

**FORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

December 19, 2007

*In re: Application of Jackson Energy Authority to)
Expand its Certificate of Convenience and)
Necessity to Provide Intrastate)
Telecommunications Services)*

Docket No. 07-00201

**AENEAS COMMUNICATIONS, LLC'S RESPONSE
TO OBJECTIONS OF JACKSON ENERGY AUTHORITY**

Aeneas Communications, LLC ("Aeneas") submits the following response to the objections filed by Jackson Energy Authority ("JEA") to the discovery requests of Aeneas.

RESPONSE TO GENERAL OBJECTIONS

JEA's main objection to Aeneas' requests is based on the assumption that this proceeding should be limited to the statutory requirements of T.C.A. §65-4-201 regarding the applicant's "managerial, financial, and technical abilities to provide the applied for services." T.C.A. §65-4-201(c)(1).

That assumption is wrong. JEA's application "to expand its certificate" is unique in several respects.

First, JEA is a municipally owned electric utility and, unlike other competitive, local exchange carriers, is bound by the prohibitions against cross-subsidization and other restrictions contained in T.C.A. §7-52-401 et seq. The prohibitions against cross-subsidization are also contained in JEA's own charter. Chapter 55 of the Private Acts of 2001, Section 4(7). See Final Order in Docket 03-00438, at pp. 1-4 and 10-11 ("Compliance with Additional Conditions . . . as a condition to the granting of a CCN.") JEA's own witness, Mr. Dana Wheeler, states that JEA

will continue to comply with those “additional conditions” concerning cross-subsidization. Pre-filed testimony at p.8.

Second, JEA already has a certificate from the TRA to provide wholesale – but not retail – telecommunications services. TRA Docket 03-00438. As a condition of obtaining that wholesale certificate, JEA agreed to a number of conditions including a “Code of Conduct” which includes commitments to adhere to the TRA’s “rules and orders governing anti-competitive practices” and to provide wholesale services to all customers on a non-competitive basis.¹ See also transcript at p. 97. All of these conditions were approved by the TRA and remain in force today.

Third, unlike other applicants for new authority, JEA already has a TRA-approved interconnection agreement containing various rates, terms, and conditions and other contractual obligations which JEA is bound to honor and the TRA is obliged, if needed to enforce. Docket 04-00128.² According to the testimony of JEA witness Wheeler, JEA will continue (as it must) to honor the terms of that contract. (Pre-filed testimony of Wheeler, at p. 5.)

¹ The Code of Conduct states, in relevant part, “JEA may not discriminate between the telephone business unit and any other entity in the provision or procurement of goods, services and information from its regulated divisions, or in the establishment of standards.”

The Code also states, “The telephone business unit of the Telecommunications Division of JEA will be subject to all rules and regulation of the TRA in the same manner and to the same extent as other similar telecommunications providers, including without limitation, rules and orders governing anti-competitive practices.”

² Section 8.1 JEA’s interconnection agreement with Aeneas states, “Parity. All services provided by either party hereto to the other shall be equal in quality subject to the same conditions and provided within the same provisioning time intervals that the Provider provides to any of its customers, its Affiliates, subsidiaries and End Users. To the extent technically feasible, the quality of the JEA network, as well as the quality of the access to such network provided by JEA to Contractor shall be at least equal in quality to that which JEA would provide to any other customers including itself, its Affiliates, or any other information or telecommunications carrier. The quality of the interconnection between the network of JEA and the facilities of Contractor shall be at a level that is equal to that which JEA and Contractor, respectively, would provide itself, a subsidiary, and Affiliate or any other carrier or provider.”

Finally, the “Memorandum of Understanding” between JEA and Aeneas which resolved a Chancery Court lawsuit between the parties and was introduced as evidence in Docket 03-00438 (Exhibit 1, tr. at p. 55), provides that the “lease amount” paid by Aeneas to JEA for use of JEA’s network “shall not be more than is charged any other provider.”

In sum, JEA is a municipally owned utility with an extensive regulatory history at the TRA. Therefore, when the TRA considers whether the applicant “has demonstrated that it will adhere to all applicable authority policies, rules and orders” (T.C.A. §65-4-201(c)(1)), the TRA must require JEA to “demonstrate” that the utility has, in fact complied both with the obligations imposed by the agency and the commitments made by JEA to its customers. More importantly, JEA’s request to expand its certificate to enable the utility to offer both wholesale and retail service means that JEA would be allowed to compete against other retail providers, including JEA’s own customers. In other words, a state-certified wholesale provider, which has a continuing, legal obligation to offer its services to all requesting CLECs on a non-discriminatory basis, now proposes to become a retail CLEC itself. Whether this request is likely to “increase” retail competition is doubtful. It is even less likely that, if JEA’s request is granted, the TRA can devise adequate and enforceable restrictions that would protect JEA’s retail customers from anti-competitive practices. Nevertheless, JEA’s Petition requires the agency to consider these novel and difficult issues.

There should be no dispute that these topics must be addressed in order for the TRA to decide whether it serves the public interest to allow JEA to become both a wholesale and retail provider of telephone service. The TRA should first determine whether JEA is following the law today and then decide what, if any, additional restrictions are needed to ensure JEA’s compliance in the future.

For the most part, the discovery requests to which JEA objects are relevant to JEA's continuing obligations to avoid cross-subsidizing its telephone business unit and to treat all retail customers on a non-discriminatory basis. Assuming, for example, that the TRA agrees that JEA's wholesale operation should not be allowed to discriminate in favor of its telephone business unit, the TRA must be able to ensure that JEA charges the same wholesale rates to Aeneas that JEA charges its own telephone business unit. Similarly, in order to determine whether JEA is cross-subsidizing its telephone business unit, the TRA must be assured that the wholesale rates charged by JEA are cost-based (see transcript of Docket 03-00438, at 144) and that the retail prices of the telephone business unit fully cover those wholesale costs. See, for example, T.C.A. §65-5-108(2)(c) setting a retail "price floor" for incumbent local telephone companies in order to prohibit "cross-subsidizing," "preferences to competitive services or affiliated entities," "price squeezing," "price discrimination," or "other anti-competitive practices."³

JEA cannot reasonably avoid addressing those concerns about cross-subsidization and discrimination. Both were raised and addressed during JEA's prior certification proceeding and both issues are of much more concern if JEA is allowed to offer retail services in competition with the same carriers to which JEA is required to provide wholesale services. Neither Aeneas nor the TRA can intelligently address those issues without the kind of information Aeneas seeks in these discovery requests.

³ Although JEA is not an "incumbent local exchange telephone company" as that term is used in T.C.A. §65-5-108, the Tennessee legislature has recognized that JEA's unique status as a municipal electric utility raises public interest concerns about cross-subsidization and anti-competitive practices. For that reason, T.C.A. §7-52-401 provides that a municipal electric entity, such as JEA, which also provides telephone service "shall be subject to regulation by the Tennessee Regulatory Authority in the same manner and to the same extent as other certified providers of telecommunications services, including, without limitation, rules or orders governing anti-competitive practices." That language means that JEA is "subject to" the same restrictions and protections against anti-competitive conduct which the TRA applies to incumbent local exchange carriers.

RESPONSES TO SPECIFIC OBJECTIONS

Aeneas submits the following responses to JEA's objections to specific discovery requests. Where JEA, despite its objections, has agreed nevertheless to furnish the requested information, Aeneas will not address the objection.

Question 4(b)

JEA has agreed to produce some of the information requested by Aeneas concerning the \$60 million bond issue used to build JEA's telecommunications network but declines to provide information which would indicate how much money JEA saved by securing those bonds with the credit of JEA's monopoly electric service. With the request information, Aeneas may be able to demonstrate that JEA has used its Electric Division to subsidize its telecommunications network, possibly in violation of T.C.A. §7-52-403. In other words, the actual cost of the network may well be higher than the subsidized cost of the network as shown on the books of JEA and the "network transport fees" paid by JEA's telephone business unit may not be sufficient to cover the actual cost of the network.⁴

Question 6

Aeneas has requested that JEA provide the actual costs of providing certain network services which JEA is obligated to provide to Aeneas under the parties' ten-year, interconnection agreement. This cost data is necessary to determine whether the network transport fees paid by the telephone unit have fully covered the costs of network transport. The TRA also needs this information if the agency decides to establish a retail "price floor" for JEA's telephone business

⁴ It makes no difference that JEA's telecommunications network is "owned" by JEA's cable television business unit. The Electric Division cannot do indirectly what it is prohibited from doing directly. If the Electric Division has cross-subsidized the construction of the network and those subsidies are passed through to the telephone business unit in the form of cheaper "network transport fees," then the Electric Division has indirectly subsidized JEA's telephone operations in violation of state law and JEA's charter.

unit as the TRA would do for a local exchange telephone company which is subject to T.C.A. §65-5-108(2)(c). As previously discussed, JEA is “subject to” those same provisions and the requested cost data is necessary if the TRA intends to prohibit JEA from engaging in the “anti-competitive practices” described in that statute. If JEA is unable or unwilling to produce this cost data, then the TRA should consider whether it serves the public interest to allow JEA to offer both wholesale and retail service.

JEA also objects to providing the cost of an “Ethernet port” because this service “is not a jurisdictional telecommunications service.”

Even though an “Ethernet port” is typically used to provide high-speed internet access rather than regulated telephone service, the parties’ interconnection agreement, which was approved by the TRA pursuant to both federal and state law, obligates JEA to offer network access for both telephone and internet services. (See, for example, page 1 and Attachment 1 of the parties’ interconnection agreement filed in Docket 04-00128.) It is well established that while parties to an interconnection agreement cannot be required to include in the agreement terms and conditions unrelated to the requirements of the federal Telecommunications Act, parties may voluntarily negotiate such terms and include them in a Section 252 agreement. Once the parties voluntarily agree to negotiate such terms and include them in an interconnection agreement, the entire agreement is subject to the jurisdiction of a state commission which is charged with enforcing the agreement. See Coserv Ltd. Liab. Corp. v. Southwestern Bell Tel. Co., 350 F.3d 482 (5th Cir. 2003).

Question 8

JEA declines to provide the information necessary to allow the TRA to impose upon JEA a “resale requirement” comparable to the resale obligation imposed upon incumbent local exchange carriers by Section 252(d)(3) of the federal Telecommunication Act.

The purpose of the federal resale obligation is to promote competition among retail providers and deter wholesale providers from engaging in anti-competitive practices. The same requirement would deter JEA from reducing its retail rates to less than JEA’s costs ie., it would deter JEA from cross-subsidizing its retail telephone operations. This kind of resale obligation is simply one of many methods the TRA could use to address the concerns over cross-subsidization and discrimination which are at issue in this case.

Question 9

JEA declines to provide information concerning its initial decision to become solely a wholesale carrier and stay out of the retail market.

When JEA obtained its wholesale certificate in 2004, JEA apparently believed that becoming a wholesale provider would be more likely to enhance competition than if JEA were to become a retail provider and that the “profitability” of the telephone business unit would be about the same under either business model. See TRA Docket 03-00438, transcript at 56-59, 85, 120-122. Since JEA now argues, seemingly to the contrary, that becoming a retail provider will enhance competition and increase profitability, Aeneas needs the requested information to determine the basis of JEA’s original position and challenge the company’s current argument.

Question 11

Instead of providing “all documents” concerning JEA’s decision to become a retail provider instead of remaining solely a wholesale provider, JEA offers to submit a “compilation of the primary strategic planning documents that management developed in connection with this decision.”

Aeneas does not accept that offer. There is no question that the requested information is not only relevant but critical to the TRA’s determination of whether it serves the public interest to allow JEA to become both a wholesale and retail supplier of telephone services. JEA cannot be allowed to select which documents it will or will not produce concerning this decision. Aeneas and the TRA need to see all of them.

Question 5

Requests for Production of Documents. JEA declines to provide the “training materials” used by JEA to ensure compliance with the FCC’s CPNI rules and the CPNI requirements set forth in the parties interconnection agreement. JEA contends that this information is not relevant to this proceeding.

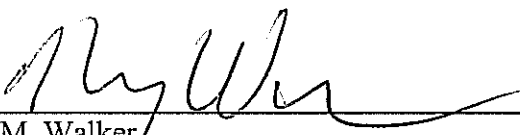
Even JEA concedes that it must meet the requirements of T.C.A. §65-4-201(c) in order to expand its CCN. That statute provides that the applicant must demonstrate it will adhere to “all applicable” TRA “policies, rules, and orders.” The protection of a customer’s private information and the legal prohibitions against the misuse of that information by one carrier to gain a competitive advantage over another are well established in the Authority’s “policies, rules and orders.” Moreover, the potential misuse of CPNI information obtained by JEA’s wholesale operations to benefit JEA’s retail business goes to the heart of the non-discrimination provisions

contained in JEA's Code of Conduct. This information is needed to determine whether JEA is, in fact, making a reasonable effort to prevent such misuse.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: _____


Henry M. Walker
1600 Division Street, Suite 700
P.O. Box 340025
Nashville, Tennessee 37203
(615) 252-2363

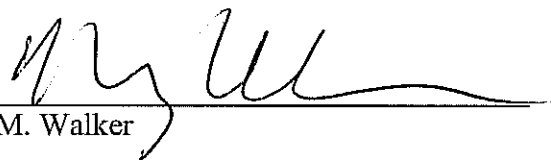
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being forwarded via U.S. mail, postage prepaid, to:

Mark W. Smith
Miller & Martin, PLLC\
Suite 1000 Volunteer Building
832 Georgia Avenue
Chattanooga, TN 37402-2289

Jamie R. Hollin
Farris Mathews Branan Bobango Hellen & Dunlap, PLC
Historic Castner-Knott Building
618 Church Street
Suite 300
Nashville, TN 37219

on this the 19th day of December, 2007.



Henry M. Walker