City seeks to prove that Zayo is the beneficiary of cross subsidization due to the inadequacy of the purchase price for MLGW's share of the depreciated value of Networx's telecommunications assets. In other words, the amount by which costs for such assets contributed by MLGW exceeds the amount of the purchase price attributable to such assets results in subsidization of Zayo with public funds. This request relates to whether the transfer as presently structured is in the public's interest.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

The City asserts that this question is relevant to this proceeding because “state law prohibits cost subsidization by the governmental joint venturer, MLGW, for the benefit of the private owner of Networx.” The Petitioners submit that the City’s characterization of the obligations under T.C.A. § 7-52-402 are incorrect because that statute addresses the on-going involvement of a governmental utility in a telecommunications venture. Because MLGW’s involvement in Memphis Networx has ended, and because MLGW does not hold any continuing interest in Memphis Networx, T.C.A. § 7-52-402 does not address the sale of all of MLGW’s membership interests in Memphis Networx.

The plain language of T.C.A. § 7-52-402 indicates that the focus of the cross-subsidy prohibition is a governmental utility system’s involvement in the provision of telecommunications services. That statute expressly states that “[a] municipality providing [telecommunications] services shall not provide subsidies for such services.” Because the sale of MLGW’s membership interest in Memphis Networx was not made in connection with its provision of telecommunications services through Memphis Networx – but was instead made in connection with its decision to end its participation in Memphis Networx and the provision of telecommunications services through Memphis Networx – this statute simply does not apply to the sale of MLGW’s membership interests in Memphis Networx.

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

RESPONSE TO ZAYO’S OBJECTION:

The City paid for and owns the telecommunications infrastructure described on Exhibit 5 to its discovery request, Networx has, without consent and compensation to the City, misappropriated such assets for its own use and Zayo continues to wrongfully use and unjustly benefit from the cities infrastructure without its consent and without just compensadon: Such use of publicly funded assets constitutes cross-subsidation and an inappropriate anti-compe~tive benefit to Zayo’s

business. Again, the City seeks to discover whether Zayo intends to pay for its use of the City's property: Zayo's continued misappropriation of the City's assets would also establish its lack of financial responsibility and suitability to own and operate Networkx, and whether the transfer is in the public's interest.

ZAYO'S REPLY TO THE CITY'S RESPONSE:

Zayo does not understand this question and is not aware of any issue concerning the ownership of the assets of Networkx. The City accuses Zayo of the "misappropriation of the City's assets." Zayo strongly denies that allegation but it is hardly the role of this agency to hear and resolve such claims. The TRA has no jurisdiction to hear lawsuits or award damages. The City cannot turn a certificate transfer proceeding into an investigation of every type of dispute that the City chooses to raise. Such a ruling would transform this docket into an open-ended investigation of matters far beyond the TRA's statutory mandate.

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

RESPONSE TO ZAYO'S OBJECTION:

The City paid for and owns the telecommunications infrastructure described on Exhibits to its discovery request. Networkx (has, without consent and compensation to the City, misappropriated such assets for its own use and Zayo continues to wrongfully use and unjustly benefit from the city's infrastructure without its consent and without just compensation. Such use of publicly funded assets constitutes cross-subsidation and an inappropriate anti-competitive benefit to Zayo's business. Again, the City seeks to discover whether Zayo intends to pay for its use of the City's property. Zayo's continued misappropriation of the City's assets would also establish its lack of financial responsibility and suitability to own and operate Networkx, and whether the transfer is in the public's interest.

ZAYO'S REPLY TO THE CITY'S RESPONSE:

See the Response to the City's Interrogatory No. 9.

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 system and/or infrastructure reflected in bold on Exhibit 5 attached hereto.

RESPONSE TO ZAYO'S OBJECTION:

The City paid for and owns the telecommunications infrastructure described on Exhibits to its discovery request, Networkx has, without consent and compensation to the City, misappropriated such assets for its own use and Zayo continues to wrongfully use and unjustly benefit from the cities infrastructure without its consent and without just compensation. Such use of publicly funded assets constitutes cross-subsidation and an inappropriate anti-competitive benefit to Zayo's business. Again, the City seeks to discover whether Zayo intends to pay for its use of the City's property; Zayo's continued misappropriation of the City's assets would also establish it lack of financial responsibility and suitability to own and operate Networkx, and whether the transfer is in the public's interest.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See the Response to the City's Interrogatory No. 9.

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).

RESPONSE TO ZAYO'S OBJECTION:

Under Tennessee law, Tenn. Code Ann. § 65-4-105(e) public utilities are allowed to collect from its customers pro rata any franchise payments made by the utility to a municipality. Neither Networkx nor Zayo have made any franchise payments to the City of Memphis. It would be unlawful to collect payments from its customers and use those collections for its operations. This request relates to whether Networkx and/or Zayo are suitable holders of a certificate of authority and whether the transfer is in the public's interest.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 1.

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.

RESPONSE TO ZAYO'S OBJECTION:

As the Authority recognized in its final order approving the certificate of necessity and convenience for Networx, state law prohibits cost subsidization by the governmental joint venture, MLGW, for the benefit of the private owners of Networx. The Authority went to great lengths to ensure that such cost subsidization would not occur. The City seeks to prove that Zayo is the beneficiary of cross subsidization due to the inadequacy of the purchase price for MLGW's share of the depreciated value of Networx's telecommunications assets. In other words, the amount by which costs for such assets contributed by MLGW exceeds the amount of the purchase price attributable to such assets results in subsidization of Zayo with public funds. This request relates to whether the transfer as presently structured is in the public's interest.

ZAYO'S REPLY TO THE CITY'S RESPONSE:

See Response to the City's Interrogatory No. 8.

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

RESPONSE TO ZAYO'S OBJECTION:

The City intends to show that Zayo's express repudiation of Networx's lawful contractual obligations bears on its fitness and suitability to operate Networx in the future.

JOINT PETITIONERS' REPLY TO THE CITY'S RESPONSE:

See Response to the City's Request for Admission No. 1.

CONCLUSION

For these reasons, the joint Petitioners reiterate their objections to the City's discovery questions.

The bulk of the questions go to matters which must be resolved in a court. The remaining issues can be addressed, if the need arises, in the TRA's "investigation" docket.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 

Henry Walker

1600 Division Street, Suite 700

P.O. Box 340025

Nashville, Tennessee 37203

(615) 252-2363

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 23rd day of April, 2008

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

<input type="checkbox"/> Hand	Allan J. Wade
<input checked="" 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 checked="" type="checkbox"/> E-Mail	



Henry Walker