

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

IN RE:

**APPLICATION OF JACKSON ENERGY
AUTHORITY TO EXPAND ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE INTRASTATE
TELECOMMUNICATIONS SERVICES**

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Docket No.: 07-00201

**BRIEF OF JACKSON ENERGY AUTHORITY IN SUPPORT OF HEARING
OFFICER'S ORDER RESOLVING OBJECTIONS TO DISCOVERY REQUESTS**

Pursuant to the Notice of Briefing Schedule dated February 5, 2008, Jackson Energy Authority ("JEA") submits this Brief in support of the finding of the Hearing Officer in his January 11, 2008, *Order Resolving Objections to Discovery Requests* (the "Discovery Order"). In the Discovery Order, the Hearing Officer correctly found that "JEA is not an ILEC, and therefore JEA should be held to the same standard as a typical CLEC when applying for a CCN, subject to any additional conditions imposed on municipal electrics by Title 7."

The Hearing Officer's Discovery Order is clearly supported by the plain language of Tennessee Code Annotated, Title 7, Chapter 52, Part 4, and by the Authority's consistent application of those statutes to municipal telecommunications applicants. The contentions of Aeneas are wholly without merit and Aeneas' appeal should be denied.

There is no legal basis to apply incumbent obligations to a competitive carrier like JEA. The Hearing Officer correctly overruled Aeneas' unsupported attempt to rewrite the municipal telecommunications statutes and correctly rejected Aeneas' invitation to discriminate among providers in its application of a clear statutory standard in granting certificates of convenience and necessity to competitive carriers.

Tennessee General Assembly has spoken very clearly: the Authority is to follow the same certification process for municipal broadband as it follows for other competitive providers. T.C.A. § 7-52-401 addresses the scope of the Authority's jurisdiction. That Section provides, in relevant part:

[To] the extent that any municipality provides any of the services authorized by this section, such municipality shall be subject to regulation by the Tennessee regulatory authority in the same manner and to the same extent as other certificated providers of telecommunications services, including, but not limited to, rules or orders governing anti-competitive practices, and shall be considered as and have the duties of a public utility, as defined in § 65-4-101, but only to the extent necessary to effect such regulation and only with respect to such municipality's provision of telephone, telegraph and communication services.

See Chapter 55 of the 2001 of the Private Acts, Section 4(7) (the "JEA Private Act") (providing similar jurisdiction over JEA's provision of telephone services).

There is no suggestion anywhere in T.C.A. § 7-52-401 or in the JEA Private Act that JEA should be regulated like an incumbent. Had the General Assembly intended for JEA or other municipal providers to be regulated as incumbent providers, it would have said so. Instead, the General Assembly's reference to other "certificated providers of telecommunications services" in T.C.A. § 7-52-401 is a clear reference to the statutory provisions applicable to other competitive local exchange carriers, found in T.C.A. § 65-4-201(c).


The Authority has consistently applied the plain language of the statute in this manner, while also recognizing that certain additional statutory requirements in Title 7, Chapter 52, Part 4 apply to municipal providers. Indeed, the Authority need look no further than JEA's existing CCN for a plain application of these clear requirements. By its *Order Approving Application for Certificate of Public Convenience and Necessity* dated March 5, 2004, in Docket No. 03-00438 (the "CCN Order"), the Authority granted JEA a CCN to provide competitive telecommunications services as a carriers' carrier. In the CCN Order, the Authority considered

JEA's request for a certificate of convenience and necessity in light of the requirements of T.C.A. § 65-4-201, provisions of the JEA Private Act and applicable sections of T.C.A. § 7-52-401, *et seq.* In applying T.C.A. § 65-4-201 to JEA, the Authority applied the customary managerial, financial and technical ability standard applicable to competitive carriers.

The Authority has consistently followed a similar analysis in each of the other dockets involving municipal broadband providers. *See, e.g., Order Approving Application for Certificate of Public Convenience and Necessity*, Docket No. 97-07488 (granting certificate of convenience and necessity to Electric Power Board of Chattanooga); *Order Approving Application for Certificate of Public Convenience and Necessity*, Docket No. 05-251 (granting certificate of convenience and necessity to Bristol Tennessee Essential Services).

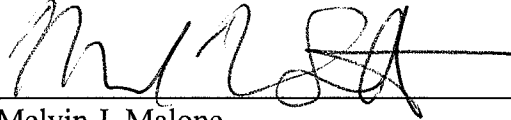
Aeneas' attempts to create new a regulatory status and new regulatory obligations on JEA are without merit and should be rejected. There is no basis to apply different standards to JEA in this case than have previously been applied to JEA and to other carriers. The Authority should affirm the Hearing Officer's Discovery Order.

Respectfully submitted,

Handwritten signature of Teresa Cobb in black ink, written over a horizontal line.

Teresa Cobb, General Counsel
Jackson Energy Authority
119 E. College Street
Jackson, Tennessee 38301
(731) 422-7280

Attorney for Jackson Energy Authority

Handwritten signature of Mark W. Smith in black ink, written over a horizontal line.

Melvin J. Malone
Mark W. Smith
MILLER & MARTIN PLLC
150 Fourth Avenue North
1200 One Nashville Place
Nashville, Tennessee 37219-2433
(615) 244-9270 telephone
(615) 256-8197 facsimile

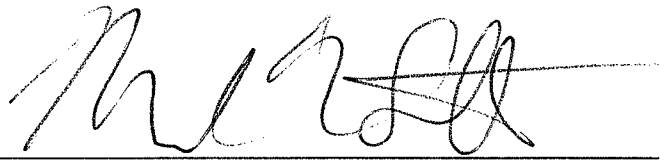
Attorneys for Jackson Energy Authority

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy has been forwarded via email to the following
on this the 20th day of February, 2008.

Charles B. Welch, Jr., Esq.
Jamie R. Hollin, Esq.
Farris Mathews Branan Bobango
Hellen & Dunlap, PLC
Historic Castner-Knott Building
618 Church Street, Suite 300
Nashville, Tennessee 37219

Henry M. Walker, Esq.
Boult Cummings Conners & Berry, PLC
1600 Division Street, Suite 700
P.O. Box 340025
Nashville, Tennessee 37203



For Miller & Martin PLLC