

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

IN RE:

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

PRE-FILED REBUTTAL TESTIMONY OF

KIM KERSEY

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 Kim Kersey, and my business address is Jackson Energy Authority, 119
3 College Street, Jackson, Tennessee, 38301.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am the Senior President of Telecommunications of Jackson Energy Authority d/b/a JEA
6 ("JEA").

7 **Q. PLEASE DESCRIBE YOUR BACKGROUND AND BUSINESS**
8 **EXPERIENCE.**

9 A. I have worked with Jackson Energy Authority since 2001. Prior to that time, I worked in
10 the cable television industry going back to 1971, working in senior management positions for
11 more than 20 years. I was promoted to General Manager of the Teleprompter Cable TV system
12 in Tuscaloosa, Alabama in 1980 and served in that capacity through subsequent owners Group
13 W Cable and Comcast Corporation until 1992. I relocated to Jackson, Tennessee to become
14 Area General Manager for Cablevision Industries' 32,000 subscriber West Tennessee cable
15 television operations. After Charter Communications acquired the West Tennessee properties in
16 1998, I was promoted to Director of Operations for Charter's group of cable systems serving
17 over 90,000 cable subscribers in West Tennessee and West Kentucky. In November 2001, I left
18 Charter to head up the JEA venture.

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

20 A. The purpose of my testimony is to respond to portions of the pre-filed testimony of
21 Jonathan V. Harlan of Aeneas Communications, LLC ("Aeneas") that has been filed in this
22 docket. I was principally involved in the negotiation of the Interconnection Agreement between

1 JEA and Aeneas dated March 1, 2004 (the “Interconnection Agreement”), and I would like to
2 respond to a number of errors and misstatements in Mr. Harlan’s testimony.

3 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

4 A. Aeneas and JEA have entered into a long term, non-exclusive Interconnection Agreement
5 dated March 1, 2004 under which Aeneas is permitted but not required to purchase certain
6 wholesale services from JEA. The Interconnection Agreement includes a “parity” provision that
7 requires JEA to provide service quality and provisioning time to Aeneas that is at least equal to
8 what it provides other providers and JEA itself. In this proceeding, Mr. Harlan has attempted to
9 stretch the “parity” provision to manufacture an obligation on JEA to charge itself the same rate
10 to use its own network as JEA charges Aeneas for wholesale services. Nothing in the
11 Interconnection Agreement, however, supports Aeneas’ argument.

12 **Q. PLEASE DESCRIBE JEA’S CURRENT BUSINESS RELATIONSHIP WITH**
13 **AENEAS.**

14 A. Aeneas has a ten-year interconnection agreement with JEA.

15 **Q. WHY DID JEA ENTER INTO A TEN YEAR INTERCONNECTION**
16 **AGREEMENT WITH AENEAS?**

17 A. As part of the settlement of a prior lawsuit between JEA and Aeneas in 2003, the parties
18 agreed that JEA would enter into a ten year interconnection agreement with Aeneas that included
19 pricing protection for Aeneas if JEA entered into another interconnection agreement with another
20 CLEC. The Interconnection Agreement was negotiated by the parties to satisfy that obligation.

21 **Q. WHEN THE INTERCONNECTION AGREEMENT WAS NEGOTIATED,**
22 **WAS JEA A RETAIL PROVIDER OF TELEPHONE SERVICES?**

1 A. No. As stated in the Memorandum of Understanding attached to the direct testimony of
2 Dana R. Wheeler in this docket (the "MOU"), JEA initially entered the telecommunications
3 market as a wholesale provider. Aeneas and other competitive retail providers were given a
4 minimum of three (3) years after JEA's launch of its network to utilize the JEA network before
5 JEA could decide to enter the market as a retail provider. If Aeneas and other providers met and
6 continued to meet the minimum customer penetration requirements under the MOU, the MOU
7 provided that JEA would continue as wholesale provider of telecommunications services. On the
8 other hand, if Aeneas and other providers did not meet the customer penetration requirements
9 under the MOU, the MOU permitted JEA to enter the retail market.

10 **Q. WHEN THE INTERCONNECTION AGREEMENT WAS NEGOTIATED,**
11 **DID THE PARTIES CONTEMPLATE THE POSSIBILITY THAT JEA**
12 **COULD BECOME A RETAIL PROVIDER?**

13 A. Yes, both parties clearly understood that possibility. The MOU clearly contemplated that
14 JEA might need, for business reasons, to enter the retail market. The MOU expressly addressed
15 that issue, and the MOU predated the Interconnection Agreement.

16 **Q. WHEN THE INTERCONNECTION AGREEMENT WAS NEGOTIATED,**
17 **DID THE PARTIES CONTEMPLATE THE POSSIBILITY THAT JEA**
18 **COULD PROVIDE SERVICES TO OTHER THIRD PARTY RETAIL**
19 **PROVIDERS?**

20 A. Yes, both parties clearly understood that possibility as well.

21 **Q. HOW DOES THE INTERCONNECTION AGREEMENT ADDRESS THOSE**
22 **ISSUES?**

1 A. The Interconnection Agreement addresses these issues in two primary areas: service
2 quality and rates. Those issues are addressed in two separate provisions in the Interconnection
3 Agreement. With respect to service quality, JEA agreed that it would provide the same quality
4 and provisioning periods for Aeneas as it provided to other providers and to JEA itself. This is
5 called the “parity” provision. With respect to rates, JEA agreed to an “adoption of agreements”
6 provision that allows Aeneas to adopt entire agreements provided to other third party providers.
7 Unlike the “parity” provision, the plain language of the “adoption of agreements” provision does
8 not (and was never intended to) apply to JEA’s own use of its network. JEA does not “agree”
9 with itself or enter into “agreements” with itself concerning the use of its own network, and JEA
10 does not charge itself a “rate” for using its own network.

11 **Q. PLEASE NOW RESPOND TO MR. HARLAN’S CONTENTION THAT**
12 **SECTION 8.1 OF THE INTERCONNECTION AGREEMENT BETWEEN**
13 **AENEAS AND JEA PREVENTS JEA FROM FAVORING ITS RETAIL**
14 **TELEPHONE OPERATIONS OVER AENEAS.**

15 A. That provision applies to the quality of services that JEA provides to Aeneas, and that
16 section does prohibit JEA from favoring its retail telephone operations over Aeneas in terms of
17 service quality and provisioning time. Section 8.1 requires JEA to provide services to Aeneas
18 that are equal in quality to those services that JEA will provide to itself. However, Section 8.1
19 does not apply to rates associated with use of the JEA network.

20 **Q. PLEASE EXPLAIN YOUR STATEMENT THAT SECTION 8.1 ONLY**
21 **APPLIES TO SERVICE QUALITY.**

22 A. The word “quality” is used throughout the Section, and the word “rates” never appears in
23 Section 8.1. Section 8.1 provides:

1 All services provided by either party hereto to the other shall be equal in quality,
2 subject to the same conditions, and provided within the same provisioning time
3 intervals that the Provider provides to any of its customers, its Affiliates,
4 subsidiaries and end-users. To the extent technically feasible, the quality of the
5 JEA network, as well as the quality of the access to such network provided by
6 JEA to Contractor shall be at least equal in quality to that which JEA would
7 provide to any other customers, including itself, its Affiliates, or any other
8 information or telecommunications carrier. The quality of the interconnection
9 between the network of JEA and the facilities of Contractor shall be at a level
10 that is equal to that which JEA and Contractor, respectively, would provide itself,
11 a subsidiary, and Affiliate, or any other carrier provider. (emphasis supplied).

12 This provision only applies to quality of service and provides for parity of service quality
13 among all providers, including JEA itself.

14 **Q. SO, SECTION 8.1 DOES NOT APPLY TO RATES CHARGED TO A THIRD**
15 **PARTY FOR USE OF JEA’S NETWORK?**

16 A. That is correct. It does not. Section 8.1 applies to service quality and provisioning time.
17 A separate provision of the Interconnection Agreement addresses rates contained in agreements
18 for use of JEA’s network.

19 **Q. PLEASE IDENTIFY THE PROVISION OF THE INTERCONNECTION**
20 **AGREEMENT THAT ADDRESSES RATES CONTAINED IN OTHER**
21 **AGREEMENTS?**

22 A. That provision is Section 21.1 of the Interconnection Agreement.

23 **Q. PLEASE EXPLAIN SECTION 21.1 OF THE INTERCONNECTION**
24 **AGREEMENT.**

25 A. That Section authorizes Aeneas to adopt entire agreements with third-party providers if it
26 finds the rates and terms and conditions under those agreements more favorable. The section is
27 entitled “Adoption of Agreements,” and that section provides in relevant part:

JEA shall make available to Contractor any interconnection, service or network element provided under any other agreement JEA has with any local exchange carrier or information service provider. The parties may adopt all rates, terms and conditions concerning such other interconnection, service or network element agreements and any other rates, terms and conditions that are legitimately related to or negotiated in exchange for or in conjunction with the interconnection, service or network element agreement. (emphasis supplied)

Q. DOES THIS PROVISION APPLY TO JEA'S OWN USE OF ITS NETWORK?

A. No, clearly it does not. JEA does not "agree" with itself for its use of its own network. Section 21.1, by its very clear terms, only applies to entire "agreements" with third party providers. Additionally, unlike the language of Section 8.1, which extends to the quality of services provided by JEA to "itself," there is no comparable provision in Section 21.1. Section 8.1 refers to JEA "itself." Section 21.1 does not.

Q. IN HIS TESTIMONY, MR. HARLAN INDICATES THAT JEA REFUSED TO PROVIDE AENEAS THE "SAME TERMS AND CONDITIONS" AS WERE PROVIDED TO CINERGY. IS THAT CORRECT?

A. No, that is not true. On numerous occasions, JEA offered Aeneas the exact terms and conditions as were provided to Cinergy Communications – including on several occasions after the agreements with Cinergy Communications had been executed. Aeneas refused to sign those agreements and instead indicated that it wanted to negotiate a different arrangement with JEA. While we were not required to do so under the provisions of Section 21.1, JEA even offered Aeneas the opportunity to adopt any of the discrete agreements with Cinergy Communications, even though those agreements were negotiated as an integrated arrangement with Cinergy Communications. Aeneas rejected this offer, too.

1 **Q. HOW DID JEA DEVELOP THE STRUCTURE OF THE CINERGY**
2 **AGREEMENTS?**

3 A. Interestingly enough, the terms and conditions provided to Cinergy Communications
4 actually originated from discussions with Aeneas at a time when Aeneas was the only CLEC
5 seeking to utilize JEA's fiber to the home network. Mr. Harlan admits this on page 13 of Exhibit
6 1 to his testimony.

7 **Q. SO AENEAS WAS ACTUALLY GIVEN THE FIRST OPPORTUNITY TO**
8 **NEGOTIATE THIS KIND OF RELATIONSHIP WITH JEA?**

9 A. Yes, that is correct. We offered this kind of agreement to Aeneas before any other
10 CLECs were using the JEA network, and I thought that we were very close to entering into an
11 arrangement of this kind with Aeneas. However, just a few weeks before we began to launch our
12 retail cable television services and marketing campaign, Aeneas declined to enter into such an
13 arrangement with JEA. Since Aeneas was the only CLEC provider on our network at the time,
14 and since we were very concerned about maximizing the services provided over our network as
15 we rolled out our new competitive video services, we negotiated a temporary marketing
16 arrangement with Aeneas instead.

17 **Q. HOW WILL JEA'S CURRENT RELATIONSHIP WITH AENEAS**
18 **CHANGE AFTER THIS DOCKET IS COMPLETED?**

19 A. JEA will become a new retail competitor in Madison County, where Aeneas currently
20 provides services, but this Docket will not impact the interconnection agreement between JEA
21 and Aeneas. That agreement will continue in effect until it is terminated in accordance with its
22 terms or the parties otherwise reach some mutually beneficial agreement. At the same time, we

1 have planned for the possibility that Aeneas will move all of its wholesale business away from
2 JEA.

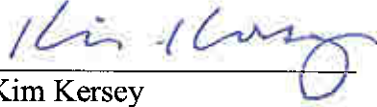
3 **Q. DOES AENEAS HAVE OTHER OPTIONS FOR NETWORK**
4 **CONNECTIVITY?**

5 A. Yes, Aeneas can develop its own network, or it can negotiate agreements with AT&T or
6 with other facilities-based providers.

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

8 A. Yes, it does. Thank you.

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

11 
12 Kim Kersey
13 Senior Vice President - Telecommunications
14 Jackson Energy Authority
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