

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

**IN RE:**

<b>APPLICATION OF JACKSON</b>	<b>)</b>	<b>DOCKET NO. 07-00201</b>
<b>ENERGY AUTHORITY TO EXPAND</b>	<b>)</b>	
<b>ITS CERTIFICATE OF</b>	<b>)</b>	
<b>CONVENIENCE AND NECESSITY TO</b>	<b>)</b>	
<b>PROVIDE INTRASTATE</b>	<b>)</b>	
<b>TELECOMMUNICATIONS SERVICES</b>	<b>)</b>	

**PRE-FILED REBUTTAL TESTIMONY OF**

**DANA R. WHEELER**

**OF**

**JACKSON ENERGY AUTHORITY**

**D/B/A JEA**

**May 12, 2008**

1   **Q.     PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2   A.     My name is Dana R. Wheeler, and my business address is Jackson Energy Authority, 119  
3   College Street, Jackson, Tennessee, 38301.

4   **Q.     ARE YOU THE SAME DANA R. WHEELER WHO HAS PREVIOUSLY FILED**  
5         **DIRECT TESTIMONY IN THIS DOCKET?**

6   A.     Yes, I am.

7   **Q.     WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

8         The purpose of my rebuttal testimony is to respond to the pre-filed testimony of Jonathan  
9   V. Harlan of Aeneas Communications, LLC ("Aeneas") that has been filed in this docket. I  
10   have asked Mr. Kim Kersey, JEA's Senior Vice President of Telecommunications, to comment  
11   on JEA's interconnection agreement with Aeneas. I will respond to other aspects of Mr.  
12   Harlan's testimony. Mr. Harlan's testimony is full of inaccurate and misleading information, and  
13   I hope that the TRA sees Aeneas' intervention for what it is: a thinly disguised attempt to  
14   eliminate or forestall competition from JEA. JEA has complied with its obligations under the  
15   Code of Conduct, its interconnection agreement with Aeneas, and its current certificate from the  
16   Tennessee Regulatory Authority ("TRA"). As it has in the past, JEA will continue to honor the  
17   policies, rules and orders of the TRA. In the four years since receiving its CCN, JEA has  
18   undergone TRA supervised audits, filed annual reports, and made other compliance filings, none  
19   of which have been questioned.

20   **Q.     PLEASE SUMMARIZE YOUR TESTIMONY.**

21   A.     JEA originally entered the telecommunications market as a wholesale provider of  
22   capacity on its fiber to the home network, consistent with the Memorandum of Understanding  
23   ("MOU") with Aeneas that is attached to my pre-filed direct testimony. In the MOU, it was

1 clear that JEA could enter the retail business if minimum penetration numbers were not achieved  
2 by all providers. This was a very important provision for JEA, especially given the financing  
3 that was going to be required for the construction of the fiber to the home network. After more  
4 than three (3) years of having exclusive use of JEA's network for telecommunications services,  
5 providers such as Aeneas failed to achieve the relatively modest customer penetration levels set  
6 out in the MOU. Since the penetration levels of the MOU were not met, it should come as no  
7 surprise to Aeneas that JEA has made the fiscally responsible decision to directly enter the retail  
8 market and that JEA has asked that the TRA authorize JEA to do so.

9 I strongly disagree with many aspects of Mr. Harlan's pre-filed testimony. It should be  
10 clear that Aeneas simply opposes competition from JEA, even though the Tennessee General  
11 Assembly has clearly authorized JEA to be a retail provider of telecommunications services.  
12 There is nothing unfair about JEA's entry into the retail market; indeed, it would be unfair to our  
13 community and fiscally irresponsible if we did not attempt to increase the utilization of JEA's  
14 advanced broadband network. Aeneas had its chance, earned its profits and can continue to  
15 utilize the JEA network under its long term interconnection agreement with JEA. Or it can  
16 choose to use other networks (including constructing its own). Or it can do both.

17 Additionally, there is nothing in the Code of Conduct and nothing in JEA's conduct  
18 under its current certificate from the TRA that warrants any further delay in granting the CLEC  
19 certificate that JEA has requested in this Docket. JEA is ready to provide competitive retail  
20 services. I submit that JEA meets the statutory requirements to expand JEA's existing  
21 authorization, and respectfully request expedited treatment of this case on behalf of JEA.

1   **Q.    IN HIS PRE-FILED TESTIMONY, MR. HARLAN SUGGESTS THAT IT IS**  
2           **UNFAIR FOR JEA TO COMPETE AGAINST ITS WHOLESALE CUSTOMER**  
3           **AENEAS. PLEASE RESPOND TO THIS.**

4    A.    I do not believe that there is anything unusual or unfair about a competitive facilities-  
5    based carrier competing with one of its wholesale customers. I believe that it is commonplace  
6    for two competitive carriers to have a customer relationship at the wholesale level while being  
7    competitors in the retail market. Mr. Harlan's "fairness" argument seems particularly weak here,  
8    where Aeneas and other competitive providers had more than three years to attempt to fully  
9    utilize the JEA fiber to the home network without any retail competition from JEA and without  
10   any financial consequences to Aeneas from its failure to meet these requirements.

11           Contrary to what Mr. Harlan says, it would be unfair to restrict JEA's entry into the retail  
12   market in the way Aeneas suggests. The TRA has certificated other municipal and governmental  
13   competitive retail carriers without imposing any obligation on them to provide a suite of  
14   wholesale services to third party carriers. Other competitive facilities based carriers, such as  
15   cable operators, do not even appear to provide wholesale services to other competitive carriers  
16   like Aeneas. JEA should not be penalized and should not be held to a higher or different  
17   standard than other competitive carriers simply because JEA initially entered the market as a  
18   wholesale provider and gave a wholesale model the chance to work.

19   **Q.    MR. HARLAN HAS TESTIFIED THAT THE CODE OF CONDUCT "STATES**  
20           **JEA 'MAY NOT DISCRIMINATE BETWEEN THE TELEPHONE BUSINESS**  
21           **UNIT AND ANY OTHER ENTITY.'" MR. HARLAN ASSERTS THAT JEA**  
22           **MUST OFFER AENEAS THE SAME WHOLESALE RATE THAT JEA WILL**  
23           **OFFER ITS OWN RETAIL OPERATIONS. PLEASE RESPOND.**

1 A. Mr. Harlan has taken a provision of the Code of Conduct completely out of context and  
2 has presented it to the TRA in a misleading way. The entire provision in the Code of Conduct  
3 that Mr. Harlan refers to states that “JEA may not discriminate between the telephone business  
4 unit and any other entity in the provision or procurement of goods, services, and information  
5 from its regulated divisions, or in the establishment of standards.” JEA Code of Conduct, page  
6 18 (emphasis supplied). The definition of the “regulated” divisions of JEA is found on pages 6-7  
7 of the Code of Conduct, and the “regulated” divisions are defined as the Electric Division, the  
8 Natural Gas Business Unit, the Wastewater Division, and the Water Division of JEA. The  
9 Telecommunications Division of JEA and the business units underneath the Telecommunications  
10 Division – including the telephone business unit – is defined as a “non-regulated” division on  
11 page 6 of the Code of Conduct. The telephone business unit of JEA is within a “non-regulated”  
12 division of JEA and not a “regulated” division.

13 Read in its entirety, this Code of Conduct provision prevents a discriminatory  
14 arrangement between the telephone business unit and JEA’s core utility divisions. For example,  
15 JEA could not provide a more advantageous rate for electric service to its telephone business unit  
16 than it provides to other telephone providers. By its plain terms, this provision does not apply to  
17 JEA’s use of its own fiber optic network within its Telecommunications Division.

18 **Q. LET’S NOW MOVE TO MR. HARLAN’S SUGGESTION THAT JEA HAS NOT**  
19 **HONORED THE LETTER OR THE SPIRIT OF ITS WHOLESALE**  
20 **CERTIFICATE. IS THAT CORRECT?**

21 A. No, it is not. Mr. Harlan has ignored clear language in the TRA’s Order granting JEA a  
22 certificate of convenience and necessity. Mr. Harlan appears to base this allegation on the  
23 billing, customer service and marketing arrangements that are discussed on Pages 13 through 15

of Exhibit 1 to his testimony. Contrary to Mr. Harlan's suggestion that these activities are inconsistent with JEA's certificate, that is simply not true.

**Q. PLEASE EXPLAIN HOW THESE BILLING, CUSTOMER SERVICE AND MARKETING ARRANGEMENTS ARE CONSISTENT WITH JEA'S WHOLESALE CERTIFICATE.**

A. In the prior proceeding before the TRA, JEA requested approval to provide these services to one or more CLEC customers. On page 5 of the Application for a Certificate to Provide Telecommunications Services as a Carriers' Carrier, JEA stated an intention to provide its CLEC customers the following services:

- Billing and customer records management for telephony and data services;
- Payment collection at various payment locations of JEA;
- Customer sales services and/or locations at various locations of JEA;
- Inclusion of the CLEC customer's services under the JEA brand umbrella, including inclusion in JEA's general marketing and advertising; and
- Customer service and help desk support for end use customers.

**Q. DID THE TRA APPROVE JEA'S REQUEST FOR THIS AUTHORIZATION?**

A. Yes, The TRA approved JEA's request. In Paragraph 2 of Section II of the March 5, 2004 Order Approving Application for Certificate of Public Convenience and Necessity in Docket No. 03-00438, the TRA made the following finding:

Although CLEC customers will not be required to purchase such services, JEA intends to offer the following services for purchase to the CLECs: 1) billing and customer records management for telephony and data services; 2) payment collection at various payment locations of JEA; 3) customer sales services and/or locations at various locations of JEA; 4) inclusion of the services offered by its CLEC customers under the JEA brand umbrella, including inclusion in JEA's

1 general marketing and advertising; and 5) customer service and help desk support  
2 for end-users of the CLEC services . . . .

3 It is clear that the TRA not only understood that JEA would be providing these services, but that  
4 the TRA also expressly approved JEA providing each one of them.

5 **Q. HAS AENEAS EVER ALLOWED JEA TO MARKET ON ITS BEHALF?**

6 A. Yes, it has, and Mr. Harlan's criticism of JEA's marketing activities struck me as a bit  
7 hypocritical. I asked for a report on the number of customers that JEA has signed up for Aeneas  
8 over the years. Our records indicate that JEA has created more than 3,700 customer  
9 relationships for Aeneas.

10 **Q. DO YOU HAVE ANY CONCLUDING COMMENTS?**

11 A. Yes, I do. I would like to emphasize again that JEA intends to fully comply with the  
12 policies, rules and orders of the TRA. JEA intends to follow its Code of Conduct, and JEA will  
13 honor the terms of its existing interconnection agreement with Aeneas. Over the past several  
14 years, JEA has constructed one of the most advanced broadband networks in operation in the  
15 country today. Aeneas was given the first opportunity to fully utilize JEA's state of the art fiber  
16 to the home network, but it and other carriers did not meet the minimum penetration  
17 requirements of the Memorandum of Understanding.


18 JEA needs to expand the utilization of the network, and we intend to do so by offering  
19 competitively priced services that utilize the latest technologies. Most, if not all, of the telephone  
20 services provided over this network will utilize voice over Internet protocol technology or will  
21 involve the provision of broadband services with speeds in excess of 200 kilobits per second.  
22 Residential and commercial customers should benefit from the availability of these competitively

1 priced services and bundled service offerings, and I respectfully ask that the TRA approve JEA's  
2 application for an expanded certificate of authority on an expedited basis.

3 **Q. DOES THIS CONCLUDE YOUR PRE-FILED REBUTTAL TESTIMONY?**

4 A. Yes, it does. Thank you.

5 I swear that the foregoing testimony is true and correct to the best of my knowledge, information  
6 and belief.

7 

8 Dana R. Wheeler  
9 President and Chief Executive Officer  
10 Jackson Energy Authority  
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