

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

**April 23, 2008**

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

Docket No. 07-00201

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**PRE-FILED TESTIMONY OF  
JONATHAN V. HARLAN  
OF  
AENEAS COMMUNICATIONS LLC**

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

A. My name is Jonathan V. Harlan, and my business address is 300 North Cumberland Street, Suite 200, Jackson, Tennessee, 38301.

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

A. I am the founder and Chief Executive Officer of Aeneas Communications, LLC. My company has intervened as a party to this proceeding because I believe that Jackson Energy Authority should not be allowed to expand its certificate to offer retail telecommunications service. JEA has clearly stated that it does not intend to abide by the policies, rules and orders of the TRA but intends to discriminate in favor of its own retail operations and against its wholesale customer, Aeneas.

**Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND BUSINESS EXPERIENCE.**

A. I founded Aeneas Communications, LLC in 1995. We have been providing telephone and internet service to customers in West Tennessee for more than eight years. We hold a

1 certificate of convenience and necessity from the TRA (Docket 99-00415) and we are one of the  
2 few, if not the only, competitive local exchange carriers headquartered in Tennessee that offers a  
3 full range of telephone and internet services and that is not part of a municipal electric system.  
4 We are a small privately owned company employing about thirty people and serving several  
5 thousand business and residential customers in seventeen counties, all in West Tennessee. There  
6 is more information about Aeneas and about me included in my resume which is attached to the  
7 end of my testimony.

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

9 A. The purpose of my testimony is to describe my concerns about JEA's plans to enter the  
10 retail voice market. JEA is a major provider of wholesale network services. When JEA sought  
11 permission from the TRA to become a wholesale provider of network services, JEA made a  
12 promise to this agency and to Aeneas that JEA would offer its wholesale services on a non-  
13 discriminatory basis to all retail customers. Those promises are contained in the "Code of  
14 Conduct" adopted by JEA as a condition of receiving a wholesale certificate from the TRA. That  
15 promise is also contained in a ten-year interconnection agreement between JEA and Aeneas  
16 which was approved by order of the Authority in Docket 04-00128 and which the TRA is  
17 obliged to enforce, if necessary. The Code of Conduct, which is made part of JEA's CCN, and  
18 the interconnection agreement, which was approved by TRA order, constitute the "policies, rules  
19 and orders" of the Authority. Now, JEA seeks to enter the retail market to compete directly  
20 against Aeneas, its own retail customer. Obviously, it raises a concern for Aeneas when our  
21 wholesale supplier also becomes our retail competitor. Perhaps those concerns could be  
22 addressed with adequate safeguards to prevent JEA from engaging in a price squeeze (offering  
23 retail service at less than its wholesale rate) and other discriminatory practices. JEA has

1 informed this agency that it does not intend to adopt any such safeguards, and that it does not  
2 believe that the prohibitions against discrimination contained in the "Code of Conduct" and the  
3 interconnection agreement apply to JEA's own retail operations. In other words, JEA has stated  
4 that, if this application is granted, JEA will be under no obligation to offer Aeneas the same  
5 wholesale rates and standards of service that JEA offers its retail operations. If this application is  
6 granted, JEA believes it has a license to discriminate against Aeneas. I cannot believe that the  
7 TRA will allow this to happen.

8 **Q. PLEASE DESCRIBE THE BACKGROUND OF THIS DISPUTE.**

9 A. It is not practical for me to spend the next hour or so describing the difficult relationship  
10 that has existed between JEA and Aeneas over the last several years. I have attached as Exhibit  
11 1 to my testimony an extensive report prepared by our attorney, Mr. Paul Rice, which accurately  
12 describes the major events that have occurred during that period and all the problems we have  
13 had. Let me summarize by saying that I do not believe that JEA honored the letter or the spirit of  
14 its wholesale certificate which limited JEA to the role of a "carrier's carrier." JEA wanted (and  
15 still wants) customers to believe that JEA was not just a wholesale carrier but a retail provider of  
16 telephone service in Madison County.

17 Second, I do not believe that JEA honored the letter or the spirit of its promise to treat all  
18 retail customers the same and not to discriminate between one CLEC and another. As described  
19 in Exhibit 1, JEA formed a partnership with another CLEC, Cinergy Communications, under  
20 terms and conditions that were more favorable to Cinergy than what JEA offered to Aeneas.  
21 When Aeneas tried to obtain those same terms and conditions, JEA put up unreasonable barriers  
22 and essentially refused to comply with their obligation to treat all CLECs on a non-discriminatory  
23 basis. Our communications with JEA and their responses are set forth in Exhibit 1.

1    **Q.     WHY DIDN'T AENEAS FILE A COMPLAINT WITH THE TRA?**

2    A.     We considered it many times but the time and expense of a complaint proceeding  
3    deterred us. We are a very small company and, of necessity, I am involved in every aspect of our  
4    company's operations. Each time a problem with JEA arose, I had to weigh the benefit of  
5    obtaining relief from the TRA against the months of time it would take to get that relief and the  
6    cost to our company in time and money. Nevertheless, the very possibility that we might go to  
7    the TRA and the fact that JEA was bound by TRA orders prohibiting JEA from discriminating  
8    against Aeneas gave us negotiating leverage we would not otherwise have had. Knowing that  
9    the TRA would enforce its orders and could, if asked, hear our complaint, has been critical to our  
10   efforts to try to negotiate these disputes with JEA.

11   **Q.     HOW WILL THAT CHANGE IF THIS APPLICATION IS GRANTED?**

12   A.     When JEA filed this application to enter the retail voice business, Aeneas sought  
13   information from JEA that would allow the TRA to create safeguards to deter, if not prevent,  
14   JEA from engaging in anticompetitive conduct and discriminating in favor of its retail operations  
15   and against Aeneas. JEA refused to provide that information on the grounds that JEA had no  
16   such obligation and that the non-discrimination language in the Code of Conduct and the  
17   interconnection agreement applied only to third party CLECs. That language does not apply,  
18   according to JEA, to JEA's own retail operations. JEA also argued that the TRA does not even  
19   have the statutory authority to prevent JEA from discriminating in favor of its retail operations  
20   and against its other wholesale customers. JEA is trying to take away the one meaningful  
21   remedy that Aeneas now has: the right to go to the TRA to enforce the prohibitions against  
22   discrimination contained in the Code of Conduct and the interconnection agreement. If JEA can

1 persuade the TRA that the prohibitions do not apply to JEA's own retail division, those  
2 protections are essentially meaningless.

3 **Q. HAVE YOU REVIEWED THE ANTI-DISCRIMINATION PROVISIONS**  
4 **CONTAINED IN THE CODE OF CONDUCT AND THE INTERCONNECTION**  
5 **AGREEMENT?**

6 A. I have. That language is set forth in the briefs filed by our attorneys in this case.

7 **Q. DO YOU BELIEVE THAT THE LANGUAGE APPLIES TO JEA's OWN RETAIL**  
8 **OPERATIONS?**

9 A. Of course it does. The Code of Conduct states JEA "may not discriminate between the  
10 telephone business unit and any other entity." That means to me that JEA cannot favor its  
11 telephone retail operations over Aeneas. The interconnection agreement states that the "quality"  
12 of the network service provided to Aeneas "shall be at least equal in quality to that which JEA  
13 would provide to any other customers including itself [or] its Affiliates." Emphasis added.  
14 These protections obviously apply to JEA "itself" and would be meaningless if they did not.

15 **Q. IF THE TRA GRANTS THIS APPLICATION, WHAT COMPETITIVE**  
16 **SAFEGUARDS SHOULD THE TRA ADOPT?**

17 A. Since JEA would not respond to our discovery requests, we do not have the information  
18 to insure, for example, that JEA is charging cost-based wholesale rates or that the rates and  
19 service offered to Aeneas are of the same quality as the rates and service which will be offered to  
20 JEA "itself." It is my understanding, however, that the TRA has said that if this application is  
21 granted, the agency does, in fact, have the power to adopt competitive safeguards and to force  
22 JEA to disclose the information necessary to develop those safeguards.

23 **Q. IS THAT WHAT YOU BELIEVE THE TRA SHOULD DO?**

1 A. No. As long as JEA insists that it should be allowed to ignore the existing "policies, rules  
2 and orders" of the TRA prohibiting discrimination, the TRA should deny JEA's application. JEA  
3 should not be allowed to enter the retail market in competition with Aeneas, its own customer,  
4 and a citizen under its sovereignty, until JEA acknowledges its obligations to treat Aeneas fairly  
5 in accordance with the Code of Conduct and the interconnection agreement and comes before the  
6 agency with adequate cost data to demonstrate that it will charge cost-based rates to all retail  
7 customers on a non-discriminatory basis.

8 **Q. IS THERE ANYTHING ELSE YOU WISH TO ADD?**

9 A. When this application was filed to allow JEA to enter the retail voice market, it frankly  
10 never occurred to us that, in doing so, JEA would try to disavow the promises it made to this  
11 agency and to us concerning their obligation to treat all retail customers on a non-discriminatory  
12 basis. There is nothing about that in JEA's application. Not until JEA refused to comply with  
13 our discovery requests did JEA reveal that it believes those obligations would not apply to JEA's  
14 own retail division if this application is granted. It is obvious to me, as I am sure it is obvious to  
15 the TRA, that if our major wholesale supplier is allowed to offer service at retail at less than it is  
16 offering to us at wholesale and otherwise discriminate in favor of its retail division, that would  
17 have serious consequences for Aeneas and the customers we serve. We have to depend upon this  
18 agency to protect Aeneas against such unfair and anticompetitive conduct.

19 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

20 A. Yes.

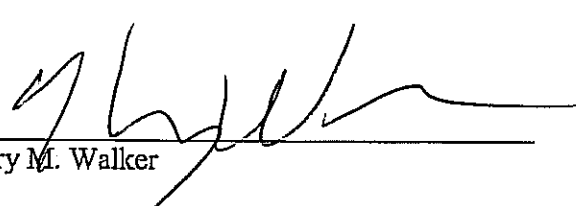
1  
2 CERTIFICATE OF SERVICE

3 I hereby certify that a copy of the foregoing is being forwarded via U.S. mail,  
4 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

5  
6 on this the 23rd day of April, 2008.

7  
  
Henry M. Walker

Jonathan V. Harlan

- Grew up in Jackson and went to local schools
- Graduated from University of Tennessee with double major in religious studies and political science
- Studied sanskrit in India for a year on scholarship
- Earned a master's degree in religious studies from University of Miami (Ohio). Continued towards a Ph.D in religious studies at University of Virginia
- Active in national Presidential politics and worked two years as aid de camp for the Speaker of the House, Tennessee Legislature
- 1990 returned to Jackson to join father's insurance agency
- Served as a Madison County Commissioner for eight years, from 1994 to 2002
- 1995 Started Aeneas Internet in a space in the back of insurance agency
- 1998 Local Chamber of Commerce awards "Emerging Business" Pinnacle Award
- Aeneas has a long history of firsts, and a particular sensitivity to the often-neglected needs of rural communities. It was the first company to bring Internet to rural Tennessee, and soon after its creation became West Tennessee's largest Internet provider. Aeneas was also the first to bring broadband Internet to rural Tennessee. In 1999, Aeneas expanded into the telephone industry and became Tennessee's first and only privately-owned, facilities based Competitive Local Exchange Carrier ("CLEC"). In 2004, Aeneas became the first Tennessee-based VoIP carrier, over the largest municipal FTTH (fiber to the home) network in the country, once again taking a place on the front lines of the latest telecommunications breakthrough.
- 2003 Aeneas physical plant completely destroyed by tornado; services resumed at alternate location within 72 hours
- 2003 Aeneas recognized for "Disaster Preparedness", appearing in print and radio ads of the United States Department of Homeland Security
- 2005 Broadband Properties Magazine (9/11/2005) and FOCUS (Fiber Optic Communities of the United States) recognized Jackson, Tennessee's network as Number One in the nation (Aeneas was sole provider of internet and telephone on the network at the time)
- 2007 Both BusinessTN Magazine and Entrepreneur Magazine list Aeneas in Hot 100 Fastest Growing Companies in Tennessee
- 2008 Local Chamber of Commerce awards Pinnacle Award for customer service.



3-17-08

**REPORT ON JACKSON ENERGY AUTHORITY  
COMPLIANCE WITH ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY IN FIRST  
THREE YEARS OF OPERATIONS**

Prepared by:  
AENEAS COMMUNICATIONS, LLC

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## **Intro**

The Jackson Energy Authority ("JEA") is authorized by the Tennessee Regulatory Authority to operate a telecommunications network as a "carrier's carrier". To alter this authority, JEA must re-apply to the TRA and expanded authority will only be granted if: "(1) the applicant has demonstrated that it will adhere to all applicable authority policies, rules and orders; and (2) the applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services." TCA 65-4-201(c). This report was prepared to review compliance with obligations of the Jackson Energy Authority to provide network access to LECs in accordance with non-discrimination and parity requirements found in Chancery Court agreements, the Aeneas Interconnection Agreement, and the terms of the JEA Certificate of Convenience and Necessity. The willingness and ability to meet legal and contractual commitments reflects upon "managerial abilities" as well. There follows a brief overview of the legal and regulatory background of the JEA Fiber to the Home Project and a narrative of its relationship with private retailers of communication services to date.

## **Aeneas Supports Public Networks**

The former Bell companies (now AT&T), like the cable companies, already have infrastructure in the public right of way that will be sufficient to carry broadband for several more years. However, both use control of their networks to their advantage by either charging competing retailers discriminatory fees to use their networks or prohibiting access to them altogether. For this reason, retailers of broadband services- like Aeneas Communications- out of self-interest will generally support any efforts to build out a network alternative to the Bell and cable networks- such as those built as part of the municipal broadband movement.

## **Role of Government**

It is often mistakenly said that the government's role in deployment of broadband is comparable to the early electrification of the nation. This is accurate when talking

about the distribution network, but not when talking about retailing applications such as voice, internet access, or cable tv programming. The financial 'barriers to entry' are not the same. Anyone with bank-able credit can become a broadband retailer; there are no rivers to dam, no nuclear power plants to build, no coal fired steam plant required. All you need is affordable equipment, expertise, and an entrepreneurial spirit. There are no shortages of broadband retailers, such as internet service providers (ISPs), Competitive Local Exchange Carriers (CLECs), or cable content providers. On the other hand, there is a need for government involvement in infrastructure deployment.

#### Tennessee Responds

The Tennessee Legislature considered and ultimately passed a bill giving "municipalities with an electric power plant" authority to enter the communications industry. Our Legislature appeared to recognize that there was no public need for the government to retail "Desperate Housewives" and "Jerry Springer" or other broadband applications; the emphasis, according to House sponsor Representative Matt Kisber, was with deploying infrastructure to foster private sector competition:

*"...Under the deregulation that the Federal government has now allowed, if this act passes, it opens up opportunities for them to joint venture- which I think would be the most likely scenario- with other private sector companies to create advanced services that could then benefit consumers and as I said earlier, competition ends up breeding a market and the consumer benefits..."*

*"...What this would do is to allow opportunities not in providing entertainment and content, but in providing infrastructures and partnerships with other private sector companies..."*

*"... What this can do is allow opportunities where they have the technology in place and they have the networks and the support systems where they can joint venture where a utility might want to joint venture with a telecommunications provider. The example I've been given before is that you might have a long distance and a local telephone company come to a utility and want to create a joint venture, which they (being the municipal electric distributor) provide the infrastructure. One provides service and one provides long distance service and they are able to do it in a package that's competitive in this era of deregulation with other companies wanting to do the same thing ..." [parenthetical clarification added].*

Representative Matt Kisber, May 19, 1997, speaking on House Bill 1427, which when passed, became TCA 7-52-401.

Reflecting legislative drag in recognizing the triple play capacity of modern distribution networks, Tennessee continues to legislate concerning networks in terms of the "applications" they carry; municipal cable tv and internet projects are authorized in one statute (TCA 7-52-601) and telephone projects are in another (TCA 7-52-401). The language of the two statutes is similar, the following paraphrased from the telephone statute-

*"Every municipality operating an electric plant [...] has the power and is authorized [...] to acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge or otherwise dispose of any system, plant or equipment for the provision of telephone, telegraph, telecommunications services, or any other like system, plant, or equipment [...] in compliance with title 65, chapters 4 and 5, and all other applicable state and federal laws, rules and regulations ..."*

#### **What The Legislature Intends vs What Local Government Does**

The above statutes obviously do not address the details of operating networks, retailing broadband applications, nor all limitations on the use of government for commercial activities. Proactive legislative or regulatory guidance in those areas might have helped avoid some of the problems that have arisen to date. Whatever the Legislature believed it was doing, the emphasis in some localities shifted from providing the public with needed infrastructure to providing private interests with publicly funded commercial opportunities.

Memphis Light Gas and Water was the first to try the waters. MLG&W literally "partnered" with a privately owned company- arguably insulating it from oversight rules applicable to cities, counties and towns- to become a part of "Memphis Network". The public monies contributed became assets of the partnership, and of course, whoever controls the partnership controls the partnership assets. As sometimes happens with even the best of business plans, the project didn't produce as much revenue as expected and the partners were asked to contribute more money. And as time rolled on, MLG&W was reluctant to contribute additional cash, but private partners were willing- if they got a greater interest in Network. (Skipping ahead, we now know that Network was sold for a \$28 million loss without any elected government official having a say in the matter. Since

these funds represented Electric Division loans that will never be paid back, the loss may represent an illegal subsidy).

A few years after Memphis Networx broke ground, the City of Jackson divested itself of its utility division by having the Legislature pass a private act creating the "Jackson Energy Authority" (2001 Priv Acts, Ch 55). JEA soon announced that it had a plan drawn up wherein the government would build a network for the exclusive use of a group of businessmen that had been working with the utility in a consulting capacity. Aeneas Communications, an existing retail provider in Jackson, objected to the creation of a government subsidized competitor and litigation ensued. Tennessean's have an historic disdain of using government as a funding tool for the benefit of a private business- traceable to the activities of Carpetbaggers and reflected in Article II, Sections 28 and 31 of Tennessee's Constitution. The public reacted negatively to JEA's business plan, and two petition-drives garnered thousands of signatures against the plan.

In the midst of this turmoil, JEA's consultants abandoned the plan. In February 2003, the utility's Telecom Division reconsidered the objections of Aeneas and agreed to build the network and operate it as public infrastructure, open to any retailer of telephone or internet willing to pay to use it. The Telecom Division agreed that all retailers would be offered the same terms and conditions and pricing as any other to use the network. In addition, the Telecom Division agreed not to engage in retail competition against private providers of telephone or internet services if a certain minimum number of customers bought services on the network. Aeneas also agreed to support JEA in its application for regulatory approval to be a "carrier's carrier" of voice services at the Tennessee Regulatory Authority. JEA also agreed not to retail internet access; since Aeneas did not sell a cable TV product, JEA's ability to retail a cable product was not challenged..

JEA's public statements made it appear as if JEA's plans were back in line with the vision outlined by Representative Kisber to the Legislature (quoted above). On February 6, 2003, the Jackson Sun quoted JEA CEO John Williams as saying- *"If JEA gets broadband funding, and Aeneas agrees to offer their services through the open network, Aeneas would likely be just one of multiple companies to make the same deal with JEA "... "With this, when someone comes into our office we can offer them a menu of telephone or internet providers..."* (emphasis added). Seemingly confirming this, the

CCN stated, "JEA intends to offer the following services for purchase to the CLECs... [including]... (4) inclusion of the services offered by its CLEC customers under the JEA brand umbrella..." The phrase "JEA Brand Umbrella" was not defined, but when asked what it meant during a meeting on December 10, 2004, the Vice President of the Telecom Division advised that CLEC and ISP logos would be listed in marketing materials in menu fashion- "just like the channel line-up for cable tv".

This settlement was memorialized in a Memorandum Of Understanding. See Attachment A. JEA filed an "Application for a Certificate to Provide Telecommunications Services as a Carrier's Carrier" under Docket 04-00128. See Attachment B. JEA representatives affirmatively stated that it would be necessary to return to the TRA for additional authority before it could lawfully engage in retail sales in competition with Aeneas or anyone else. Testimony of John Williams, Attachment C.

In March of 2004, JEA was granted a Certificate of Convenience and Necessity (CCN) from the TRA, upon express condition that JEA operate the network as a Carrier's Carrier, and not also function as an internet and voice retailer. The certificate grants authority "*...to provide facilities-based telecommunication services as a carriers' carrier to competitive local exchange carriers (CLECs) within Madison County, Tennessee...*" The Certificate is attached as Attachment D.

#### JEA's Interconnection Agreement Template

After JEA began construction of the fiber network in March 2004, work began on outlining the operational systems for lessee-Aeneas to interface with lessor-JEA. It may be telling that Aeneas had to inquire about JEA's plans for such an agreement as the need for one drew near; the Telecom Division's management background was in cable television and there is evidence today that it is not familiar with many nuances of the telephone industry, such as the need in 2004 for an Interconnection Agreement.

Drawing from Bellsouth's experience open access- (a concept with some features of a carrier's carrier model), Aeneas and the Telecom Division developed an Interconnection Agreement to be executed by private providers using the JEA network. In it are standard references to "non-discrimination" and "parity", as well as a "pick and choose clause" for the providers to enforce parity should some later provider come up

with a better way of handling something. Together JEA and Aeneas filed the twenty six page "Interconnection Agreement" with the Tennessee Regulatory Authority in April 2004 (Docket 04-00128); see ~~Attachment B~~.

#### **Activity at the Policy Level**

At this point in the chronology it appeared that the situation in Jackson had come to a workable conclusion, and interest in public broadband networks seemed to be spreading in Tennessee. Chattanooga's Electric Power Board built a limited fiber to the premises network, Bristol followed suit, Covington formed a "hybrid" network based on cable tv infrastructure. Several other communities filed plans with the Comptroller to build public broadband networks, and they have even formed a trade association called the Tennessee Broadband Communities Council. Many ISPs and CLECs in the broadband retailing industry viewed the construction and inevitable statewide reach of these networks with great hope, but at the same time viewing government interest in retailing with great suspicion.

The TRA has also recognized that "municipalities with an electric power plant" are faced with the same temptations for abuse as anyone else controlling their competition's distribution network, and opened Docket 05-00327 to explore the need to have Interconnection Agreements between certificated entities (like JEA and its retail providers) approved and/or filed with the TRA. Aeneas participated and pointed out that since government network operators do not have to file or seek approval of the access rates they charge for the use of their networks, there is no accurate way to monitor whether these public networks are being operated for the economic benefit of one provider over another. This transparency is doubly important if the government is itself a retailer. The Due Process Clause, state statutes, TRA telecommunication regulations, and almost all interconnection agreements require government networks to provide non-discriminatory access and parity among retailers for good reason. Without it, the public will lose the benefits of competing providers trying to attract them with new innovations and lower prices. Strangely, two governmental entities, namely JEA and EPB, jointly appeared to oppose such disclosure of the terms of their interconnection agreements. The panel, noting that no actual complaint had been filed over a municipal agreement,



verbally voted 2-1 to continue the practice of reviewing Interconnection Agreements upon request, but not to require routine filing, approval, or monitoring. Director Ron Jones dissented, recognizing that it might be better to avert conflicts with a pre-implementation review than to try to resolve problems after they do damage.

#### Carrier's Carrier or Conflicted Carrier?

Even though JEA and Aeneas had resolved the lawsuit by agreeing to a "carrier's carrier" relationship, JEA Telecom Division management proposed a separate contract to be offered to all retailers using the network under which Telecom Division personnel would handle marketing, sales, billing and collections, and technical support for the retailers using its network.

Aeneas initially objected to the idea of turning over all of its proprietary customer information and company goodwill to someone else. It was further debated whether it would be appropriate for a government to hire out its sales influence. Throughout March 2004-April 2005, Division and Aeneas personnel discussed the practical impossibility the Division would have complying with non-discrimination requirements if, after additional internet or voice retailers joined the network, the Division attempted to continue recommending a particular providers internet and voice services. Aeneas predicted that division personnel would either have to live in a perpetual conflict of interest trying to be fair to competing companies or throw the entire weight and goodwill of local government behind one private company and against all others. Unequal treatment of retailers on the public network faces multiple legal prohibitions at the contractual and state law levels, for example: as made applicable to JEA via its Private Act, Section 4 (7), JEA is obliged to honor TCA 65-4-115, which states in pertinent part:

*"No public utility shall adopt, maintain, or enforce any regulation, practice, or measurement which is unjust, unreasonable, unduly preferential or discriminatory..."*

JEA is also obliged to respect TCA 65-4-122(c), which states in pertinent part:

*"It is unlawful for any such corporation to make or give an undue or unreasonable preference or advantage to any particular person or locality, or any particular description of traffic or service, or to subject any particular person, company,*

*firm, corporation, or locality, or any particular description of traffic or service to any undue or unreasonable prejudice or disadvantage."*

Furthermore, JEA is obliged to obey TCA 65-4-124(a), which states in pertinent part:

*"All telecommunications services providers shall provide non-discriminatory interconnection to their public networks under reasonable terms and conditions, and all telecommunications services providers shall, to the extent that it is technically and financially feasible, be provided desired features, functions and services promptly, and on an unbundled and non-discriminatory basis from all other telecommunications services providers."*

The more Aeneas raised traditional telephony issues concerning "non-discrimination" and "parity", the clearer it became that the Telecom Division either did not understand these commitments or did not plan to honor them. Based on the anti-competitive effect and doubtful legality of allowing a public utility to sell its influence over the sales process, Aeneas declined to accept the proposed agreements for additional service, in particular the "Sales Commission Agreement". See letter, ~~Attorney General~~.

#### **JEA As Reluctant Carrier's Carrier**

In the first year, the Telecom Division's cable tv retail sales team made a tremendous effort to bundle applications provided by Aeneas and sell fiber services – Aeneas was the only retail provider of voice and internet until April 8, 2005- and Aeneas paid over \$824,000 to JEA in the first year as a result of those customers. Because the Telecom Division desired to offer consumers all services that the fiber could carry, the Division's temporary army of door-to-door salespersons was allowed under a verbal agreement to offer Aeneas products during a JEA cable tv sales call, and the Telecom Division was paid a commission by Aeneas for this new revenue. Aeneas personnel could earn a commission selling JEA cable as well, and a discount was provided for consumers buying all three retail services. Things were going so well, in fact, that on September 11, 2005 the Jackson Sun reported that after the first year of operation- and while Aeneas was the only data and voice carrier on the network- Broadband Properties Magazine and the FOCUS organization (Fiber Optic Communities of the United States), recognized Jackson's network as Number One in the entire country.

The festering sore behind the scenes was that despite the carrier's carrier success in year one, the Telecom Division still had a full court press going on marketing the E+ brand, which it gave multiple identities- confusing the public. On the one hand, E+ was the cable TV product; on another, it was JEA's local customer support, and on yet a third, it was the fiber and its superior ability to transmit voice, internet, and cable. Consumers wanting anything on fiber were responding to the E+ ad campaign by calling JEA and many customers thought their E+ voice and internet was provided by JEA. Subsequently, Aeneas began to pick up stories of people calling the Telecom Division for internet and voice and being told to wait, as another carrier was coming on board. ~~(Attachment C)~~: The Telecom Division steadfastly denies any steering of customers to or away from a particular provider, but suspicion was ever present as it was evident that JEA was committed to a free-standing E+ product line.

#### **JEA As Sales Agent for Hire- Discriminatory Charges**

Sometime in December, 2004, the Telecom Division executed an Interconnection Agreement with Cinergy, an Indiana based provider of internet and telephone services, to provide access to the JEA network. A copy of said agreement is attached and incorporated by reference as ~~Attachment G~~:

The Memorandum of Understanding filed by JEA with the Chancery Court and incorporated into its Certificate of Convenience and Necessity with the TRA specifics parity in certain terms to go into all interconnection agreements:

*"(3) The Jackson Energy Authority and Aeneas Communications shall enter into a ten-year network access agreement on a per customer basis whereby Aeneas will lease capacity on JEA's open network to service Aeneas' telephone and internet customers. The lease amount shall not be more than is charged to any other provider..."*

In the Interconnection Agreement with Aeneas, JEA included a "Parity Clause" in paragraph 8.1 in which JEA agreed: *"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..."*

Despite representations to the Chancery Court and the Tennessee Regulatory Authority, the Telecom Division ignored the requirement to charge all retailers the same amount to use the network. By letter dated August 14, 2007, Telecom Division head Kim Kersey advised, "JEA did negotiate a different Interconnection Agreement with Cinergy with different terms, as is our right to do so."

The following is based on information available May 2006:

**Residential Internet, 4Mb-**

JEA contracted to sell 4Mb transport to Aeneas for \$30.25 per month; JEA sells Cinergy service at retail to the end user for \$29.95, meaning that under its formula it pays JEA only \$25 for the same bandwidth that Aeneas is charged \$30.25.

-As if the different pricing structure didn't make rate parity difficult enough to determine, it appears that the rates stated in the Interconnection Agreement between JEA and Cinergy are not the true rates being charged. For example:

**Residential Internet, 10 Mb-**

JEA contracted to sell 10 Mb transport to Aeneas for \$64.35 per month; JEA contracted to sell transport of Cinergy service for "50% of billed revenue or \$55, whichever is greater; JEA sells the Cinergy service at retail to the end user for \$54.95, which if truly the retail price charged, would be at a loss to Cinergy.

The Division's pricing, ~~Attachment H~~, was printed from the internet on May 23, 2006.

JEA has suggested that Aeneas simply sign the contract that it has with Cinergy. However, JEA offered the transport fee that Cinergy was charged only if all proprietary customer information and goodwill was abandoned to JEA. Aeneas had already made it clear it would not hand over its customers to JEA.

This second interconnection agreement not only produced discriminatory access rates, but on page 28, it actually requires the retailer to allow JEA to set retail prices; Aeneas believes the pricing of Aeneas services, like the pricing of all the competing retailers' services, should be the province of market forces and not the network operator's revenue needs.

The second interconnection agreement states that commercial rates are listed in an attachment, but the attachment was never drafted. The Telecom Division eventually

confirmed that the Telecom Division negotiates commercial rates for Cinergy customers on an ad hoc basis, and that there was no standard commercial rate to apply to all retailers (the case as late as August 2007).\*

#### **JEA As Sales Agent for Hire- Discriminatory Practices**

In addition to an Interconnection Agreement mentioned above, the Telecom Division and Cinergy entered two other agreements of the type earlier rejected by Aeneas, one for billing and customer service (~~Attachment 1~~) and another for sales commissions and joint marketing (~~Attachment 5~~).

On or about April 8, 2005, the Division began retailing Cinergy's voice and data services as *E+ products* with rare mention of "Cinergy". No reasonable interpretation of statutory or regulatory authority enabled the Telecom Division to wrap its "E Plus" brand around the products of one carrier and start retailing voice and internet products. JEA provided the trucks, the personnel, accounting, legal, sales, order fulfillment, initial customer support, billing and collections for its Indiana partner, and Cinergy is allowed use of the registered "E+ Broadband" logo in its marketing material as an endorsement by a government agency. When Aeneas merely mentioned "Jackson Energy Authority" in its advertising, Nashville counsel for the Telecom Division threatened to sue if Aeneas again uttered the name of its public utility in advertisements about Aeneas fiber applications.

JEA performs every function of a retailer for the Indiana company (indeed, Cinergy has only one known employee in West Tennessee with a desk in JEA's "Tennergy Building"); the only thing the Division doesn't do is generate the signal that it sells.

\* It would be interesting to hear Cinergy's view of this. These same Cinergy customers, some of whom apparently were signed up by JEA at a loss to Cinergy, are the ones JEA wishes transferred to the Telecom Division today.

Aeneas has attempted through marketing to distinguish itself as the only "local" provider of voice and data on the fiber network. Our local government, however, hijacked this campaign in its efforts to promote sales for the Indiana company by heavily marketing E+ as a local provider of broadband "customer service"- which it only performs for Cinergy.

Aeneas continues to receive feedback from the public indicating that the community on the whole is unaware that JEA was not a legal provider of data services and is not a legal provider of voice services. Others state they believed they had purchased "local" service from Aeneas or from JEA/E+ when in fact the Telecom Division signed them up for Cinergy's service. Others report having been steered away from Aeneas by Division personnel despite asserting a strong preference for Aeneas services. Two documented customer reports are attached as ~~Attachment K~~

Aeneas attempted to mitigate the Division's favoritism for out of state providers by suggesting adherence to a practice adopted by Jackson General Hospital when referring patients and also by the Jackson Police Department when ordering wreckers. Recalling John William's quote in the February 6, 2003 Jackson Sun article ("*With this, when someone comes into our office we can offer them a menu of telephone or internet providers...*"), Aeneas requested that the Division utilize a "consumer choice" card at every sales pitch to alert the consumer that they have a choice of internet and voice providers and to mark their selection on the card. A copy of the suggested "Choice Card" is ~~Attachment L~~. Division management has refused to even discuss it.

The Division's marketing intentionally blurred the line between its legal obligation to be a carrier's carrier and its partnership with Cinergy. The Division has allowed Cinergy to co-opt the public's logo and brand identification. For example, the JEA website is [www.jaxenergy.com](http://www.jaxenergy.com) and the Indiana company owns [www.jaxnet.net](http://www.jaxnet.net); the color schemes, layout, font, etc, are indistinguishable and intended to reflect the endorsement of the government. The Indiana company's site is rich with JEA branding, however the JEA site barely mentions Cinergy. ~~Attachment M~~

*JEA Utility =E*  
*Cinergy's Services=E+*

*JEA's URL =jaxenergy.com  
Cinergy's URL=jaxnet.com*

*JEA's website= white, blue and gold theme  
Cinergy's website= exactly the same white, blue and gold theme*

*JEA's website= multiple references to E+  
Cinergy's website= multiple references to E+, but not itself.*

*JEA email =jaxenergy.com  
Cinergy's email=jaxnet.net*

In October 2006, JEA bid as a retail provider of internet and voice services for the government account for Madison County. The bid cover sheet is ~~Attachment 1~~, and shows that it came from JEA on the fax masthead, lists JEA's headquarters address as the bidder's address, and purports to be submitted by "Jackson Commercial Account Executive, Cinergy Communications/Jackson Energy Authority". Clearly, JEA and Cinergy were one in the same.

#### **IMPASS: Perspectives of Aeneas and of Local Government**

Aeneas- In August of 2007, Aeneas CEO Jonathan Harlan wrote Telecom Division management to express his frustrations with various JEA practices that did not make business sense, to wit:

- JEA violations of laws, court orders, and contracts concerning pricing discrimination between the rates charged by the Telecom Division to Aeneas and the lower, and in some cases, ad-hoc pricing set by JEA per page 28 of their ICA;
- JEA's conflict of interest as a governmental entity and sales agent for Cinergy;
- JEA pushing Cinergy services even though higher access rates charged to Aeneas meant that Aeneas would pay JEA more for using the network than Cinergy would;
- that JEA's pricing to use the network had to be competitive with the pricing Aeneas can get on competing networks, and that the Telecom Division should focus on competing with other networks- not Aeneas;

and concluded by complaining that "All of these facts demonstrate that JEA management would prefer to lose money than allow a local retailer equal terms and conditions for use of our publicly funded network".

JEA- Telecom Division Vice President Kim Kersey's response of August 14, 2007 reflected exasperation with Harlan's perceived rigidity, and confirmed that Aeneas and its local public utility were seeing their relationship from completely different points of view. Mr. Kersey wrote:

- "*JEA does not have a publicly funded network. Our network is funded through the sale of revenue bonds, TVA-approved loans, and commercial loans*" (reminiscent of the November 1, 2002 Deposition Testimony of JEA VP denying that funds in JEA bank accounts were "public funds", denied that the fiber optic network would be a "governmental asset", and denied JEA is a "governmental entity". ~~Attachment 2~~).

On behalf of the government, Mr. Kersey continued to state:

- "*JEA did negotiate a different interconnection agreement with Cinergy with different terms, as is our right to do so*";

- "*JEA does not actively market Aeneas' services because Aeneas has not contracted JEA to be its sales and marketing agent, and Cinergy has*";

- "*Cinergy maintains complete control over its pricing*";

- Kersey continued to state that the carrier's carrier model was unproven and may never work because private providers only want to "*selectively use the network*".

#### JEA Rejects All Private Competition

Since the initial bond issue in Jackson, JEA has pushed back its projected 'break even' date by years and has refinanced all the bonds once, about \$38 million of them twice- pushing back the start of principal payments. JEA has borrowed additional millions from a local bank and from the Electric Division of JEA, and Chattanooga newspapers recently reported that the project is temporarily losing about \$3,000,000 per year. JEA management participated in a Fiber to the Home Council conference call in March 2007 concerning its broadband project and allowed that: "*We anticipate that it will have a positive net income in about 2010...we're about a year behind [our initial*



*business model] ... "We exhausted our available capital more quickly than anticipated in the project..."*

Under the Memorandum of Understanding that settled the JEA/Aeneas lawsuit, if, at the three year anniversary, the minimum customers were not using the network, JEA could at that point seek regulatory authority to sell its own branded voice products as a retailer, and sell internet access. In August 2007, JEA notified Aeneas that it did not have the minimum predicted customers on the network and that it would be approaching the TRA for authority to be a voice retailer and buy out Cinergy's customer base.

*"Expansion into retail services is necessary for the long term financial health of the JEA fiber to the home project. While JEA attempted to limit its role to that of a wholesale carrier's carrier, that model has not proven to provide sufficient revenues or income to JEA's project."* Pre-filed Testimony of Dana R. Wheeler, CEO of JEA, (Docket 07-00201). Clearly, the Telecom Division entertains the belief that retailing under a Certificate of Convenience and Necessity from the TRA will produce more revenue than retailing without one has produced to date.

#### **Rule of Law vs Government Debt**

The situation in Jackson has degenerated from a model in which the private sector buys a desirable service from JEA for a fair return, to a model where the public utility takes what it wants without much regard to legal niceties, to wit:

- (a) JEA sold government influence to Cinergy by becoming its "sales agent";
- (b) JEA fostered the image that it was a retail provider of telephone and internet under the E+ brand when it could not legally be one;
- (c) despite clear prohibitions against cross-subsidization between JEA divisions in sections 4(7), 5 and 18 of JEA's Private Act, the FY 2007 Audit on file with the State Comptroller reveals no expenses associated with the Telecom Division for payroll, billing, collections, and tech support. ~~Attachment P.~~

(d) In November 2007, JEA began making extortionate demands on Aeneas, threatening to use the proprietary and confidential list of Aeneas customers\* served over the JEA network to launch a campaign to take Aeneas' customers too. JEA management wrote, "*JEAs agrees not to directly solicit Aeneas accounts... based upon the following conditions...*" See, Attachment Q.

(e) In January 2008, JEA notified Aeneas that in retaliation for Aeneas participating in the Tennessee Regulatory Authority proceeding concerning JEA's request for an expanded certificate, it was refusing to discuss access rate adjustments or quote a Wide Area Network (WAN) that Aeneas needed to bid for the Madison County School System's annual contract. Attachment R

(f) While refusing to give Aeneas a quote for the WAN, JEA did include a WAN in its competing bid for the school system's internet service, while the company whose customers JEA has contracted to buy (Cinergy) bid on the telephone service and nothing else. The school system was deprived of competing bids utilizing the public fiber network.

(g) JEA has actively blocked the possibility of private competitors bringing new services to town via control over both over pole attachments and the fiber. Attachment S

Rather than serving to facilitate competition in Jackson, JEA is working to replace private enterprise, and there is a danger that hostility toward the private sector will spread. For example, in 2007 the City of Jackson, which guarantees JEA's debt, was asked to invite AT&T to begin negotiating with the City for a cable franchise, which would allow it to compete against JEA's cable product. Local media quoted a Councilman as noting JEAs financial position and stating that it is "*not in JEAs best interest to invite competition into the utility's area.*" (Jackson Sun, March 8, 2007, Ned Hunter). Beyond the City of Jackson, JEA and other like minded utilities have organized

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\*In section 17 of the Interconnection Agreement, JEA promised to hold all customer information received from Aeneas as confidential and not to use it for any purpose other than provisioning Aeneas orders. "...Recipient agrees not to publish or use the information for any advertising, sales or marketing promotions..."

the "Tennessee Fiber Optics Communities" <http://fiberoptics4tn.com/help.htm> which markets itself as an alternative to private enterprise. *"We can no longer depend on private enterprise to deliver this critical source of economic and social advancement."* Aeneas, for one, would be able to deliver broadband much more efficiently if JEA management would stop working so hard to stop it.

**Next: On to the Tennessee Regulatory Authority**

JEA has petitioned for the Tennessee Regulatory Authority to expand its area of operations via a state-wide Certificate of Convenience and Necessity.

END OF REPORT ON JEA COMPLIANCE WITH FIRST CCN

## **ATTACHMENT A**

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**IN THE CHANCERY COURT OF TENNESSEE FOR MADISON COUNTY**

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**AENEAS COMMUNICATIONS, LLC**

**Plaintiff**

**RD 60064**

**vs**

**THE CITY OF JACKSON, TENNESSEE,  
AND THE JACKSON ENERGY AUTHORITY**

**Defendants**

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**MEMORANDUM OF UNDERSTANDING BETWEEN THE JACKSON ENERGY  
AUTHORITY AND AENEAS COMMUNICATIONS, LLC**

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Come now the parties to this lawsuit to announce to the Court that this matter has been compromised and is resolved according to the following terms to be approved by the Board of the Jackson Energy Authority.

1. The Jackson Energy Authority (JEA) proposes to build and operate a fiber-optic broadband network for the citizens of Jackson that will provide cable television and Internet access services. This network will also have the capability of transporting telephone signals and the network shall be open to all qualified Tennessee Competitive Local Exchange Carriers (CLEC's). The Jackson Energy Authority will seek a limited Certificate of Public Convenience and Necessity from the Tennessee Regulatory Authority that will permit JEA to transport telephone signals over this open network and provide support services such as billing, installation, maintenance, marketing and provisioning for the participating CLEC's. The application for the certificate will not include a request for authorization for JEA to provide retail telephone service.
2. Aeneas Communications, LLC shall support and facilitate the efforts of the Jackson Energy Authority in its application for a Certificate of Convenience and Necessity, including but not limited to providing the TRA with a statement of support endorsing JEA's open network.
3. The Jackson Energy Authority and Aeneas Communications, LLC shall enter into a ten-year network access agreement on a per customer basis whereby Aeneas will lease capacity on JEA's open network to serve Aeneas' telephone and Internet customers. The lease amount shall not be more than is charged any other provider. Within this agreement, JEA may offer optional carrier support services such as

marketing, installation, billing, maintenance, and provisioning to Aeneas for additional charges per customer or transaction.

4. Jackson Energy Authority chooses not to enter the retail telephone and Internet business as long as Aeneas is serving the Jackson market in accordance with this Memorandum. Jackson Energy Authority may independently reverse its decision not to enter the retail market for either the telephone business (subject to any necessary TRA approval) or Internet business if Aeneas does not meet the following service conditions.
- a) Aeneas shall begin providing retail telephone and Internet service over JEA's network within 90 days upon commercial launch of the first stage of the network, unless Aeneas encounters technical problems within JEA's network that are beyond Aeneas' control.
  - b) Aeneas shall provide Aeneas telephone service on JEA's network to all of JEA's customer classes in a non-discriminatory manner to meet customer demand and at competitive retail rates that are at or below BellSouth's standard rates for equivalent service.
  - c) Aeneas shall provide Aeneas Internet service on JEA's network to all of JEA's customer classes in a non-discriminatory manner to meet customer demand and at rate and service levels that are competitive with other providers in the Jackson market.
  - d) Aeneas and all other providers utilizing the open network in the aggregate shall achieve market penetration levels of premises passed by the network according to the schedule below following JEA's commercial launch of its network, and shall maintain those penetration levels of customers served through the network as a minimum throughout the term of the network access agreement:

<u>Class of Service</u>	<u>Penetration of Premises Passed</u>	
	<u>End of 3 Yrs.</u>	<u>End of 5 Yrs</u>
1) Residential telephone	20%	25%
2) Commercial telephone	30%	35%
3) Residential Internet	20%	25%
4) Commercial Internet	20%	25%

"Commercial launch" shall occur after beta testing.

5. In consideration of the terms of this Memorandum of Understanding, Aeneas Communications, LLC shall submit to the Court a Stipulation of Dismissal terminating the appeal pending in this lawsuit, with costs to be paid by Aeneas.

**AGREED:**

**Jackson Energy Authority**

By: 

John Williams

Title: President

Approved by the Jackson Energy Authority Board on the \_\_\_\_ day of \_\_\_\_, 2003.

**Aeneas Communications, LLC.**

By: 

Jonathan Harlan

Title: Managing Member

## **ATTACHMENT B**

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## BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE:

APPLICATION OF JACKSON ENERGY :  
 AUTHORITY FOR A CERTIFICATE OF :  
 CONVENIENCE AND NECESSITY TO :  
 PROVIDE TELECOMMUNICATIONS :  
 SERVICES AS A CARRIERS' CARRIER :

Docket No. 03-00438


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APPLICATION FOR A CERTIFICATE TO PROVIDE  
 TELECOMMUNICATIONS SERVICES AS A CARRIERS' CARRIER

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Pursuant to applicable Tennessee Statutes and the Rules and Regulations of the Tennessee Regulatory Authority, Section 253 of the Federal Telecommunications Act of 1996 ("Act"), and the provisions of Chapter 55 of the 2001 Private Acts of the Tennessee General Assembly (the "JEA Private Act"), Jackson Energy Authority ("JEA") respectfully requests the Tennessee Regulatory Authority ("TRA") grant to JEA the authority, as may be required by law, to provide facilities-based telecommunications services as a carriers' carrier within Madison County, Tennessee. JEA is willing and able to comply with all applicable rules and regulations in Tennessee pertaining to the provision of such telecommunications services.

In support of its Application, JEA submits the following:

1. The full name and address of the Applicant is:

Jackson Energy Authority  
 119 East College Street  
 Jackson, Tennessee 38301  
 Telephone: (731) 422-7500

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Questions regarding this application should be directed to:

Carlos C. Smith  
Mark W. Smith  
Strang, Fletcher, Carriger, Walker, Hodge & Smith, PLLC  
400 Krystal Building / One Union Square  
Chattanooga, Tennessee 37402  
Telephone: (423) 265-2000  
Facsimile: (423) 756-5861

and

Teresa Cobb  
General Counsel  
Jackson Energy Authority  
119 East College Street  
Jackson, Tennessee 38301  
Telephone: (731) 422-7500  
Facsimile: (731) 422-7241

Contact name and address at the Company is:

John W. Williams  
President and Chief Executive Officer  
Jackson Energy Authority  
119 East College Street  
Jackson, Tennessee 38301  
Telephone: (731) 422-7500  
Facsimile: (731) 422-7241  
e-mail: [jwilliams@jaxenergy.com](mailto:jwilliams@jaxenergy.com)

Following certification, the TRA contact for financial and accounting matters at JEA will be:

Dana R. Wheeler  
Senior Vice President and Chief Financial Officer  
Jackson Energy Authority  
119 East College Street  
Jackson, Tennessee 38301  
Telephone: (731) 422-7207  
Facsimile: (731) 422-7221  
e-mail: [dwheeler@jaxenergy.com](mailto:dwheeler@jaxenergy.com)

Following certification, the TRA and customer/consumer (as applicable) contact at JEA will be:

Kim Kersey  
Senior Vice President of Telecommunications  
Jackson Energy Authority  
119 East College Street  
Jackson, Tennessee 38301  
Telephone: (731) 422-7257  
Facsimile (731) 422-7221  
e-mail: [kkersey@jaxenergy.com](mailto:kkersey@jaxenergy.com)

2. Organization Chart of Corporate Structure:

See attached Exhibit A for organizational chart of corporate structure.

3. Corporate information:

JEA is a utility authority created on July 1, 2001, by a Private Act of the Tennessee General Assembly. JEA is the successor to the Jackson Utility Division of the City of Jackson, Tennessee, which was originally created in 1959. JEA provides electric, gas, water and wastewater services to approximately 38,000 homes, businesses and industries in Jackson, Tennessee and adjacent areas of Madison County, Tennessee. A copy of the JEA Private Act is attached as Exhibit B.

JEA intends to construct a cable television system with a "fiber to the home" broadband network architecture ("Network"). The Network will have the capabilities of supporting telephony and/or data services in addition to its core cable television, video and Internet capabilities. Upon completion, the Network will consist of a 658 mile all-fiber optic network designed and manufactured by Wave7 Optics that relies fundamentally on an Internet Protocol (or "IP") over Gigabit Ethernet architecture. This architecture will provide the Network the capability to deliver, cost-effectively, 500 Mbps of symmetrical

bandwidth to individual subscribers using a single fiber. The Network will be capable of utilizing Voice-over-IP-technology to transport telephony traffic as prioritized IP packets over extremely high bandwidth fiber links, assuring high quality of service and feature set capability. Likewise, the architecture of the Network will be capable of providing unsurpassed bi-directional bandwidth and robust and flexible quality-of-service management for superior data transport.

JEA will utilize the Network to provide cable television within Madison County, and JEA will utilize the Network to provide Internet services, either directly or in combination with one or more Internet service providers; but JEA does not presently intend to utilize the Network to offer voice or data service to end users. Instead, JEA desires to create a platform for competition in the competitive local exchange markets by entering into wholesale contractual relationships with one or more third party competitive local exchange carriers ("CLEC Customers") that will utilize the Network to provide these services to end users. JEA anticipates that these contractual arrangements may include fixed per line access charges, compensation arrangements under which JEA will be compensated a fixed percentage of the CLEC Customer's gross revenues, or some combination of the foregoing. JEA does not anticipate entering into any arrangement that will involve the joint ownership or joint control of assets or the sharing of profits or losses with these CLEC Customers, and JEA does not by this Application seek approval to enter into any such arrangement.

JEA anticipates that the CLEC Customers will be responsible for providing or arranging for the following matters:

- all end use services required by law or regulation;
- a soft-switch that is compatible with the Network;
- connections with long distance carriers;
- interconnections with BellSouth and other CLECs;
- technicians to operate and maintain the CLEC Customer's equipment;
- sales personnel and related agent compensation;
- labor and materials for commercial installations, as well as PBX systems and other equipment beyond JEA's gateway to the Network;
- customer support and service; and
- engineering and technical service.

JEA will provide the Network, including the installation and maintenance of subscriber specific infrastructure, such as customer gateways to the Network. Additionally, while the CLEC Customers will not be required to purchase these services from JEA, JEA intends to offer the 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.

Section 4(7) of the JEA Private Act authorizes JEA to own and operate a telecommunications system and to provide telecommunications services, and in Section 2(20) of the JEA Private Act, the General Assembly broadly defined telecommunications services to include telephone and voice, cable television, data, and Internet access services, among other authorized services. Under Section 4(7) of the JEA Private Act, the telecommunications system is to be independent of and separate from other utility systems of JEA, as is required of each of JEA's core utility services. To accomplish this, JEA will create and operate a Telecommunications Division (the "JEA Telecommunications Division"), in the same manner as JEA has already created and presently operates divisions for its electric, water, wastewater and gas services. Within the JEA Telecommunications Division, JEA will create distinct business units for cable, Internet and telephony services, and JEA will provide the applied for services under this Application through the JEA telephone business unit of the JEA Telecommunications Division.

JEA has established cost allocation guidelines that will apply to the JEA Telecommunications Division. These guidelines are consistent with JEA's traditional practice to allocate costs among its various separate utility divisions. For regulatory purposes, JEA will also allocate costs within the Telecommunications Division among its cable, Internet and telephone business units. JEA has attached as Exhibit C a copy of JEA's Cost Allocation Manual.

4. JEA possesses the managerial, technical, and financial ability to provide telecommunications service, as demonstrated below:

A. Financial Qualifications:

JEA has the financial capability to provide the applied-for services. Because of the unique technical capabilities of JEA's fiber-based cable system, nearly all capital expenditures and most operating expenses will fall under the cable business unit of its Telecommunications Division, and JEA's telephone business unit will have minimal capital requirements, other than for its on-going working capital needs.

At its May 22, 2003 Board meeting, the JEA Board of Directors adopted bond resolutions authorizing the issuance of up to sixty million dollars (\$60,000,000) of bonds to provide for the construction of the Network and operating expenses during the start-up period of JEA's cable and Internet operations.

Exhibit D contains a pro forma balance sheet, income statement, and statement of cash flows for the telephone business unit of the JEA Telecommunications Division. To provide for the required working capital, JEA has obtained a line of credit in the amount of \$1,000,000 from Union Planters Bank. A copy of the Union Planters commitment letter and a set of JEA's most recent audited financial statements are attached as Collective Exhibit E.

Neither JEA's financials nor its projected financials reflect any revenues or expenses associated with reciprocal compensation.

A corporate surety bond is provided as Exhibit F.

Thus, JEA asserts that it has the financial resources necessary to operate as a wholesale carriers' carrier in Tennessee.

B. Managerial Ability:

JEA has substantial experience with and expertise in facilities-based utility services. As shown in Exhibit G to this Application, JEA has the managerial expertise to successfully operate a broadband enterprise in Tennessee. As described in the attached biographical information, JEA's management team has extensive management and business experience with facilities-based utility services.

In addition, JEA's Senior Vice President of Telecommunications has substantial management and business experience in the cable television, internet and broadband services sector, and another member of JEA's management team has substantial experience with fiber optic cable engineering, construction, and maintenance.



To supplement the experience and expertise of its internal management team, JEA will rely upon the expertise of its fiber to the home vendors and will secure independent third party consultants on an as needed basis.

C. Technical Qualifications:

Because JEA will not provide retail local exchange services, JEA's CLEC Customers will be responsible for satisfying the minimum standards established by the TRA. JEA's CLEC Customers will also be responsible for filing and maintaining tariffs in the manner prescribed by the TRA and to meet minimum basic local standards, including quality of service and billing standards required of all local exchange carriers regulated by the TRA. JEA's CLEC Customers will also be responsible for compliance with the TRA prohibition on requiring customers to purchase consumer premises equipment that cannot be used with the incumbent local exchange carrier's systems.

As noted in the biographical information contained in Exhibit G, there are three officers of JEA who have engineering backgrounds and extensive experience in facilities-based utility system management, and another officer who has several years of experience and expertise in related fields. JEA has also hired a Telecommunications Project Manager with extensive experience in fiber optic cable network design and construction, as well as in the operation and maintenance of a broadband network. In addition, JEA will secure the services of one or more third party consultants on an as need basis to supplement JEA's internal experience and expertise. Thus, directly and through its contractual

arrangements with its CLEC Customers, JEA is technically qualified to provide local exchange service in Tennessee.

5. Proposed Service Area:

JEA proposes to offer its services to carriers within Madison County, Tennessee as permitted by applicable state and federal law. JEA intends to offer its services through the use of its own facilities.

6. Types of Telecommunications Service to be provided:

As indicated above, JEA does not intend to directly provide local exchange service to end users. Instead, JEA intends to offer wholesale services through contractual arrangements with one or more CLEC Customers. These CLEC Customers will, in turn, offer a broad variety of local exchange services to residential, business and industrial customers in Madison County. JEA's CLEC Customers will be responsible for providing an initial line of local services that are, at a minimum, comparable to that offered by BellSouth.

In addition, JEA's CLEC Customers will be responsible for: 1) Providing access to 911 and E911 emergency service; 2) Providing white page directory listings and directory assistance; 3) Providing consumer access to and support for the Tennessee Relay Center in the same manner as incumbent local exchange telephone companies; 4) Providing free blocking service for 900, 976 type services in accordance with TRA policy; 5) Providing Lifeline and Link-up services to qualifying citizens of this state; 6) Providing educational discounts in existence as of June 6, 1995, all in accordance with TRA Rule 1220-4-8-.04.

7. Repair and Maintenance:

JEA understands the importance of effective customer service for local service customers. Where a CLEC Customer arranges for JEA to provide customer support to the CLEC Customer's end use customers, those end use customers will be able to call JEA at a designated service number, and this will be a local call for those customers. In addition, those end use customers may contact JEA in writing or in person at the headquarters address, as well as via e-mail at [www.jaxenergy.com](http://www.jaxenergy.com). The local service number will be printed on the customer's monthly billing statements. The contact person knowledgeable about JEA's operations following certification will be Kim Kersey, Senior Vice President of Telecommunications, referenced in Paragraph 1, above.

Grant of the Application will further the goals of the Tennessee Legislature and further the public interest by expanding the availability of competitive telecommunications services in the State of Tennessee. In addition, intrastate offering of these services is in the public interest because the services will provide Tennessee customers new technologies, increased efficiencies, and cost savings. Authorizing JEA to provide certain services to CLECs that, in turn, provide competitive local exchange telecommunications services to end users will enhance materially the telecommunications infrastructure in the State of Tennessee and will facilitate economic development.

In particular, the public will benefit both directly, through the use of the competitive services to be offered by JEA's CLEC Customers and indirectly, because JEA's presence in Tennessee will increase the incentives for other telecommunications providers to

operate more efficiently, offer more innovative services, reduce their prices, and improve their quality of service. Grant of this Application will further enhance the service options available to Tennessee citizens for the reasons set forth above.

8. Small and Minority-Owned Telecommunications Business Participation Plan (65-5-212):

See Exhibit H

9. Toll Dialing Parity Plan:

JEA's CLEC Customers will be responsible for abiding by the then current state and federal regulatory requirements relating to toll dialing parity plans.

10. Applicant has served notice of this application to the eighteen 18 incumbent local exchange telephone companies in Tennessee with a statement regarding the company's intention of operating geographically. The notice is attached as Exhibit I.

11. Numbering Issues:

At this time, JEA does not intend to request its own NXXs or to issue its own telephone numbers. JEA's CLEC Customers will be responsible for abiding by the then current state and federal regulatory requirements relating to numbering issues.

12. Tennessee Specific Operational Issues:

See Exhibit J.

13. Miscellaneous:

- A. Sworn Pre-filed testimony: Exhibit K.
- B. JEA's CLEC Customers will be responsible for complying with TRA requirements concerning end use customer deposits.
- C. JEA is not providing telecommunications service in any other state and, therefore, has not been subject to complaints of any other States.
- D. JEA will file any required tariffs subsequent to the Application's approval and before providing regulated services in Tennessee, in accordance with applicable statutes and regulations.

## CONCLUSION

JEA respectfully requests that the TRA enter an order granting it a certificate of convenience and necessity to operate as a telecommunications service provider and authority to provide telecommunications services under contractual arrangements with CLEC Customers on a facilities-based basis in Madison County, Tennessee in the service areas of BellSouth. For the reasons stated above, JEA's provision of these services would promote the public interest by providing high-quality service at competitive prices and by creating greater economic incentives for the development and improvement for all competing providers.

Respectfully submitted this 14th day of July, 2003.



Carlos C. Smith (TN BPR No. 1710)  
Mark W. Smith (TN BPR No. 16908)  
Counsel for Jackson Energy Authority  
Strang, Fletcher, Carriger, Walker, Hodge & Smith, PLLC  
400 Krystal Building  
One Union Square  
Chattanooga, Tennessee 37402  
Telephone: (423) 265-2000  
Facsimile: (423) 756-5861

Teresa Cobb  
General Counsel  
Jackson Energy Authority  
119 East College Street  
Jackson, Tennessee 38301  
Telephone: (731) 422-7500  
Facsimile: (731) 422-7241

## **ATTACHMENT C**

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BEFORE THE TENNESSEE REGULATORY AUTHORITY

RECEIVED

2003 NOV 21

ORIGINAL  
TRAFFIC ROOM

IN RE:

APPLICATION OF JACKSON  
ENERGY AUTHORITY FOR A  
CERTIFICATE OF CONVENIENCE  
AND NECESSITYDOCKET NO.:  
03-00438

## TRANSCRIPT OF PROCEEDINGS

Monday, November 10, 2003

VOLUME I

APPEARANCES:

For Aeneas Communications:	Mr. Henry Walker
For Charter Communications:	Mr. Charles B. Welch, Jr. Mr. Timothy Glut
For Jackson Energy Authority:	Mr. Mark W. Smith Mr. Carlos C. Smith Ms. Teresa Cobb
For TRA Staff:	Mr. Joseph Werner

Reported By:  
Susan D. Delac, RPR, CCR

NASHVILLE COURT REPORTERS

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(615) 885-2798 • (800) 372-DRPO  
Fax (615) 885-2621



CROSS-EXAMINATION

BY MR. WALKER:

Q. Mr. Williams, your application is for wholesale service only; is that correct?

A. That is correct.

Q. So you would have to return and would intend to return to the TRA to seek an amendment to your certificate before getting into the retail side of the Telecom business?

A. Yes, sir, that's correct.

MR. WALKER: That's all.

DIRECTOR MILLER: Thank you, Mr. Walker. Mr. Welch.

CROSS-EXAMINATION

BY MR. WELCH:

Q. Mr. Williams, you worked closely with Mr. Work on this application?

A. That's correct, yes.

Q. He's your paid consultant for this application, isn't he?

A. That's correct, he is paid.

Q. And would it surprise you if I told you that Mr. Work refers to the telephone business unit as a shell? Would that surprise you in his testimony?

## **ATTACHMENT D**

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

March 5, 2004

IN RE: APPLICATION OF JACKSON ENERGY )	
AUTHORITY FOR A CERTIFICATE OF )	
PUBLIC CONVENIENCE AND NECESSITY )	DOCKET NO.
TO PROVIDE TELECOMMUNICATIONS )	03-00438
SERVICES AS A CARRIER'S CARRIER )	

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**ORDER APPROVING APPLICATION FOR CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY**

---

On January 5, 2004, this matter came before the Tennessee Regulatory Authority ("Authority"), for consideration of the *Application of Jackson Energy Authority for a Certificate of Public Convenience and Necessity to Provide Telecommunications Services as a Carrier's Carrier* (the "*Application*").<sup>1</sup>

**LEGAL STANDARD FOR GRANTING CCN**

The *Application* of Jackson Energy Authority ("JEA") was made pursuant to and considered in light of the criteria for granting a certificate of public convenience and necessity ("CCN") as set forth in Tenn. Code Ann. § 65-4-201 *et seq.*, Tenn. Code Ann. § 65-5-212, and applicable sections of Tenn. Code Ann. § 7-52-401 *et seq.*

Tenn. Code Ann. § 65-4-201 provides, in pertinent part:

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<sup>1</sup> Chapter 55 of the Private Acts of 2001, § 4(7) provides that Jackson Energy Authority is "subject to regulation by the Tennessee regulatory authority in the same manner and to the same extent as other certified providers of such [telecommunications] services, including, without limitation, rules or orders governing anti-competitive practices, and shall be considered as and have the duties of a public utility, as defined in Section 65-4-101, but only to the extent necessary to effect such regulation and only with respect to the authority's provision of telephone and telegraph services."

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system, or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate. . .

\*\*\*

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable authority policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

\*\*\*

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 1, 1995.

In addition, pursuant to Tenn. Code Ann. § 65-5-212, competing telecommunications providers are required to file with the Authority: 1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and 2) information on programs that might provide technical assistance to such businesses.

Pursuant to Chapter 55 of the Private Acts of 2001, § 4(7), JEA's Application is also subject to the requirements of Tenn. Code Ann. §§ 7-52-401, 7-52-403 and 7-52-405. Tenn. Code Ann. § 7-52-401 provides, in pertinent part:

Every municipality operating an electric plant, whether pursuant to this chapter or any other public or private act or the provisions of the charter of the municipality, county or metropolitan government, has the power and is authorized, on behalf of its municipality acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, to acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge or otherwise dispose of any system, plant or equipment for the provision of telephone, telegraph, telecommunications services, or any other like system, plant, or equipment within and/or without the corporate or county limits of such municipality, and, with the consent of such other municipality, within the corporate or county limits of any other municipality, in compliance with title 65, chapters 4 and 5, and all other applicable state and federal laws, rules and regulations. A municipality shall only be authorized to provide telephone, telegraph or telecommunications services through its board or supervisory body having responsibility for the municipality's electric plant. . . . Notwithstanding § 65-4-101(a)(2) or any other provision of this code or of any private act, 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, without limitation, 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.

With respect to the applicability of other regulatory laws and rules to municipalities, Tenn. Code Ann. § 7-52-403 provides:

(a) To the extent that it provides any of the services authorized by § 7-52-401, a municipality has all the powers, obligations and authority granted entities providing telecommunications services under applicable laws of the United States or the state of Tennessee. To the extent that such authority and powers do not conflict with the provisions of title 65, chapter 4 or 5, and any rules, regulations, or orders issued thereunder, a municipality providing any of the services authorized by § 7-52-401 has all the authority and powers with respect to such services as are enumerated in this chapter.

\*\*\*

Additionally, Tenn. Code Ann. § 7-52-405 establishes the criteria for a municipality's allocation of the costs of providing its telecommunications services.

To prevent cross-subsidization among the divisions of JEA, Chapter 55 of the Private Acts of 2001, § 4(7) provides that the telecommunications services system "shall be operated as a separate system independent of, and separate from, the other utility systems of the authority."

#### **PROCEDURAL HISTORY**

On July 15, 2003, JEA filed its application for a Certificate of Public Convenience and Necessity to provide facilities-based telecommunications services as a carrier's carrier within Madison County, Tennessee. Aencas Communications, LLC filed a petition to intervene on July 18, 2003, stating it had a cognizable interest in the outcome of the proceedings.

At the regularly scheduled Authority Conference held on August 4, 2003, Director Pat Miller, Director Sara Kyle and Director Ron Jones, the voting panel assigned to this docket, appointed General Counsel or his designee as Hearing Officer to hear preliminary matters, to rule on any petitions for intervention, and to set a procedural schedule to completion. The Panel also voted to hear the Application on the merits. On September 25, 2003, the Hearing Officer filed a Notice of Hearing, scheduling a hearing for October 21, 2003.

On October 10, 2003, Charter Communications, Inc. ("Charter") filed the *Petition of Charter Communications, Inc. for Leave to Intervene and Request for Procedural Schedule* ("Petition to Intervene"), stating it needed to ensure that its interests would be represented, insofar as they related to exemption of certain services from regulatory requirements pursuant to Tenn. Code Ann. § 65-5-208(b). In its *Petition*, Charter also requested a procedural schedule to permit it sufficient opportunity to conduct discovery prior to the hearing of the case. JEA filed

an objection to Charter's *Petition* on October 15, 2003, arguing that the issues regarding Tenn. Code Ann. § 65-5-208(b) Charter raised in its *Petition* were beyond the scope of the certification proceeding and could not be addressed without impairing the prompt and orderly conduct of the proceeding and requesting that the *Petition* be denied. Aeneas did not assert a position regarding the *Petition* filed by Charter. The Hearing Officer heard arguments from the parties on October 16, 2003. The Hearing Officer found that Charter did not sufficiently demonstrate that issues arising under Tenn. Code Ann. § 65-5-208(b) should be considered in this proceeding and struck that portion of Charter's *Petition*. After granting Charter's request for intervention, the Hearing Officer determined that, because JEA had filed with the Authority testimony in support of its application, discovery of JEA's position would not be necessary and a revised procedural schedule was ordered.

#### **JEA'S HEARING**

A hearing was held before the Authority on November 10, 2003 and November 24, 2003. John W. Williams, President and Chief Executive Officer of JEA presented pre-filed direct and rebuttal testimony and was subject to cross-examination; Kim Kersey, Senior Vice President of Telecommunications Division of JEA presented pre-filed rebuttal testimony and was subject to cross-examination; Dana R. Wheeler, Senior Vice President and Chief Financial Officer of JEA presented pre-filed rebuttal testimony and was subject to cross examination; Dwight Work, of Work and Greer, presented pre-filed direct and rebuttal testimony and was subject to cross-examination.

Charter called Thomas E. Nanney, Senior Vice President of the Electric System for JEA and Darrell Pope, Telecommunications Project Manager for JEA, both of whom presented direct

testimony and were subject to cross-examination. William J. Barta, founder of Henderson Ridge Consulting, presented pre-filed direct testimony and was subject to cross-examination. JEA and Charter filed post-hearing briefs on December 8, 2003.

At the hearing and in its post-hearing brief, Charter raised issues concerning JEA's statutory authority to finance the construction of the network through municipal bonds; the managerial, financial and technical qualifications of JEA's proposed telephone business unit; the limited oversight of JEA by the TRA because of the structure of JEA's Telecommunications Division; and the issue of subsidization.

JEA countered that it satisfied all requirements for a CCN, including the necessary managerial, financial and technical qualifications. JEA stated further that the cost allocation manual, submitted as part of their Application ("Exhibit C"), provides for the proper allocation of costs among JEA's divisions. JEA also stated that it is authorized by the Private Act to issue bonds to finance its network.

#### **FINDINGS AND CONCLUSIONS**

This matter was brought before the voting panel for consideration on the merits at a regularly scheduled Authority Conference held on January 5, 2004. At that Conference the Authority granted JEA's Application, with conditions, based upon the following findings of fact and conclusions of law:

##### **I. APPLICANT'S QUALIFICATIONS**

1. Jackson Energy Authority is a utility authority that provides electric, gas, water and wastewater services to approximately 38,000 homes, businesses and industries in Jackson and the adjacent areas of Madison County, Tennessee. JEA was created on July 1, 2001 by



Chapter 55 of the Private Acts of 2001 as a public corporation and political subdivision of the State of Tennessee and is the successor to the Jackson Utility Division of the City of Jackson, Tennessee created in 1959.

2. JEA's principal place of business is located at 119 East College Street, Jackson, Tennessee, 38301. The telephone number is (731) 422-7500.

3. To demonstrate its financial capability to provide the proposed services, JEA has provided financial statements for fiscal years ending June 30, 2001 and 2002 for each of its divisions. In addition, JEA has provided *Pro Forma* financial statements for the Telephone Business Unit of the JEA Telecommunications Division for three (3) years. Chapter 55 of the Private Acts of 2001 authorizes JEA to issue bonds to finance its cable network. JEA's Board of Directors have adopted bond resolutions authorizing issuance of up to sixty million dollars (\$60,000,000) of bonds to provide for the construction of the network and operating expenses during the start-up of JEA's cable and internet operations. JEA has stated that most of the capital requirements will fall under the Cable Business Unit of its Telecommunications Division and that the Telephone Business Unit will have minimal capital requirements. JEA has obtained a line of credit in the amount of one million dollars (\$1,000,000.00) from Union Planters Bank. Therefore, based upon the financial data presented herein, the Authority concludes that JEA possesses the financial ability to provide the services it proposes to offer.

4. With respect to JEA's managerial and technical ability, compelling evidence has been presented to demonstrate that JEA possesses a sufficiently experienced management staff. The record demonstrates that President and Chief Executive Officer John W. Williams, Senior Vice President and Chief Financial Officer Dana R. Wheeler and Senior Vice President Thomas

E. Nanney have substantial managerial and technical experience in the provision of facilities-based utility services. Senior Vice President Kim Kersey has over twenty years of experience in cable television operations, including expansion into broadband services. Telecommunications Project Manager Darrell Pope has significant experience in fiber-based broadband operations. JEA has stated that it will also rely on the expertise of its fiber to the home vendor; and will secure independent third party consultants as needed to supplement the expertise of its managers. The Authority concludes that JEA possesses the requisite expertise to provide the applied for services based upon the foregoing demonstration of managerial fitness and technical ability.

5. JEA has represented that it will adhere to all applicable policies, rules and orders of the Authority.

## **II. PROPOSED SERVICES**

1. JEA, through the Telephone Business Unit of its Telecommunications Division, intends to provide facilities-based telecommunication services as a carriers' carrier to competitive local exchange carriers ("CLECs") within Madison County, Tennessee. JEA will build a network with a fiber to the home architecture throughout its service area in Jackson, Tennessee and surrounding areas of Madison County. Upon completion, the network will consist of a 658 mile, all-fiber-optic network that relies fundamentally on an internet protocol over gigabit ethernet architecture. This architecture will provide JEA the capability to deliver, cost effectively, 500 Mbps of symmetrical bandwidth to individual subscribers using a single fiber. This will allow the delivery of cable television and internet access to the end user. JEA will enter into wholesale contractual relationships with the CLECs to provide services over the fiber optic network, including the installation and maintenance of subscriber specific infrastructure such as customer gateways to the network.

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

JEA anticipates that the CLEC customers will be responsible for providing or arranging for: 1) all end use services required by law or regulation; 2) a soft-switch that is compatible with the network; 3) connections with long distance carriers; 4) interconnections with BellSouth and other CLECs; 5) technicians to operate and maintain the CLEC customers' equipment; 6) sales personnel and related agent compensation; 7) labor and materials for commercial installations as well as PBX systems and other equipment beyond JEA's gateway to the network; 8) customer support and service; and 9) engineering and technical service.

### **III. PUBLIC CONVENIENCE AND NECESSITY**

Upon a review of the Application and the record in this matter, the Authority finds that approval of JEA's application would benefit the present and future public convenience by permitting competition in the telecommunications services market in the State and by fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

### **IV. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN AND BUSINESS ASSISTANCE PROGRAM**

1. JEA has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's rules.

2. JEA has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn. Code Ann. § 65-5-213.

#### **V. COMPLIANCE WITH ADDITIONAL CONDITIONS**

To prevent cross-subsidization among the divisions of JEA, Chapter 55 of the Private Acts of 2001, § 4(7) provides that the telecommunications services system "shall be operated as a separate system independent of, and separate from, the other utility systems of the authority." To ensure compliance with this provision and as a condition to the granting of a CCN, JEA must agree to comply with the following:

1. An audit shall be conducted to include an examination of JEA for compliance with Chapter 55 of the Private Acts of 2001, § 4(7), prohibiting cross-subsidization among JEA's Divisions. The audit shall be conducted by an independent auditor chosen by JEA but under the direction and supervision of Authority staff. This audit shall include an examination to determine the reasonableness of JEA's cost allocations to the Telecommunications Division as well as any other direct or indirect transactions between the Telecommunications Division, its business units and other divisions and business units of JEA. The audit shall begin upon the closing of JEA's books for the first fiscal year following the approval of JEA's CCN and will be completed within six (6) months. Audits shall continue on an annual basis unless otherwise ordered by the Authority.

2. JEA shall provide access to the books, accounts, memoranda, contracts and records of the electric system and the telecommunications division and any other affiliated business unit or company upon request of the Authority.

3. JEA shall file a fiscal year-end annual report inclusive of financial statements to the Authority within ninety (90) days after the end of the fiscal year. The results of the financial audit performed by the chosen independent auditor shall be provided to the Authority within one hundred twenty (120) days after the fiscal year-end annual report is issued.

**IT IS THEREFORE ORDERED THAT:**


1. The Application of Jackson Energy Authority is approved, subject to the conditions listed above;
2. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from the date of this Order; and
3. Any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a petition for review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.



Pat Miller, Director



Sara Kyle, Director



Ron Jones, Director

## **ATTACHMENT E**

## **INTERCONNECTION AGREEMENT GENERAL TERMS AND CONDITIONS**

**THIS AGREEMENT** is made and entered into this 1st day of March, 2004, by and between Jackson Energy Authority, (hereinafter referred to as "JEA"), a public utility authority created by 2001 Tennessee Private Acts, Chapter 55, and Aeneas Communications, LLC, a Tennessee company (hereinafter referred to as "Contractor"). This Agreement may refer to either JEA or Contractor or both as a "Party" or "Parties."

### **WITNESSETH**

**WHEREAS**, JEA is a Tennessee utility authority that is authorized to own and operate a telecommunications system and provide telecommunications services in the state of Tennessee; and

**WHEREAS**, JEA has constructed a cable television system with a "fiber to the home" broadband network architecture (hereinafter referred to as the "Network") in and around the City of Jackson that also has the capability of providing transport for telephony and data services utilizing Gigabit Ethernet technology, and

**WHEREAS**, Contractor warrants that it currently possesses a valid Certificate of Convenience and Necessity to operate as a Competitive Local Exchange Carrier ("CLEC") to provide telecommunications services in the state of Tennessee; and

**WHEREAS**, Contractor desires JEA to provide transport for its telephony and ISP services over its Network for a fee, and

**WHEREAS**, the Parties wish to interconnect their facilities for this purpose pursuant to State and Federal law.

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, JEA and Contractor agree to the following terms and conditions as follows:

#### **Definitions**

**Affiliate** is defined as a person or entity that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person or entity. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 51 percent.

**Authority** is defined as the Tennessee Regulatory Authority (TRA).

- 3.0 **Network Access and Transport**
- 3.1 **Network Interconnection and Interface** – JEA shall provide Contractor with access to its Network at the designated entry point of the JEA Master Telecommunications Control Center (MTCC) at 125 E. College Street, Jackson, Tennessee. Contractor shall be responsible for providing and maintaining a fiber optic interconnection link between the JEA MTCC and the Contractor Central Office (CO) with sufficient spare fiber to reach the JEA Ethernet switch and/or routers. JEA may, at Contractor' option, provide and maintain the fiber optic interconnection link to the Contractor CO, for a monthly fee mutually agreed upon by both parties. JEA shall make and maintain all necessary connections within its MTCC of the Contractor interconnection link to its Ethernet switch and routers.
- 3.2 **Network Transport** – JEA shall provide transport for Contractor' telephony and data services as prioritized data packets utilizing Internet Protocol (IP) over Gigabit Ethernet technology to and from Contractor's customers over the Network. Telephony packets shall have priority over data packets.
- 3.3 **Network Maintenance and Operation** – JEA shall be capable of performing all monitoring and coordinating of all testing, maintenance, and repair functions of the Network twenty-four (24) hours per day, seven days (7) per week with the objective of causing the Services to perform in compliance with industry standards. JEA shall be responsible for constructing and maintaining the Network to provide carrier class transport service for Contractor' services. All active components of the Network, including the MTCC, Network core devices, and JEA Gateway devices, shall be supported by sufficient stand-by battery and/or generator back up to provide eight (8) hours of on-hook and two (2) hours of off-hook operation for Contractor' telephone customers. JEA shall maintain and operate its Network in a manner to achieve five 9's (99.999%) reliability and assure Quality of Service (QoS) for Contractor's customers.
- 3.4 **Trouble Call Reporting and Response** – JEA shall be responsible for responding to and correcting any problems on its Network between the Network Interface Point where Contractor enters the Network and the output side of the Gateway at the customer's premises. JEA shall maintain a call center and service staff sufficient to receive and respond to customer trouble calls on a 24-hour, 7 day a week basis. Upon receiving a trouble call or system alarm, JEA shall immediately commence coordinating efforts to effect appropriate repairs and restore service. JEA shall respond within one (1) hour from such trouble call or system alarm.
- 3.5 **Scheduled System Maintenance** – Scheduled system maintenance of the Network shall be performed outside of regular business hours during the maintenance window of 12:00am CST to 5:00am CST, and any scheduled system maintenance



that is likely to disrupt Network Transport shall be scheduled with no less than three (3) days advance notice to Contractor. A Service Outage outside of regular business hours resulting from scheduled system maintenance, and about which Contractor was given appropriate notice, and, where applicable, consented as provided in this Agreement, shall not result in a credit for a Service Outage and shall be completed as soon as practicable.

- 3.6 Installation of Network Service Drops – JEA shall install all fiber optic service drops to customer premises and shall install and maintain Gateway devices and any necessary power supplies. As requested by the customer through a valid service request which alerts the customer that there may be a charge, JEA shall make all connections to customer end-use devices using existing inside wiring or new wiring as required, and JEA may bill CLEC or ISP for such work requested.
- 3.7 Number Portability – Contractor shall be responsible for making all number portability requests on behalf of its customers and coordinating the number portability scheduling with JEA.
- 3.8 Provisioning of Services – JEA shall configure and provision services to meet the service level needs of Contractor's customers. Provisioning by JEA shall include assigning of IP addresses to Gateways, establishing bandwidth parameters for data customers, QoS specifications, and Service Level Agreements (SLA). Contractor shall be responsible for provisioning the features and functionality available through its telephone switch or Internet equipment. Contractor shall be responsible for notifying JEA regarding orders for new accounts, or any changes with its existing customer accounts such as transfers of service, upgrades, or account termination, in order to coordinate the proper provisioning of those accounts on the JEA Network.
- 3.9 Network Security – JEA shall make reasonable and sufficient efforts to protect its Network from malicious attacks by unauthorized persons. In addition to the security features inherent in the JEA Network through its equipment vendor, JEA shall install firewalls and other security measures to provide added protection against such intrusions. Contractor shall also be responsible for installing and maintaining sufficient security measures, including firewalls and other protective devices, to the reasonable satisfaction of JEA to reasonably protect the Network from unauthorized intrusion through its facilities.
- 3.10 Co-Location of Equipment – JEA will make available to Contractor, at mutually agreed upon rates as described in Attachment 1 of this agreement, co-location space within its MTCC for telephony and data service equipment owned by Contractor.
- 4.0 **Network Transport Fee**
- 4.1 JEA does hereby lease to Contractor access to its fiber optic network between the Network Interface Point and the output side of the Gateway located at the customer's premises, for Network Transport of the Contractor's Services by JEA.

across its Network and all other purposes described in this Agreement or any additional agreement signed by the Parties hereto.

- 4.2 For and in consideration of this Network Transport, Contractor agrees to compensate JEA in accordance with Attachment 1.

**5.0 Billing, Taxes and Other Fees**

- 5.1 Invoices – JEA shall invoice Contractor on a monthly recurring basis for the Network Transport fees and other non-recurring charges in accordance with the fee schedule defined in Attachment 1. Monthly recurring Network Transport fees that are started on a date other than the first of the prior month or terminated on a date other than the last day of the prior month shall be pro-rated based on the number of days of service from the activation or other beginning date and the closing date of that billing period.

- 5.2 Remittance – Invoices for current charges and fees, and invoices issued upon resolution of disputed charges or fees, are payable within thirty (30) days after receipt of the invoice. Contractor shall pay the sum due in the invoice at the remittance address indicated on the invoice.

- 5.3 Late Payments – In the event Contractor should fail to make any payment by the due date specified above, Contractor shall be liable to JEA for a late charge on all past due amounts at the compounded rate of one and one-half percent (1.5%) per month (or such lower rate that is then the maximum rate allowed by law), calculated on a daily basis from the first day when said amount became due and owing until paid.

- 5.4 No Setoff Rights – The amounts due to JEA hereunder are due and payable without set off.

- 5.5 Disputed Invoices – Should Contractor dispute any of the charges on its monthly invoice, it shall notify JEA of such disputed charges in writing no later than sixty (60) days after date of the invoice. Contractor shall timely pay all amounts not in dispute. The notice shall set forth all details concerning the disputed charges and reasons for the dispute. JEA and Contractor shall attempt in good faith to resolve any objection to the invoiced amount prior to the payment due date or, if the due date has already passed, within ten (10) days of Contractor's dispute. If agreement cannot be resolved prior to the payment due date, Contractor shall pay the invoiced amount minus the disputed amount on the due date of original invoice. If the dispute is subsequently resolved in favor of JEA, JEA shall re-invoice the disputed amount owed then, including interest at the rate specified in Section 5.3 from the original due date, and Contractor shall pay all amounts agreed or found to be owing to JEA within fifteen (15) days of the date of the reissued invoice. Payment shall not prejudice Contractor's right to dispute charges, so long as they are disputed in the manner and within the time specified in this section. Any credits resulting from said dispute, such as in the case of an overpayment, will be reflected in a subsequent billing cycle and shall include

- 7.5 Marketing and Sales -- Unless otherwise agreed in a writing signed by the parties hereto, Contractor will be responsible for all communications with potential and current end users with respect to all marketing and sales of Contractor branded goods or services.
- 7.6 Ordering -- Unless otherwise agreed in a writing signed by the parties hereto, Contractor will be responsible for all communications with potential and current end users with respect to all ordering which requires action from the Contractor side of the Network Interface Point.
- 7.7 Provisioning -- Unless otherwise agreed in a writing signed by the parties hereto, Contractor will be responsible for all communications with potential and current end users with respect to all provisioning which requires action from the Contractor side of the Network Interface Point.
- 7.8 Collections -- Unless otherwise agreed in a writing signed by the parties hereto, Contractor will calculate, print, distribute, and collect its own billing from the end-users.
- 8.0 Parity
- 8.1 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, an Affiliate, or any other carrier or provider.
- 9.0 Directory Listings
- 9.1 Contractor shall be responsible for tendering all subscriber listing information (SLI) to the incumbent local exchange carrier for publication in listings directory(s) that is regularly published for Madison County. Contractor will indemnify and hold JEA harmless from and against any and all losses, liabilities, claims, damages, and expenses (including, without limitation, reasonable counsel fees, disbursements, and administrative or court costs) arising out of the Contractor's failure or inability to provide directory listings for any of its customers.
- 10.0 Court Ordered Requests for Call Detail Records and Other Subscriber Information

tax, and Federal Access Charge collections shall be reported under the Contractor Tax Identification Number.

- 19.3 **Mutual Cooperation.** In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.
- 20.0 **Force Majeure**
- 20.1 If the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, terrorism, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Contractor or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided, however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.
- 21.0 **Adoption of Agreements**
- 21.1 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 were negotiated in exchange for or in conjunction with the interconnection, service or network element agreement.
- 22.0 **Modification of Agreement**
- 22.1 No modification, amendment, supplement to, or waiver of this Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.
- 22.2 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of Contractor or JEA to perform any material terms of this Agreement, Contractor or JEA may, on thirty (30) days' written notice, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in this Agreement.

### Attachment 1

#### **Monthly Charges for Network Transport on Jackson Energy Authority Network**

##### Telephony Services:

- Residential Service - \$7.50/line for retail charges up to \$15.95/month, excluding all taxes, fees, and surcharges as specified in Section 19.1.
- \$7.50/line plus 25% of retail charge over \$15.95/month, excluding all taxes, fees, and surcharges as specified in Section 19.1.
- Commercial Service - \$13.50/analog line for retail charges up to \$24.95/month, excluding all taxes, fees, and surcharges as specified in Section 19.
- \$13.50/analog line plus 25% of retail charge over \$24.95/month, excluding all taxes, fees, and surcharges as specified in Section 19.
- \$150.00 + 50% of retail [charge] rate for T1/D1 service over \$750/month, excluding all taxes, fees, and surcharges as specified in Section 19.

##### Data/Internet Services

- Residential Service - \$10.00 access charge for 256K symmetrical bandwidth, excluding taxes and other required charges.
- \$1.50 Network Transport charge for each incremental 256K of downstream bandwidth in addition to the initial 256K downstream bandwidth, excluding taxes and other required charges.
- \$1.00 Network Transport charge for each incremental 256K of upstream bandwidth in addition to the initial 256K upstream bandwidth, excluding taxes and other required charges.

##### Commercial Services:

- Limited Service - \$25.00/month for Limited Service defined as 1.54 Mbps download and 512 Kbps upload and limited features.
- Standard Service - \$60.00/month for each 512 Kbps increment of symmetrical bandwidth.

#### **Installation and One-Time Charges**

- Residential Telephone** - \$8.00 per connection of existing telephone wiring to Gateway during same trip as cable television and/or Internet installation.
- \$12.50 per outlet for each new telephone outlet installed during same trip as cable television and/or Internet installation.
- \$20.00 per telephone customer for up to 3 new telephone outlets installed during a separate trip. Additional new telephone outlets after the first three outlets will be installed for \$10.00 each.
- Commercial Telephone** - Actual installation cost, as approved in advance by Contractor, excluding any customer equipment such as PBX, local switches, or internal wiring beyond the commercial gateway.
- Residential Internet** - \$8.00 per Internet connection from Gateway to customer PC or hub during the same trip as cable television and/or telephone installation, inclusive of all existing Category5 or coaxial cable wiring and with customer software self-installation and network interface card present.
- \$12.50 per Internet installation of new Category5 or coaxial cable wiring from Gateway to customer PC, during the same trip as cable television and/or telephone installation, with customer software self-installation and network interface card present.
- \$20.00 per Internet installation of first new or existing Category5 or coaxial cable outlet and \$10.00 for each additional outlet during a separate trip, with customer software self-installation and network card present.
- \$24.00 per installation of customer-supplied network interface card into customer PC.
- \$25.00 per customer-supplied Internet hub installed with new or existing Category5 or coaxial wiring.
- Commercial Internet** - Actual installation cost, as approved in advance by Contractor, excluding any customer equipment such as routers, firewalls, etc. beyond the commercial gateway.

#### **Adjustments to Monthly Rates and One-time Charges**

JEA reserves the right to periodically review and adjust all monthly rates for Network Transport and all One-time Installation and Service Repair charges. Such adjustments shall not exceed 10% of the then current rate and shall not occur more frequently than 24 months after the prior adjustment, with the first adjustment occurring no sooner than 24 months after the effective date of this Interconnection Agreement. Any adjustment to the monthly rates and charges described above shall be preceded by a one hundred twenty (120) day written notice to the Contractor.

## **ATTACHMENT F**

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Mr. Kim Kersey, VP  
Jackson Energy Authority  
125 E. College  
Jackson, TN 38301

April 14, 2004

RE: Aeneas Communications, LLC

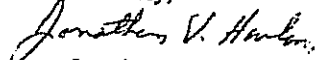
Dear Kim,

After consideration of the concept of a Support Services Agreement, we have decided that it is in the best interests of competition generally and Aeneas in particular to keep sales, support, and billing in-house, and we will proceed under our previously executed Interconnect Agreement.

We believe that the parity provision in paragraph 1.8 in our Interconnect Agreement is the key to developing vigorous competition over the fiber for data and voice services. Our experience working under the Telecommunications Act of 1995 convincingly demonstrates that parity cannot be self imposed by a network owner that is itself a provider of retail services, and based on that experience, we believe it is in everyone's best interests to stick to the concept of a pure 'carrier's carrier' as closely as possible.

Because the Triple Pack and other promotional packages of Aeneas and JEA-TV are actively being marketed, we agree to allow JEA to continue offering Aeneas Internet and telephone services on approved service agreements at the prices currently displayed on your website. We will agree to continue to sell JEA TV on your contracts until we reach some long-term sales agreement. Until that time we will agree to pay commissions outlined in your proposed support services agreement with the addition that a commission-able "sale" means the end-user has completed one bill cycle and has paid that first payment. We will agree for television sales to be done the same way. We'll need a short written agreement along these lines pursuant to paragraph 22 of our ICA. We would appreciate it if JEA management would limit their public remarks about your contractors to positive and optimistic comments. We will do the same, and I assure you that everyone at Aeneas is dedicated to making this network a banner success, both technically and in the marketplace.

Sincerely,

  
Jonathan V. Harlan, CEO

*By JPH*

## **ATTACHMENT G**

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**INTERCONNECTION AGREEMENT  
GENERAL TERMS AND CONDITIONS  
(Version 2.0)**

THIS AGREEMENT is made and entered into this 22nd day of December, 2004, by and between Jackson Energy Authority, (hereinafter referred to as "JEA"), a public utility authority created by 2001 Tennessee Private Acts, Chapter 55, and Cinergy Communications Company, a Kentucky corporation (hereinafter referred to as "Contractor"). This Agreement may refer to either JEA or Contractor or both as a "Party" or "Parties."

**WITNESSETH**

WHEREAS, JEA is a Tennessee utility authority that is authorized to own and operate a telecommunications system and provide telecommunications services in the state of Tennessee; and

WHEREAS, JEA has constructed a cable television system with a "fiber to the home" broadband network architecture (hereinafter referred to as the "Network") in and around the City of Jackson that also has the capability of providing transport for telephony and data services utilizing Gigabit Ethernet technology; and

WHEREAS, Contractor warrants that it currently possesses a valid Certificate of Convenience and Necessity to operate as a Competitive Local Exchange Carrier ("CLEC") to provide telecommunications services in the state of Tennessee; and

WHEREAS, Contractor desires JEA to provide transport for its telephony and ISP services over the Network for a fee; and

WHEREAS, the Parties wish to interconnect their facilities for this purpose pursuant to State and Federal law.

NOW THEREFORE, in consideration of the mutual agreements contained herein, JEA and Contractor agree to the following terms and conditions as follows:

**Definitions**

**Affiliate** means an entity: (i) that is wholly owned by a Party; or (ii) is wholly owned by the parent entity of a Party; or (iii) where a Party, or the parent entity of a Party, controls the voting rights of all outstanding equity in such entity.

**Ancillary Service** means any Contractor service or application offered over a Contractor data transport service (i.e. T-1, DS-1), for which there is a separate and identifiable billing charge to the End User. (VoIP telephony offered over a residential high speed Internet connection is an example of an Ancillary Service).

**Authority** is defined as the Tennessee Regulatory Authority ("TRA").

**Competitive Local Exchange Carrier ("CLEC")** means a telephone company certificated by the Authority to provide local exchange service within JEA's network area.

**Direct Solicitation** means the specific targeting of only the Contractor customer base in part or in its entirety, by any direct sales, direct advertising or direct marketing effort, including but not limited to door-to-door solicitations, or calling campaigns, initiated by JEA, should JEA be authorized to offer retail services, or an agent of JEA, for the expressed purpose of selling those End Users services which are competitive with Contractor's Services.

**End Use Devices** means any customer owned equipment, including but not limited to computers, hubs, PBX switches, routers, or telephone sets, that is connected to the Network via the JEA Gateway.

**End User** means a user to whom Contractor provides services utilizing, in part, the transport services provided over the Network by JEA to Contractor under this Agreement. (End User may also be referred to as "Contractor's customer", or simply as "customer".)

**FCC** means the Federal Communications Commission.

**Gateway** means the network terminal device located at the customer premises that makes the conversion of the end user's service between light waves and electrical or radio frequency signals and connects with the end user's internal wiring to the end use devices.

**Indirect Solicitation** means mass marketing efforts initiated by JEA, should JEA be authorized to provide retail services, or an agent of JEA, that are targeted to all existing or potential customers throughout the JEA Network Territory.

**Industry Standards** means those standards, procedures, practices, and specifications that are commonly recognized and utilized among telecommunications providers and equipment manufacturer in the telecommunications industry.

**Internet Service Provider ("ISP")** means a company that provides customers (companies and private individuals) with access to the Internet and the World Wide Web, and ancillary services such as web hosting, Static IP addressing, Domain Server registration, and other features.

**JEA Network ("Network")** means JEA's fiber optic cabling and equipment between the designated Network Interface Point and the output side of the JEA Gateway at an End User's premises.

**JEA Network Territory** means the service area of the JEA Network within the City of Jackson and Madison County, Tennessee.

**Mediation** as used herein shall refer to private mediation.

**Network Interface Point** means the designated entry point described as the input to the Ethernet switch port located inside the JEA Master Telecommunications Control Center at 125 E. College Street, Jackson, TN.

**Network Service Outage** means a complete disruption of a Service or a failure of the Service to conform in any material respect to the technical specifications applicable to that Service caused by failure of the JEA Network to facilitate such performance.

**Network Transport** means the transport of Contractor's Services provided by JEA across its Network between the input of the Ethernet switch port and the output of the Gateway device.

**Response** means, in the context of trouble call response, that dispatch personnel have properly notified the appropriate technical repair personnel to the existence of a service problem that requires immediate attention and repair.

**Retail Charge** means the amount of money charged to the customer for a particular service, excluding any fees, taxes, or surcharges collected from the customer.

**Scheduled Outage** means any disruption or degradation of Service caused by scheduled maintenance or planned enhancements or upgrades to the Network.

**Service** means any telephony, Ancillary, or ISP service provided by Contractor to an End User over the JEA Network.

**1.0 Certifications**

**1.1** Prior to execution of this Agreement, Contractor agrees to provide JEA with a copy of Contractor's CLEC certification. JEA agrees to provide Contractor with written evidence of its authority to enter into this Agreement.

**2.0 Term of the Agreement**

**2.1** The initial term of the Agreement shall be three (3) years ("Initial Term"), beginning on the above effective date and, unless either Party gives written notice of its intention not to renew the Agreement at least two hundred seventy (270) days prior to the expiration of the then current term, the Agreement shall automatically renew for successive seven (7) year renewal terms. The Agreement shall apply to the JEA Network Territory.

**2.2** In the event that either Party provides proper notice of its intention not to renew this Agreement, within fifteen (15) days of delivery of such notice, either Party may make written request for the commencement of negotiations for a new agreement to be effective beginning on the expiration date of this Agreement ("Subsequent Agreement"). Upon such request, the Parties shall negotiate in

"good faith" and make reasonable efforts to enter into a Subsequent Agreement within one hundred twenty (120) days of commencing negotiations.

2.3 If, within one hundred twenty (120) days of commencing with such negotiations, the Parties are unable to negotiate new terms, conditions, and prices for a Subsequent Agreement, the Agreement shall terminate upon expiration of the then current term. Upon termination of this Agreement, JEA shall continue to provide Network Transport pursuant to Section 2.5.

2.4 If the Agreement is terminated due to an uncured Contractor default, JEA shall continue to provide Network Transport services to Contractor pursuant to the terms, conditions and rates set forth in this Agreement for a period of six (6) months ("Migration Period"). During the Migration Period, Contractor shall formulate and implement a plan to migrate its existing customers to another contractor or to JEA, provided that JEA has the legal authority to offer telephony services. Such plan shall comply with anti-slamming laws and shall include notification to the Contractor's customers of how and when their accounts will be transferred to a new service provider. Contractor shall pay all costs associated with such customer notification. During the Migration Period, Contractor may not establish any new End User accounts that would require transport over the JEA Network.

2.5 If this Agreement is terminated for any reason other than an uncured Contractor default, Contractor may choose to continue to provide Services to its End Users utilizing the Network, subject to following conditions: (1) Contractor may not add any new End Users to the Network without JEA's express consent; (2) Contractor shall continue to pay all applicable fees under the Agreement; and (3) Contractor shall continue to adhere to all terms and network service requirements under the Agreement. Notwithstanding the foregoing, if Contractor desires to no longer serve all or substantially all of its End Users, the Parties agree in good faith from and after the date Contractor notifies JEA of such desire, to transition the End Users to JEA or a JEA designee, provided JEA agrees to reimburse Contractor for any losses, costs or expenses Contractor incurs during or related to the transition and provided further that the transition period shall not exceed one hundred eighty (180) days. As part of such transition, JEA shall agree to assume and hold Contractor harmless from, any and all further liability relative to such End Users from and after, or related to, the transition. Nothing herein shall prohibit Contractor from moving its End Users to another network upon the expiration or termination of this Agreement for any reason other than an uncured Contractor default.

### 3.0 Non Competition and Non Solicitation

3.1 Non Competition - For the Initial Term of the Agreement, JEA shall not: (i) either directly, through any entity where the JEA is a shareholder or has an ownership interest, or through a third party on behalf of JEA, offer any services that are comparable to the Services offered by Contractor in the JEA Network Territory; or (ii) interfere with Contractor's relationship with any End User or Contractor employee.

- 3.2 Non Solicitation - After the expiration of the Initial Term, if the Agreement is renewed or Contractor continues to provide Services to its End Users pursuant to Section 2.5, JEA shall refrain from the Direct Solicitation of Contractor's End Users for a period of three (3) years from the date the Initial Term expires. However, nothing in this section shall prohibit JEA from engaging in Indirect Solicitation as defined in this Agreement.
- 4.0 **Network Access and Transport**
- 4.1 Network Interconnection and Interface - JEA shall provide Contractor with access to the Network at the designated entry point of the JEA Master Telecommunications Control Center ("MTCC") at 125 E. College Street, Jackson, Tennessee. Contractor shall be responsible for providing and maintaining a fiber optic interconnection link between the JEA MTCC and the Contractor switching facilities with sufficient spare fiber to reach the JEA Ethernet switch and/or routers. JEA may, at Contractor's option, provide and maintain the fiber optic interconnection link to the Contractor switching facilities for a monthly fee. Subject to the Port Charges in Attachment 1 of this Agreement, JEA shall make and maintain all necessary connections within its MTCC for the Contractor interconnection link to interface with its Ethernet switch and routers.
- 4.2 Network Transport - JEA shall provide transport for Contractor's services as prioritized data packets utilizing Internet Protocol ("IP") over Gigabit Ethernet technology to and from Contractor's customers over the Network. Telephony packets shall have priority over data packets.
- 4.3 Network Maintenance and Operation - JEA shall perform the monitoring and coordinating of all testing, maintenance, and repair functions of the Network twenty-four (24) hours per day, seven days (7) per week with the objective of causing the Services to perform in compliance with Industry Standards. JEA shall use its best efforts to construct and maintain the Network to provide carrier class transport service for Contractor's Services. All active components of the Network, including the MTCC, Network core devices, and JEA Gateway devices, shall be supported by sufficient stand-by battery and/or generator back up to provide eight (8) hours of on-hook and two (2) hours of off-hook operation for Contractor's telephony customers.
- 4.4 Trouble Call Reporting and Response - JEA shall be responsible for responding to and correcting any problems with the Network between the Network Interface Point, where Contractor enters the Network, to the output side of the Gateway at an End User's premises. JEA shall maintain a call center and service staff sufficient to receive and respond to End User trouble calls on a twenty four (24) hour, seven (7) day a week basis. Upon receiving a trouble call or system alarm, JEA shall immediately commence coordinating efforts to effect appropriate repairs and restore service. JEA shall respond within two (2) hours from the time any trouble call or system alarm related to a Network Service Outage is received.

- 4.5 **Scheduled System Maintenance** - Scheduled system maintenance that may potentially disrupt overall Network service, without limitation, including software upgrades/patches, circuit turn-up and testing, hardware additions, shall be performed outside of regular business hours during the maintenance window of 12:00am CST to 5:00am CST, and any scheduled system maintenance that is likely to disrupt Network Transport shall be scheduled with no less than five (5) days advance notice to Contractor. Such notice shall contain a good faith estimate of the expected duration of the outage. In instances where it is either mutually beneficial or where both parties consent to the amended schedule, the five days advance notice may be waived to provide upgrades when the potential for an outage exists without the upgrade. A Network Service Outage outside of regular business hours resulting from scheduled system maintenance, and about which Contractor was given appropriate notice, and, where applicable, consented as provided in this Agreement, shall not result in a credit for a Network Service Outage. Such maintenance work shall be completed as soon as practicable. Notwithstanding the foregoing, Contractor shall be eligible to receive outage credits for any portion of the scheduled Network Service Outage which exceeds JEA's good faith estimate by more than 100% if such delay is not due to unforeseen or unusual circumstances.
- 4.6 **Installation of Network Service Drops** - So long as an End User: (i) orders cable television service from JEA; or (ii) orders both phone and data service from Contractor; for a charge to the Contractor as specified in Attachment 1 of this Agreement, JEA shall install a fiber optic service drop to the End User premises and shall install and maintain Gateway devices and any necessary power supplies. JEA shall perform any other such work as is specified in the description of charges in Attachment 1. Unless otherwise agreed to in writing between both Parties, Contractor shall be responsible for collecting such installation charges as it deems appropriate, directly from the End User, to recoup JEA's charge to the Contractor.
- 4.7 **Installation Services Where Network Service Drops Are Present** - At the rates specified in Attachment 1, JEA will activate an existing gateway, install new wiring to customer devices, connect existing wiring, and provide customer set-up for Contractor telephone and data services either in combination or individually, where network service drops are already present.
- 4.8 **Number Portability** - Contractor shall be responsible for making all number portability requests on behalf of its End Users and coordinating the number portability scheduling with JEA.
- 4.9 **Provisioning of Services** - JEA shall configure and provision its Network equipment to meet, at a minimum, the service level needs ordered by the Contractor's End Users. Provisioning by JEA shall include assigning of IP addresses to Gateways, establishing bandwidth parameters for End Users receiving data services, QoS specifications, and Service Level Agreements ("SLA"). Contractor shall be responsible for provisioning the features and



functionality available through its telephone switch or Internet equipment. Contractor shall be responsible for notifying JEA regarding orders for new accounts, or any changes with its existing End User accounts such as transfers of service, upgrades, or account termination, in order to coordinate the proper provisioning of those accounts on the JEA Network.

- 4.10 Network Security – JEA shall make commercially reasonable efforts to protect its Network from malicious attacks by unauthorized persons. Contractor shall also be responsible for installing and maintaining industry standard security measures regarding its equipment, including provisioning firewalls and other protective devices, to the reasonable satisfaction of JEA, to reasonably protect the Network from unauthorized intrusion through its facilities.
- 4.11 Co-Location of Equipment – JEA hereby grants Contractor, its successors and assigns, a license to occupy and use suitable secured space for one (1) standard twenty-three inch (23") rack, with JEA providing primary and back-up A/C power, inside the JEA MTCC for the purpose of locating, operating and maintaining, its equipment. Contractor shall have twenty four (24) hour per day, seven (7) day per week access to such space. JEA shall maintain the MTCC in good working order. JEA may make available to Contractor, at rates described in Attachment 1, additional non-utilized co-location space within its MTCC for the location of additional telephony and data equipment owned by Contractor.
- 5.0 Network Transport Fee
- 5.1 License - JEA hereby grants Contractor, its successor and assigns, a license to access that portion of the Network between the Network Interface Point and the output side of the Gateway located at the End User's premises, for the purpose of providing Network Transport of the Contractor Services by JEA to Contractor's End Users and all other purposes described in this Agreement.
- 5.2 Fees - For and in consideration of the Network Transport of Contractor's Services by JEA, Contractor agrees to compensate JEA in accordance with fees and charges listed in Attachment 1.
- 6.0 Billing, Taxes and Other Fees
- 6.1 Invoices – JEA shall invoice Contractor on a monthly recurring basis for the Network Transport fees and other non-recurring charges in accordance with the fee schedule in Attachment 1. Unless JEA has agreed to provide billing services on behalf of Contractor, Contractor shall provide JEA with a certified statement of billed revenue for the immediate prior month, signed by an officer of the Contractor, in the format specified by JEA within ten (10) business days of the end of each month.
- 6.2 Remittance – Invoices for current charges and fees, and invoices issued upon resolution of disputed charges or fees, are payable within thirty (30) days after receipt of the invoice. Contractor shall pay the sum due in the invoice at the remittance address indicated on the invoice.

- 6.3 Late Payments – In the event Contractor should fail to make any payment by the due date specified above, Contractor shall be liable to JEA for a late charge on all past due amounts at the rate of one and one half percent (1.5%) per month (or such lower rate that is then the maximum rate allowed by law), calculated on a daily basis from the first day when said amount became due and owing until paid.
- 6.4 No Setoff Rights – Except for good faith billing disputes, where only the disputed portion of the bill will be set off as provided in Section 6.5, the amounts due to JEA hereunder are due and payable without set off, unless otherwise agreed to in writing by both Parties.
- 6.5 Disputed Invoices – Should Contractor in good faith dispute any of the charges on a monthly invoice, Contractor shall notify JEA of such dispute in writing no later than thirty (30) days from receipt of the invoice. The notice shall set forth all details concerning the disputed charges and reasons for the dispute and shall include any documentation evidencing the dispute. JEA and Contractor shall attempt in good faith to resolve such dispute prior to the payment due date or, if the due date has already passed, within thirty (30) days of Contractor's written notification of the dispute. If agreement cannot be reached prior to the payment due date, Contractor shall pay all undisputed portions of the bill and such billing dispute shall be subject to the dispute resolution procedures provided in Section 18. Any credits resulting from said dispute, such as in the case of an overpayment, will be reflected in a subsequent billing cycle and shall include accrued interest at the rate of 1.5% per month, calculated on a daily basis from the date of overpayment.
- 6.6 Timely Invoicing – JEA shall invoice for all fees and charges or adjustments to previous invoices no later than ninety (90) days after the end of the month in which those fees, charges or adjustments apply.
- 6.7 Change in Contractor's Creditworthiness – With the exclusion of "set off" pursuant to Section 6.4, if Contractor has not paid charges otherwise due hereunder within thirty (30) days of receiving a written late notice from JEA, in addition to any other remedies provided in this Agreement, JEA may request commercially reasonable financial information from Contractor for the purpose of determining the continued creditworthiness of Contractor. If such documentation reveals a material adverse change in Contractor's creditworthiness or a material adverse change in Contractor's financial position, JEA may elect, at its reasonable discretion, to demand the posting of a deposit or irrevocable letter of credit equal to four (4) months of the charges on Contractor's bill for the month immediately preceding the month in which JEA makes a formal written demand for assurance of payment. Contractor shall also execute any accompanying agreement with JEA regarding the use of any such deposit or letter of credit, in form and substance reasonably acceptable to both parties. Failure by Contractor to provide adequate assurance of payment will trigger default pursuant to Section 13.0.
- 6.8 Taxes – Contractor shall be responsible for any applicable federal, state or local use, excise, sales or other taxes, fees, assessments, surcharges or similar amounts.

in connection with the Services furnished by Contractor to Contractor's End Users pursuant hereto, including but not limited to any Universal Service Fund contributions or other surcharges or contribution required or permitted by a regulatory body. Contractor shall pay all such amounts required to be remitted to a taxing authority directly to the taxing authority unless the taxing authority requires that JEA collect and remit payment, in which event Contractor shall pay said amounts to JEA and JEA shall accept said amounts in trust for this purpose and remit such amounts to the authority. Contractor and JEA shall cooperate in taking all reasonable actions necessary to minimize, or to qualify for exemptions from, any such taxes, duties or liabilities, including the furnishing of certifications that purchases by Contractor are for purposes of resale. Contractor shall provide all information to JEA of any exemption of sales, use, or other tax claimed by Contractor and shall immediately notify JEA of any change in Contractor's tax status.

- 6.9 Franchise and User Fees; Permits - Contractor shall be solely responsible for obtaining all necessary permits or consents from state or local government authorities, if any, for use by Contractor of the Network and shall pay all franchise or user fees, if any, imposed on Contractor or required of Contractor by the local, state, or federal government authorities upon or as a result of Contractor's use of the Network. JEA shall be solely responsible for obtaining any necessary permits or consents from state and local government authorities, if any, to operate the Network and/or provide Network Transport to Contractor and shall pay all franchise or user fees, if any, imposed on JEA by the local, state, or federal government authorities upon or as a result of JEA operating the Network and/or providing Network Transport to Contractor.
- 6.10 Indemnification against Taxes and Third Party Fees - Contractor shall indemnify and hold JEA harmless against all taxes, fees, assessments or similar amounts, if any, which may be assessed against Contractor or JEA for Contractor's use of the Network hereunder. Contractor shall further indemnify and hold harmless JEA against all claims or liability due to or arising out of the failure of Contractor to obtain any permit or other consent as may be required from any local government or other regulatory body for use of the Network. JEA shall indemnify and hold Contractor harmless against all taxes, fees, assessments or similar amounts, if any, which may be assessed against Contractor or JEA as a result of JEA's operation of the Network. JEA shall further indemnify and hold harmless Contractor against all claims or liability due to or arising out of failure of JEA to obtain any permit or consent as may be required from any local government or other regulatory body to operate the Network.
- 6.11 Protest - Either Party shall each have the right to protest or appeal any tax or charge assessed against such Party by any taxing authority, as permitted by law.
- 7.0 Performance Standards and Network Service Outage Credits
- 7.1 Allowances for Interruption of Network Service - Contractor shall be entitled to a credit for periods during which Network Transport is interrupted due to a

Network Service Outage. No credit shall be issued for a Network Service Outage caused by failure of the Contractor's equipment outside of the Network. JEA agrees to undertake immediate action to correct any Network Service Outage after receiving notice from Contractor that a Network Service Outage exists. The credit owed to Contractor resulting from a Network Service Outage shall be computed at 1/1440 of the monthly recurring fees applicable to that portion of the Network Transport which is subject to the Network Service Outage for each one-half (1/2) hour or major fraction thereof that a Network Service Outage continues beyond two (2) hours. A Network Service Outage begins when the Network Outage first commences. A Network Service Outage ends when the affected service in JEA Network has passed all required testing and is functioning in compliance with technical specifications. For opening a trouble ticket, Contractor may notify JEA's call center by telephone 1-731-422-7500 or any such similar expedited notice mechanism at the numbers and addresses set forth on JEA's published service escalation procedures as are in effect from time to time. In no event shall the credit for Network Transport during a calendar month exceed the monthly recurring fee for that Network Transport specified in the Service Order. If an unscheduled outage causes an End User to leave Contractor, Contractor shall not be charged for the Network Transport fee associated with that End User during the monthly cycle in which the disconnection order was placed.

7.2

Events Excepted from Credit - Notwithstanding the foregoing, Contractor shall not receive any credit for a Service Outage arising from or caused any of the following events:

- a) Contractor's (or Contractor's employees, agents, or subcontractor's) negligence;
- b) Negligence of End User causing an interruption of their own service;
- c) Failure of electrical power to Contractor equipment.
- d) Election by Contractor, after requested by JEA, to release the Services without testing and repair;
- e) JEA's inability, due to the action or inaction of Contractor or an End-User, to obtain access required to remedy a defect in Service;
- f) Scheduled system maintenance coordinated with Contractor and performed by JEA within the agreed upon time period;
- g) Scheduled upgrade of Service at the request of Contractor;
- h) Malfunction of non-JEA equipment or systems; or
- i) Force Majeure Events;

- 7.3 Credit Claim Deadline – Contractor must request a credit allowance for a Network Service Outage within sixty (60) days after delivery of an invoice involving the affected Service or any claim for an allowance is waived.
- 7.4 Equipment – JEA may substitute, change or rearrange core telecommunications equipment used in providing Network service as long as the quality of service or type of services are not impaired or changed. JEA will use its best efforts to notify Contractor of the technical specifications of these changes at least ninety (90) days in advance. Any special interface equipment or facilities, necessary to achieve compatibility solely between the telecommunications equipment of JEA and the facilities of Contractor, shall be at Contractor's expense and JEA shall not be required to provide any such equipment. The End User shall be responsible for any specific interface equipment necessary to achieve compatibility with the JEA Network.
- 8.0 **Contractor Responsibilities**
- 8.1 Network Compatibility – All equipment and services provided by the Contractor shall be compatible with JEA's Wave 7 Optics' network equipment.
- 8.2 Telephony Equipment and Facilities – Contractor shall be responsible for providing and maintaining all Contractor equipment outside of the JEA Network, such as soft switches, media gateways, and any other equipment necessary to switch, distribute, and provision telephone traffic for its telephony End Users. Such equipment may be installed at the Contractor CO or co-located in the MTCC if such space is available. Contractor shall be responsible for establishing and maintaining all necessary interconnection agreements with ILECs and any other CLECs at its expense.
- 8.3 Telephony Provisioning – Contractor shall be responsible for provisioning the features and functionality of its telephony services offered to its End Users through its switch.
- 8.4 Required Services and Operating Regulations – The Parties shall each be responsible for meeting all operating regulations that are required by federal or state law.
- 8.5 Data Equipment and Facilities – Contractor shall be responsible for installing and maintaining all equipment outside of the JEA Network, such as routers, servers, and any other equipment necessary for providing Internet and data services to its End Users. Such equipment may be installed in the Contractor Central Office or co-located in the MTCC if adequate co-location space is available and purchased. Contractor shall be responsible for maintaining adequate interconnections to long-haul carriers sufficient not to exceed a maximum over-subscription rate of fifteen to one (15 to 1) and exceed the requirements of its End Users using the Network.

- 8.6 Security – Contractor shall take commercially reasonable measures to protect the JEA Network against malicious attacks and intrusions by unauthorized persons as outlined in Section 4.9 of this Agreement.
- 8.7 End User Support - Unless the Parties enter into an agreement where JEA agrees to provide Contractor sales and customer support services, Contractor shall be solely responsible for all sales, marketing, service ordering, provisioning, collections and customer support services related to its End Users.
- 8.8 Service Levels - During the term of this Agreement Contractor will use best efforts to provide its End Users service and support in full compliance in all material respects with any applicable State and Federal regulatory requirements but, in any event, no less than the highest quality of service Contractor offers to any of its other End Users receiving services over other networks.
- 8.9 Customer Service – Unless the Parties enter into an agreement where JEA agrees to provide customer and billing services on behalf of Contractor, or Contractor continues to provide Services pursuant to Section 2.5, Contractor shall establish and maintain sufficient local customer service capabilities to adequately serve its customer base. At a minimum, such customer service capabilities shall include, but shall not be limited to: (a) a local business office at which prospective and existing customers may place service orders, make payments, and resolve billing or service questions; (b) a toll-free telephone number through which customers may contact the Contractor's customer service representatives during regular business hours; and (c) Contractor shall provide live 24/7 emergency support via telephone for JEA personnel and its customers. Contractor shall also maintain a trained and knowledgeable Tier I and above help desk for telephone and high-speed data customers at a minimum during the hours of 7:00 a.m. to Midnight, Monday through Friday; 8:00 a.m. to Midnight, Saturday; and 10:00 a.m. to 10:00 p.m., Sunday; all times Central Time Zone.
- 9.0 Parity
- 9.1 All network access 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 Contractor provides to any of its customers or End Users. To the extent technically feasible, the quality of the Network, as well as the quality of the access to the 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, an Affiliate, or any other carrier or provider.
- 10.0 Directory Listings

- 10.1 Contractor shall be responsible for tendering all subscriber listing information ("SLI") to the incumbent local exchange carrier for publication in any listings directory that is regularly published for Madison County, Tennessee.
- 11.0 **Court Ordered Requests for Call Detail Records and Other Subscriber Information**
- 11.1 In instances where either Party receives a subpoena or court-ordered request for information involving information possessed only by the other Party, the Party receiving the request will advise the law enforcement agency initiating the request to redirect such request to the other Party.
- 12.0 **Indemnification**
- 12.1 By Contractor – Except to the extent that any loss, cost, damage or liability is due to the negligence of JEA, Contractor shall indemnify, defend and hold harmless JEA and its affiliates, employees, directors, officers, and representatives, ("Indemnified Parties") from and against all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses, including interest, penalties and disbursements (collectively, "Claims"), to the extent any such Claim is asserted by a third party against JEA or any of its Indemnified Parties, directly by reason of or resulting from any Contractor failure to perform an obligation under this Agreement or any action or inaction of Contractor or its employees or agents that is illegal or constitutes negligence or intentional misconduct, or as a result of: (i) claims for libel, slander, infringement of copyright or unauthorized use of trademark, logo, trade name or service mark arising out of use of the Service; (ii) claims for infringement of any valid U.S. patent or copyright arising from combining or connection of facilities to use JEA's Network; (iii) claims for damage to property and/or personal injuries (including death) arising out of the negligence or willful act or omission of Contractor; (iv) claims that any actions of Contractor violate any law or regulation; and (v) failure or inability of Contractor to provide directory listings for any of its customers.
- 12.2 By JEA – Except to the extent that any loss, cost, damage or liability is due to the negligence of Contractor, and to the extent legally permissible and subject to the statutory liability limitations of the Governmental Tort Liability Act (TCA 29-20-201), JEA shall indemnify, defend and hold harmless Contractor its affiliates, employees, directors, officers and representatives ("Collectively "Contractor Parties") from and against all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses, including interest, penalties and disbursements, to the extent any such claims are asserted directly or indirectly by a third party against Contractor or any of it's the Contractor Parties directly by reason of or resulting from any JEA failure to perform an obligation under this Agreement or any action or inaction of JEA or its employees or agents that is illegal or constitutes negligence or intentional misconduct, or incurred as a result of: (i) claims for infringement of any valid U.S. patent or

copyright relating to the equipment or software used by JEA to provide the Services hereunder; (ii) claims for damages to property and/or personal injuries (including death) arising out of the negligence or willful act or omission of JEA; and (iii) claims that any action of the JEA violate any law or regulation.

12.3 Procedures – A Party seeking indemnification for itself or an Indemnified Party shall notify the other Party promptly after becoming aware of the Claim, and shall provide or cause the Indemnified Party to provide reasonable and customary cooperation (e.g. providing copies of documents or testimony of witnesses) in the defense of the Claim. The Party being asked to provide indemnification shall not be bound to honor any settlement or compromise of a claim affected by an Indemnified Party without the prior written consent of the indemnifying Party.

13.0 **Default, Remedies and Security Interest**

13.1 Default. A Party shall be in "Default" under this Agreement if:

- a) Such Party fails to make a payment when due and such failure continues for more than thirty (30) days after written notice, in accordance with the terms of sections 6.1 through 6.11
- b) such Party fails to perform any obligation required under this Agreement, including but not limited to the provisions set forth in Section 6.0 and Contractor Responsibilities listed under Section 8.0 above, and such failure continues for more than thirty (30) days after written notice, provided that if the breach is of such a nature that it cannot be cured within thirty (30) days, then such Party shall have an additional thirty (30) day period(s), such period(s) approved in writing by the other Party, in which to cure its breach. Failure by the Contractor to cure after the period(s) allowed by JEA may result in automatic suspension of service leading to termination as described in Section 13.3 below.
- c) Such Party fails generally to pay its debts as such debts become due, or admits in writing its inability to pay its debts as such debts become due, or makes any general assignment for the benefit of creditors.
- d) There is commenced by such Party any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, or reorganization, or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other similar official for it or for all or any substantial part of its property.
- e) There is commenced any case, proceeding or other action against such Party seeking to have any order for relief entered against such Party as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of such Party or its debts under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other similar official for such Party or for all or



any substantial part of the property of such Party, and (i) such Party shall, by any act or omission, indicate its consent to, approval of, or acquiescence in such case, proceeding or action, or such case, proceeding or action results in the entry of an order for relief which is not fully stayed within seven (7) business days after the entry thereof, or (ii) such case, proceeding or action remains un-dismissed for a period of thirty (30) days or more or is dismissed or suspended only pursuant to section 305 of the United States Bankruptcy Code or any corresponding provision of any future United States bankruptcy law.

- 13.2 Remedies – Upon the occurrence of a Default, the non-Defaulting Party may seek any and all remedies available at law and/or equity, except to the extent any such remedy is specifically limited or prohibited by this Agreement, and may terminate this Agreement by written notification.
- 13.3 Suspension of Service – In the event of Default by the Contractor as described in Section 13.1 above, JEA, in its sole and absolute discretion, shall have the right, on and after the thirtieth (30<sup>th</sup>) calendar day after JEA has either given Contractor written notice of Default or the expiration of any additional time granted to cure a default, in addition to exercising any remedies available for such Default, to suspend acceptance of any new customer addition requests. After the Contractor has exhausted its cure period permitted by JEA without correcting its Default, JEA may provide all of the Contractor's customers with written notice that the Contractor is in Default of its agreement with JEA and subject to cessation of Network Transport services by JEA and that the Contractor's customers may switch to another service provider of their choice within a reasonable amount of time as provided for in Section 2.4. At the end of the time period during which the Defaulting Contractor's customers may switch providers, JEA may terminate its Agreement with the Contractor.
- 13.4 Prohibited Use – If Contractor uses any Network service in a manner that is a violation of law or that interferes with the technical functionality of the Network, and if Contractor does not cease such objectionable use immediately after receipt of notice from JEA, JEA shall have the right to suspend its provision of the relevant Service to Contractor until Contractor provides assurances reasonably acceptable to JEA that such use is not or no longer shall be in violation of applicable law, or will no longer interfere with the technical functionality of the JEA Network. In addition to immediate suspension of service following notice of Prohibited Use of the JEA Network by the Contractor, continued violation of this section after receipt of notice by JEA shall constitute a Termination of this Agreement.
- 13.5 Contractor Remedies - In the event of any uncured Default by JEA, upon the expiration of the applicable default cure period, in addition to any legal rights and remedies it may have, Contractor shall have the right to continue to offer services to its End Users over the Network in accordance with Section 2.4 of this Agreement.

- 14.0      **Limitation of Liability**
- 14.1      Definition – For purposes of this Section 14, "JEA" shall be defined as JEA, its Affiliates, and its and their employees, directors, officers, agents and representatives, "Contractor" shall be defined under this Section 14 as Contractor, its Affiliates, their employees, directors, officers, agents and representatives.
- 14.2      Exclusive Remedies – JEA'S ENTIRE LIABILITY, AND CONTRACTOR'S EXCLUSIVE REMEDIES AGAINST JEA, FOR ANY DAMAGES CAUSED BY ANY SERVICE OUTAGE, DEFECT OR FAILURE SHALL BE THE OUTAGE CREDIT AND TERMINATION PROVISIONS SET FORTH ABOVE IN SECTION 7.
- 14.3      Limitation of Liability – THE ENTIRE LIABILITY OF EITHER PARTY FOR OTHER CLAIMS ARISING IN CONNECTION WITH ANY SERVICE OR THIS AGREEMENT, IF NOT OTHERWISE LIMITED BY ANOTHER PROVISION OF THIS AGREEMENT, SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED PER CLAIM (OR IN THE AGGREGATE DURING ANY THREE MONTH PERIOD) THE TOTAL NET PAYMENTS MADE BY CONTRACTOR TO JEA UNDER THIS AGREEMENT FOR THE APPLICABLE SERVICE DURING THE SIX (6) MONTHS PRECEDING THE MONTH IN WHICH THE DAMAGE OCCURRED.
- 14.4      No Consequential or Punitive Damages – IN NO EVENT SHALL JEA OR CONTRACTOR BE LIABLE TO THE OTHER OR TO ANY THIRD PARTIES FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OF ANY KIND OR INCREASED COST OF OPERATIONS, WHETHER OR NOT JEA OR CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 14.5      Technical Limitations – NEITHER JEA OR CONTRACTOR SHALL BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, INTERACTION OR INTERCONNECTION PROBLEMS WITH APPLICATIONS, EQUIPMENT, SERVICES OR NETWORKS PROVIDED BY THE PARTIES OR THIRD PARTIES; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF THE PARTIES', END USERS' OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, EQUIPMENT, NETWORK OR SYSTEMS.
- 14.6      Additional Limitation of Liability – JEA HEREBY ADVISES CONTRACTOR THAT FIBER STRANDS ON JEA'S NETWORK MAY BE IN CLOSE PROXIMITY TO ELECTRICAL CABLES THAT ARE SUBJECT TO FAULT, BURNOUT, OR OTHER MALFUNCTION WHICH CAN RESULT IN DAMAGE, DESTRUCTION, OR DISRUPTION TO SUCH FIBER STRANDS. CONTRACTOR ACKNOWLEDGES AND AGREES THAT NEITHER JEA

NOR ANY HOLDER OF AN UNDERLYING RIGHT ASSUMES LIABILITY FOR ANY SUCH DAMAGE, DESTRUCTION, OR DISRUPTION, EXCEPT FOR SERVICE CREDIT AS PROVIDED FOR UNDER OUTAGE CREDITS IN SECTION 7.0

14.7 Form of Claim – THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 14 AND IN ANY ATTACHMENT SHALL APPLY: (i) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE; AND (ii) WHETHER OR NOT DAMAGES WERE FORESEEABLE. THESE LIMITATIONS OF LIABILITY SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDIES PROVIDED IN THIS AGREEMENT, AND (iii) ONLY TO DISPUTES WHICH ARISE FROM THE PERFORMANCE OF THIS INTERCONNECTION AGREEMENT AND ANY ATTACHMENT THERETO.

14.8 No Third Party Beneficiaries – This Agreement does not expressly or implicitly provide any third party (including End-Users) with any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

#### 15.0 Insurance

15.1 Insurance - Within thirty (30) days after the Effective Date, JEA and Contractor shall each procure, and thereafter shall maintain through the term of this Agreement, insurance coverage in the type and amount set forth below. Such coverage shall be obtained on an occurrence basis from carriers having a AM Best Rating Service rating of A- / X or better and licensed to do business in the State where the Services are to be delivered. Each Party shall deliver to the other, standard form insurance certificates evidencing the foregoing coverage and stating that such coverage shall not be cancelled, non-renewed or materially and adversely modified without at least thirty (30) days written notice to the certificate holder.

15.2 Each Party shall maintain the following coverages: Commercial general liability insurance, covering claims for bodily injury, death and property damage, including comprehensive form, premises and operations, independent contractors, products and completed operations, personal injury, contractual, and broad form property damage liability coverage, with limits of \$1,000,000 per occurrence and \$2,000,000 aggregated for each annual period;

a) Comprehensive automobile liability insurance, covering owned, non-owned, hired and other vehicles, with combined single limits \$1,000,000; and

b) Umbrella, or excess liability, coverage in the amount of \$5,000,000.

c) Worker's compensation insurance shall also be maintained but the other Party shall not be named as an additional insured.

#### 6.0 Intellectual Property Rights and Indemnification

- 16.1 No License - No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. Unless otherwise agreed in writing by the Parties, the Parties are strictly prohibited from any use, including but not limited to, in the selling, marketing, promoting or advertising of telecommunications services, of any name, service mark, logo or trademark (collectively, the "Marks") of the other Party. The Marks include those Marks owned directly by a Party or its Affiliate(s) and those Marks that a Party has a legal and valid license to use. The Parties acknowledge that they are separate and distinct and that each provides a separate and distinct service and agree that neither Party may, expressly or impliedly, state, advertise, or market that it offers the same service as the other Party, or engage in any other activity that may result in a likelihood of confusion between its own service and the service of the other Party.
- 16.2 Ownership of Intellectual Property - Any intellectual property that originates from or is developed by a Party shall remain the exclusive property of that Party. Except for a limited, non-assignable, non-exclusive, non-transferable license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right, now or hereafter owned, controlled or licensable by a Party, is granted to the other Party. Neither shall it be implied nor arise by estoppel. Any trademark, copyright or other proprietary notices appearing in association with the use of any facilities or equipment (including software) shall remain on the documentation, material, product, service, equipment or software. It is the responsibility of each Party to ensure at no additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third Parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement.
- 16.0 **Intellectual Property Remedies**
- 16.1 Claim of Infringement - In the event that use of any facilities or equipment (including software), becomes, or in the reasonable judgment of the Party who owns the affected facilities, software or equipment is likely to become, the subject of a claim, action, suit, or proceeding based on intellectual property infringement, then said Party shall promptly and at its sole expense and sole option, but subject to the limitations of liability set forth below:
- a) modify or replace the applicable facilities or equipment (including software) while maintaining form and function, or
  - b) obtain a license sufficient to allow such use to continue.
- 16.2 Termination - In the event these remedies are commercially unreasonable, then said Party may terminate, upon reasonable notice, this Agreement with respect to use of, or services provided through use of, the affected facilities or equipment (including software), but solely to the extent required to avoid the infringement claim.

- 16.3 **Exception to Obligations** - Neither Party's obligations under this Section shall apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor, provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.
- 16.4 **Exclusive Remedy** - The foregoing shall constitute the Parties' sole and exclusive remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.
- 17.0 **Proprietary and Confidential Information**
- 17.1 **Proprietary and Confidential Information**. It may be necessary for JEA and Contractor, each as the "Discloser," to provide to the other Party, as "Recipient," certain proprietary and confidential information (including trade secret information) including but not limited to technical, financial, marketing, staffing and business plans and information, strategic information, proposals, request for proposals, specifications, drawings, maps, prices, costs, costing methodologies, procedures, processes, business systems, software programs, techniques, customer account data, call detail records and like information that is either marked "Confidential" or "Proprietary" (collectively the "Information"). All such Information is deemed confidential and shall not be disclosed except as required by law.
- 17.2 **Use and Protection of Information** - Recipient agrees to protect such Information of the Discloser provided to Recipient from whatever source from distribution, disclosure or dissemination to anyone except employees of Recipient with a need to know such Information solely in conjunction with Recipient's analysis of the Information and for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipient will not make any copies of the Information inspected by it.
- 17.3 **Exceptions** - Recipient will not have an obligation to protect any portion of the Information which: (a) is made publicly available by the Discloser or lawfully by a nonparty to this Agreement; (b) is lawfully obtained by Recipient from any source other than Discloser; (c) is previously known to Recipient without an obligation to keep it confidential; or (d) is released from the terms of this Agreement by Discloser upon written notice to Recipient. Contractor acknowledges that JEA is a public utility authority created by 2001 Tennessee Private Acts Chapter 55, and as such is subject to the Tennessee Open Records Act, under which JEA may be required under law to disclose information provided to JEA by the Contractor.

- 17.4 Publication - Recipient agrees not to publish or use the Information for any advertising, sales or marketing promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.
- 17.5 Ownership of Rights - The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, application or other intellectual property right that is now or may hereafter be owned by the Discloser.
- 17.6 Survival of Confidentiality Obligations - The Parties' rights and obligations under this Section shall survive and continue in effect after the expiration or termination date of this Agreement with regard to all Information exchanged prior to and during the term of this Agreement. Thereafter, the Parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.
- 18.0 Resolution of Disputes
- 18.1 Any claim or controversy related to or arising out of this Agreement, whether in contract or in tort ("Dispute"), will be resolved on a confidential basis, according to the following process, which either party may start by delivering to the other party a written notice describing the Dispute and the amount involved ("Demand"):
- 18.2 After receipt of a Demand, authorized representatives of the parties will meet at a mutually agreed upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved after thirty (30) days after the receipt of the Demand, either Party may start binding arbitration in Evansville, Indiana if the claim is brought by the JEA or Jackson, Tennessee if the claim is brought by Contractor. The arbitration will be before a three (3) arbitrator panel. Each Party will select one arbitrator to represent its interest, at its sole expense. The final arbitrator, who shall be impartial, will be selected by the two partial arbitrators. In the event the two (2) partial arbitrators shall fail to select an impartial arbitrator, either party may apply to a court of law in the jurisdiction where the arbitration is being conducted, to have a judge select an impartial arbitrator. Discovery shall be controlled by the impartial arbitrator and shall be permitted to the extent set forth in this Section 18.2. Each Party shall be entitled to any combination of thirty-five (35) discovery requests, without subparts, consisting of any of the following: interrogatories, demands to produce documents or requests for admission. Upon receipt of any such discovery requests, each Party shall respond within a reasonable time period as determined by the impartial arbitrator. At a time and place mutually agreed upon between the Parties, or, if the Parties cannot agree on a time and place, at a time and place determined by the impartial arbitrator, each Party shall also be entitled to take the oral deposition of one individual of the other Party. Additional discovery may be permitted upon mutual agreement of the Parties. The three (3) arbitrators, by majority rule, shall adopt any other procedures they deem efficient and appropriate for making the determinations submitted to them for adjudication. No statements by or communications between the Parties during negotiations or mediation, or both,

performance and both Parties shall proceed whenever such causes are removed or cease.

**21.0 Modification of Agreement**

21.1 No modification, amendment, supplement to, or waiver of this Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

21.2 In the event that any effective legislative, regulatory, judicial or other legal action or technological change affects any material terms of this Agreement, or the ability of Contractor or JEA to perform any material terms of this Agreement, Contractor or JEA may, on thirty (30) days written notice, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within thirty (30) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in this Agreement.

**22.0 Severability**

22.1 If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be unenforceable, the rest of the Agreement shall remain in full force and effect and shall not be affected unless removal of that provision results in a material change to this Agreement. If a material change as described in this paragraph occurs as a result of action by a court or regulatory agency, the Parties shall negotiate in good faith for replacement language. If replacement language cannot be agreed upon within a reasonable period, either Party may terminate this Agreement without penalty or liability for such termination upon written notice to the other Party.

**23.0 Waivers**

23.1 A failure or delay of either Party to enforce any of the provisions hereof, to exercise any right which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

**24.0 Governing Law**

24.1 Where applicable, this Agreement shall be governed by and construed in accordance with federal and Tennessee substantive law, including applicable rules and regulations of the FCC and the TRA.

**25.0 Assignments**

25.1 Any assignment by either Party to any non-affiliated entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party shall be void. Consent to assignment shall not be unreasonably withheld. A Party may assign this Agreement in its entirety to an Affiliate of the Party without the consent of the other Party; provided, however, that the assigning Party shall notify the other Party in writing

of such assignment thirty (30) days prior to the Effective Date thereof and, provided further, if the assignee is an assignee of Contractor, the assignee must provide evidence of TRA CLEC certification. The Parties shall amend this Agreement to reflect such assignments and shall work cooperatively to implement any changes required due to such assignment. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. Notwithstanding anything to the contrary herein, neither Party shall assign this Agreement to an Affiliate to avoid any of its obligations under this Agreement or otherwise avoid liability to the other Party.

**26.0 Relationship of Parties/Independent Contractor**

26.1 Each party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation, and discharge of its employees assisting in the performance of such obligations. Nothing contained herein shall constitute the Parties as joint venturers, partners, employees, or agents of one another, and neither Party shall have the right to bind or obligate the other. Except for any provisions herein expressly authorizing a party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other party.

**27.0 Notices**

27.1 Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by overnight courier or by US mail postage prepaid, address to:

**Jackson Energy Authority**

Mr. Kim K. Kersey  
Senior Vice President – Telecommunications  
Jackson Energy Authority  
119 East College Street  
Jackson, TN 38301

with copy to:

Ms. Teresa Cobb, General Counsel  
Jackson Energy Authority  
119 E. College Street  
Jackson, TN 38301

**Contractor**

Mr. Michael Farmer  
Cinergy Communications Company



5856 West 74<sup>th</sup> Street  
Indianapolis, IN 46278

with a copy to:

Legal Department c/o Mr. John Campbell  
Cinergy Communications Company  
8829 Bond Street  
Overland Park KS 66214

Mr. John Cinelli  
Cinergy Communications Company  
1419 W. Lloyd Expressway  
Evansville, IN 47710

or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

- 27.2 Unless otherwise provided in this Agreement, notice by mail shall be effective and receipt shall be accomplished on the date it is officially recorded as delivered by return receipt or equivalent.
- 28.0 **Rule of Construction**
- 28.1 No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.
- 29.0 **Headings of No Force or Effect**
- 29.1 The headings of Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.
- 30.0 **Multiple Counterparts**
- 30.1 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.
- 31.0 **Necessary Approvals**
- 31.1 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, governmental authorities, building and property owners, other carriers, and any other persons that may be required in connection with the performance of its obligations under this Agreement. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which such Party is responsible.
- 31.2 Each Party shall file and maintain any necessary tariffs with appropriate authorities. Each Party agrees to comply with all state and federal statutes and regulations and administrative orders applicable to it, including but not limited to those addressing minimum performance standards, slamming and cramming, confidentiality, free choice with respect to customer premises equipment, toll

dialing parity plans, telephone numbering plans, end user customer deposits, and the like.

- 31.3 Each Party warrants that the person executing this Agreement on their behalf below is lawfully authorized to do so. The Board of the Jackson Energy Authority has given the representative executing this Agreement authority to do so by virtue of action taken at its meeting on the 23rd day of September, 2004 and as reflected in the minutes of said meeting.
- 32.0 **Good Faith Performance**
- 32.1 Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.
- 33.0 **Nonexclusive Dealings**
- 33.1 Nothing in the Agreement shall be construed to prevent JEA from entering into a similar interconnection agreement with any other service provider subsequent to this Agreement. Should such a subsequent agreement contain terms more favorable or less burdensome than those contained in this Agreement, Contractor may adopt the new Agreement in its totality.
- 34.0 **Survival**
- 34.1 The Parties' obligations under this Agreement, which by their nature are intended to continue beyond the termination or expiration of this Agreement, shall survive the termination or expiration of this Agreement.
- 35.0 **Entire Agreement**
- 35.1 "This Agreement" means the General Terms and Conditions, the Attachments and all documents identified therein, as such may be amended from time to time as provided herein and those (if any) which are incorporated herein by reference, all of which, when taken together, are intended to constitute one indivisible agreement. This Agreement sets forth the entire understanding and supersedes all prior agreements and understanding between the Parties relating to the subject matter hereof. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise regarding the subject matter hereto other than as expressly stated in the Service Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

Jackson Energy Authority

John W. Williams  
Signature

John W. Williams  
Name

President  
Title

12/28/04  
Date

Contractor

John P. Cimelli  
Signature

John P. Cimelli  
Name

as President  
Title

01/03/05  
Date

Approved as to form  
Legal

By JHC Date 12/30/04

## Attachment 1

### **Jackson Energy Authority Fiber Optic Broadband Telecommunications Network Access and Non-Recurring Charges**

#### **1. NETWORK ACCESS CHARGES**

JEA shall charge the Network access fees listed below for transport of Contractor service traffic across its Network. The definition of the JEA Network relating to these charges shall include all JEA facilities, equipment, and associated software from the service provider's backbone optronics patch panel through to the gateway at the customer's premises. Access charges shall include maintenance of the Network by JEA. For purposes of calculating all Network access charges, revenue derived from any Ancillary Service is specifically excluded, unless otherwise expressly included below, and shall not be used to calculate the monthly billed revenue for any data service. Contractor shall provide JEA with a monthly certified statement of billed revenue within 10 days of the end of each month, delineated by service category and level.

Residential telephone service.....	<u>40% of monthly billed revenue,</u> excluding long distance, taxes, subscriber line charges, and regulatory fees, or \$7.50, whichever is greater.
Business telephone service.....	<u>40% of monthly billed revenue,</u> excluding long distance, taxes, subscriber line charges, and regulatory fees, or \$12.00, whichever is greater.
Business DS1/T1 telephone service.....	<u>\$150.00 + *50% of the retail charge for</u> <u>T1/DS1 service over \$750/month,</u> *Retail charges shall exclude all long distance, taxes, subscriber line charges, and regulatory fees
Residential high-speed data service.....	<u>50% of monthly billed revenue,</u> for the data connection, excluding taxes and regulatory fees or \$10.00 for 256/256Kbps connection, \$12.50 for a 512/256Kbps connection, \$15 for a 1.5Mbps/256Kbps connection, \$17.50 for a 2Mbps/384Kbps connection, or \$20.00 for a 3Mbps/512Kbps connection, \$25.00 for a 4Mbps/512Kbps connection, or \$30.00 for a 5Mbps/ 512Kbps connection, whichever is greater.

Business high-speed data service..... 50% of monthly billed revenue, excluding taxes, ancillary service revenue, and regulatory fees, for the data connection transport offerings mutually agreed between the parties pursuant to the procedure set forth below.

Business high-speed data pricing procedure – The product description and pricing of all business data connection transport service offerings shall be determined by the mutual agreement of the Parties. Within sixty (60) days of the date of this Agreement, the Parties shall mutually develop an initial pricing schedule for all business data connection transport services to be offered by Contractor over the JEA Network. Upon completion, such schedule shall be incorporated into this Agreement as Attachment "2". Thereafter, upon request by either Party, "Attachment 2" may be revised by the mutual agreement of the Parties. Upon request for revisions, the Parties agree to work in good faith to revise Attachment "2" as necessary to ensure that Contractor's business data service offerings are competitive with similar offerings in the JEA Service Territory. In the event the Parties cannot agree on such revisions, either Party may apply for arbitration under Section 18 of this Agreement.

## 2. CO-LOCATION CHARGES

For any space that Contractor may require beyond the co-location space provided under Section 4.11 the following rate structure shall apply. Contractor may co-locate its equipment in available rack space inside JEA's secure Master Control headend facility that features proper temperature and humidity controls to satisfy equipment requirements and adequate electrical circuitry and sufficient generator and UPS back-up. The co-location charges shall be inclusive of rack space, HVAC, electrical powering and electrical back-up, and 24-hour access.

- a. Full rack and cross connects to JEA Network interface \$500.00/mo.
- b. Half rack and cross connects to JEA Network interface \$300.00/mo.

## 3. PORT CHARGES

JEA shall charge monthly for connection to its Ethernet switch ports to cover the cost of equipment and maintenance necessary to maintain the Contractor Network connectivity. Based on anticipated traffic volume of the Contractor, JEA reserves the right to assign switch ports to a service provider.

- a. Extreme Networks BlackDiamond 6800 series Switch (one gigabit of capacity per port) \$360.00/mo.
- b. Extreme Network Summit series Switch (10/100 Mbps of capacity per port) \$200.00/mo.

#### 4. NON-RECURRING CHARGES

JEA shall charge Contractor non-recurring charges for installation and activation of services at customers' premises. Such charges shall be billed monthly based on activity during the prior month.

##### A. RESIDENTIAL INSTALLATIONS

Non-recurring charges for residential End Users shall include installation of a fiber optic service drop to the customer's premises, installation and activation of the gateway, installation of new wiring to customer devices, connection of existing wiring, and customer set-up for services.

- |  |                          |
|--|--------------------------|
| a. Telephone or high-speed data service turn-up, during same dispatch trip with cable television account turn-up and using existing customer wiring, where customer performs self-installation of data service software and a network interface card is present. | \$8.00 per service       |
| b. Telephone or high-speed data service turn-up, separate dispatch trip without cable television and using existing customer wiring where customer performs self-installation of data service software and network interface card is present.                    | \$20.00 per service      |
| c. New Category 5 wiring installed in connection with item a. or b. above.   | \$12.50 per outlet       |
| d. Installation of customer-supplied network interface card into customer PC   | \$24.00 per installation |
| e. Installation of customer-supplied Internet hub  | \$25.00 per installation |
| f. Customer telephone or data set-up beyond establishing dial tone or data connectivity, and setting up email.   | \$50.00 per hour         |

##### B. BUSINESS INSTALLATIONS

###### Small Business Aerial Installations

Non-recurring aerial installations into small businesses shall include the installation of an aerial fiber optic service drop to the customer's premise, installation and activation of a gateway and power supply on the outside of the customer's premise, installation of new wiring to customer devices, connection of existing wiring to customer devices, and customer set-up of services.

- |  |                             |
|--|-----------------------------|
| a. Telephone or high-speed data service turn-up, during same dispatch trip with cable television account turn-up and using existing customer wiring, where customer performs self-installation of data service software and network interface card is present. | \$8.00 per service          |
| b. Telephone or high-speed data service turn-up, separate dispatch trip without cable television and using existing customer wiring where customer performs self-installation of data service software and network interface card is present.                  | \$20.00 per service         |
| c. Installation of fiber drop on more than two utility poles.  | \$20.00 per additional pole |
| d. New Category 5 wiring installed in connection with item a. or b. above.   | \$12.50 per outlet          |
| e. Installation of customer-supplied network interface card into customer PC   | \$24.00 per installation    |
| f. Installation of customer-supplied Internet hub  | \$25.00 per installation    |
| g. Customer telephone or data set-up beyond establishing dial tone or data connectivity, and setting up email.   | \$50.00 per hour            |

#### Large Business and Underground Small Business Installations

Large Business installations shall be treated differently than residential installations and Small Business End User aerial installations, as described above, due to the variables for aerial and underground service drop installation costs, special conditions that may exist at a business premises, gateway requirements, and customer requirements for inside wiring and services turn-up.

JEA shall charge Contractor the actual cost of installation as bid by an approved contractor. JEA will involve the Contractor in the selection of contractors qualified to receive periodic bid proposals for this purpose.

### **C. SERVICE REPAIR**

#### Residential Customers

Service repair for residential customers shall be performed by JEA following the generation of a repair dispatch order in the Contractor trouble repair tracking system. JEA shall charge for service repair trips according to the following schedule:

- |   |                  |
|---|------------------|
| a. Service repair for telephone and/or data only, if the problem exists on the customer side of the gateway.  | \$25.00 per trip |
| b. Service repair for telephone and/or data, if the problem exists on the customer side of the gateway and the service repair trip also involves a cable television repair. | \$12.50 per trip |

Business Customers

Service repair for business customers shall be performed by JEA following the generation of a repair dispatch order in the Contractor trouble repair tracking system.

- a. For those service repair trips where the problem exists on the customer side of the Gateway, JEA shall charge \$50.00 per hour.
- b. For those service repair trips where the problems exist on the customer side of the Gateway and where cable repair is also involved, JEA shall charge \$25.00 per hour.
- c. For those service repair trips where the problem exists on the JEA Network side of the Gateway, there will be no charge to the Contractor for the repair.

**5. NETWORK ACCESS AND RECURRING CHARGE ADJUSTMENTS**

JEA reserves the right to review and adjust its network access and recurring charges on an annual basis by the lesser of any increase in the Consumer Price Index ("CPI") from the previous year, or actual network access services cost increases incurred by JEA.

**6. NON-RECURRING CHARGE ADJUSTMENTS**

Non-recurring charges by JEA will be subject to annual review and may be adjusted by amounts equivalent to JEA's direct underlying direct costs for such items as materials and company-wide labor rate adjustments as approved by the JEA Board of Directors, in any case not to exceed the increase in the CPI + 1.5%. To the extent possible, JEA will attempt to minimize cost increases by third party suppliers through competitive bidding.



## **ATTACHMENT H**



## EPlus Broadband Rate Sheet

422.7500

www.eplusbroadband.com

Broadband

### EPLUS CABLE TV (Rates Effective May 1, 2006)

Basic Service	\$15.95	24 Channels (2-13, 17-22, 191, 201-205)* Required with any service.
Expanded Service	\$24.00	43 Channels and HD Basic Service (\$29.95) (201-205)*
Digital Service	\$10.00	41 Channels (101-141)*
EPlus HD Service	\$25.95	6 High-Def Channels and HD Basic HD (201-205)*
HBO	\$12.00	3 Analog Channels or 14 Digital Channels*
Cinergy Cinema	\$10.00	12 Digital Channels*
Showtime Unlimited	\$11.00	22 Digital Channels*
Starz Super Pak	\$10.00	24 Digital Channels*
Standard Converter	\$2.00	First Standard Converter (Includes Electronic Program Guide [EPG] & Music Choice [Channels 901-946])
	\$5.00	Each Additional Standard Converter
Smart Box Converter	\$10.00	Smart Box Converter (Includes EPG & Music Choice)

### JAXNET HIGH-SPEED INTERNET\*

512K/256K Basic	\$24.95	Non Static IP, 5 Email Addresses, 50Mb Email Storage w/Spam & Virus Filtering
6M/512K Upgrade	\$39.95	Non Static IP, 5 Email Addresses, 50Mb Email Storage w/Spam & Virus Filtering
10M/1M Upgrade	\$54.95	Non Static IP, 5 Email Addresses, 50Mb Email Storage w/Spam & Virus Filtering
Internet Security Suite	FREE	Includes Virus Protection, Firewall Security, Anti-Spyware, Pop-up Blocker, Ad Blocker, and Parental Controls.

### TELEPHONE

One Link	\$15.95	Unlimited Local Calling with Call Waiting & Call Return
One Link Feature Pak	\$10.00	Pak includes: Call Forward Busy, Call Forward No Answer, Remote Access Call Forwarding, Speed Calling 30, 3-Way Calling, Anonymous Call Rejection, Caller ID Delivery Block, Call Return, Call Forward Variable, Caller ID (w/Name)*, 60 Minutes Free Long Distance Calling*
Local Link	\$24.95	Unlimited Local Calling with: Caller ID (w/Name)*, Call Waiting (w/Caller ID)*, 3-Way Calling, Call Forwarding Variable, Call Return, 60 Minutes Free Long Distance Calling*
Local Link Feature Pak	\$5.00	Pak includes: Call Forward Busy, Call Forward No Answer, Remote Call Forwarding, Speed Calling 30, Repeat Dialing, Anonymous Call Rejection, Caller ID Delivery Block
Nationwide LD	\$20.00	Long Distance Calling Anywhere in the Contiguous 48 States (Lvl to 1500 Mins.)*
Protection	\$3.95	EPlus Service Assurance Plan*
Not-Published Listing	\$3.33	Number not in Phone Book or Directory Assistance

(1) Requires digital converter. (2) High-speed internet services are provided as best-effort service. Cinergy Communications does not guarantee bandwidth due to customer usage. (3) Nationwide long distance calling and West TN long distance calling are each limited to 1500 minutes per month with minutes over 1500 billed at 6.94 per minute rate. (4) 60 minutes free long distance calling is limited to the 48 contiguous United States. Long distance minutes in excess of 60 minutes each month will be billed at 6.94 per minute rate. Unused free long distance minutes do not roll over to the next month. (5) You must provide the correct equipment to use Caller ID. (6) Free standard basic installation is limited to franchisees that do not exceed 100 feet from the curb to the premise and includes wiring needed in the installer's discretion, where service is connected to an existing phone jack within the customer's home, and is connected to the customer's own PC. (7) This offer is available to new residential customers only through May 31, 2006 and cannot be combined with other offers. (8) Requires "Smart Box" converter. Terms and conditions subject to change without notice. Prices and rates listed are per month. Tax and fees not included. This offer available to residential customers only. ©2006 Jackson Energy Authority Cinergy Communications Company is a wholly owned subsidiary of CE-Corps Corporation. Although Cinergy Corp. has assumed the use of its name as CE-Corps, it has no management oversight, control or responsibility for Cinergy Communications Company.

## Residential Services Bundled Feature Packages!

### MVP

#### Basic & Expanded Cable TV

81 Cable TV Channels  
EPlus Service Assurance Plan

#### High-Speed Internet

10 Mbps Download/1 Mbps Upload  
High-Speed Internet

#### Telephone

Unlimited Local Calling  
West TN Long Distance  
Features Included:

Touch Tone, Caller ID (w/Name),  
Call Return, Call Forwarding, 3-Way  
Calling, Caller ID Delivery Block,  
Repeat Dialing, Anonymous Call  
Rejection, 30, 3-Way Calling,  
30, Call Forward Variable, Call  
Forwarding, Call Return, Call  
Waiting (w/ID),  
Repeat Forward all  
Forwarding

Save More Than

\$30

Each Month  
With This  
Bundle!

### ALL-STAR

#### Basic & Expanded Cable TV

81 Cable TV Channels  
EPlus Service Assurance Plan

#### High-Speed Internet

6 Mbps Download/1 Mbps Upload  
High-Speed Internet\*

#### Telephone

Unlimited Local Calling  
Features Included:

Touch Tone, Caller ID  
(w/Name), Call  
Return, Call  
Waiting (w/ID)

Save Nearly

\$7

Each Month  
With This  
Bundle!

Basic & Expanded Cable TV	\$24.00
High-Speed Internet	\$25.95
Telephone	\$15.95
One Link Feature Pak	\$10.00
Local Link	\$24.95
Nationwide LD	\$20.00
Protection	\$3.95
Not-Published Listing	\$3.33

## **ATTACHMENT I**

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**JACKSON ENERGY AUTHORITY  
BILLING AND SUPPORT SERVICES AGREEMENT**

THIS AGREEMENT is made and entered into this 22nd day of December, 2004, by and between Jackson Energy Authority (hereinafter referred to as "JEA"), a public utility authority created by the 2001 Tennessee Private Acts, Chapter 55, and Cinergy Communications Company, a privately held company organized under the laws of Kentucky (hereinafter referred to as "CONTRACTOR"). The Agreement may refer to either JEA or CONTRACTOR or both as a "Party" or "Parties".

**WITNESSETH**

WHEREAS, JEA and CONTRACTOR have entered into an Interconnection Agreement (Version 2.0) dated December 22, 2004 ("Interconnection Agreement") under which JEA shall provide transport for CONTRACTOR's data and telephony traffic across JEA's telecommunications network in and around the City of Jackson and the County of Madison, Tennessee, and

WHEREAS, the Parties have also entered into a Sales Commission Agreement dated December, 22, 2004 under which each Party may market and sell the services of the other Party; and

WHEREAS, JEA desires to offer and has the capability to provide various support services, including order entry, billing, collection, provisioning, trouble reporting, and general customer support, through its staff resources, and

WHEREAS, CONTRACTOR desires to purchase such support services from JEA for its operations within the JEA telecommunications service area for customers who receive service from CONTRACTOR over the JEA Network.

NOW THEREFORE, in consideration of the mutual agreements contained herein, JEA and CONTRACTOR agree to the following terms and conditions as follows:

**DEFINITIONS**

**Affiliate** means an entity: (i) that is wholly owned by a Party; or (ii) is wholly owned by the parent entity of the Party; or (iii) where the Party, or the parent entity of the Party, controls the voting rights of all outstanding equity in such entity.

**Ancillary Service** means any Contractor service or application offered over a Contractor data transport service (i.e. T-1, DS-1), for which there is a separate and identifiable billing charge to the End User. (VoIP telephony offered over a residential high speed Internet connection is an example of an Ancillary Service)

**Billing** shall mean the rendering of a billing statement via mail or other means by JEA for recurring and non-recurring charges for services provided to a customer by CONTRACTOR.

**Contractor Agreements** shall mean the Interconnection Agreement, the Sales Commission Agreement and this Billing and Support Services Agreement.

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**Contractor Network** shall mean any integral portion of a network outside of the JEA network.

**Commercial Services** shall mean those Contractor data transport services for business customers with symmetrical throughput of no less than 1Mbps.

**Collections** shall mean the receipt by JEA personnel of billed customer charges or monies due through JEA's normal collections means.

**Customer Account Management** shall mean application to a customer's account of appropriate charges for services received or rendered, posting of payments as received by the customer, issuance of credits as appropriate, proper calculation of monies owed by the customer, and maintenance of other such historical transactional or service information pertaining to the customer.

**Customer Service** shall mean the support provided to a customer to include handling billing and service inquiries, trouble call reporting and resolution, payment collection and processing, and any other activity that will aid in the acquisition and retention of the customers of JEA or CONTRACTOR.

**Effective Date** shall mean the date this Billing and Support Services Agreement is fully executed by the Parties.

**JEA Network** shall mean JEA's fiber optic cabling and equipment between the designated network interface point and the output side of the JEA gateway at an end user premises.

**JEA Network Territory** shall mean the service area of the JEA Network within the City of Jackson and Madison County, Tennessee.

**JEA Billing Support Services** shall mean all Billing, Collections, Customer Account Management, Customer Service and Order Entry Services provided by JEA to CONTRACTOR under this Agreement.

**Order Entry** shall mean the input into an order management system of the pertinent information necessary to provision the proper level of services desired by the customer, to render customer billing statements, and to ascertain customer credit history.

**Provisioning** shall involve the configuration of switches, routers, and other such network equipment to deliver the proper types and levels of services requested by a customer.

**Telecommunications Services** shall mean telephony and data services.

**Triple Play Services** – shall mean a single integrated bundle of telephone, data and cable television services jointly offered by CONTRACTOR and JEA.

**1.0 Nature of Relationship**

- 1.1. The scope of service offered by JEA under this Agreement shall include order entry of sales taken for CONTRACTOR by either JEA or CONTRACTOR, inclusion of the CONTRACTOR's portion of the charges on the JEA bill, collection of billed charges by JEA, handling billing and service inquiries, and trouble call reporting and resolution for CONTRACTOR. JEA and CONTRACTOR agree that data and telephone services provided by CONTRACTOR may be billed by JEA individually or jointly, or as a single discounted bundle of Triple Play Services containing cable television, data and telephone offerings.
- 1.2 Each party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation, and discharge of its employees assisting in the performance of such obligations. Nothing contained herein shall constitute the Parties as joint venturers, partners, employees, or agents of one another, and neither Party shall have the right to bind or obligate the other. Except any for provisions herein expressly authorizing a party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other party.
- 1.3 For any end user receiving CONTRACTOR services through the JEA Network, CONTRACTOR shall be required to utilize JEA to provide the JEA Billing Support Services. Notwithstanding the foregoing, with notice to JEA, Contractor may provide all such billing and customer service functions directly to any business customer receiving Commercial Services.

**2.0 CONTRACTOR Requirements**

- 2.1 Within a maximum of seventy-five (75) days from the effective date of this Agreement, CONTRACTOR shall provide JEA with the following:
  - a. confirmed pricing and feature sets for all categories of its services;
  - b. help desk and trouble call reporting requirements and procedures;
  - c. billing interfaces and data transfer formats conforming to the technical requirements of JEA;
  - d. CONTRACTOR product and service training for JEA personnel; and
  - e. on-site resources and technical training for "go live" and follow up training.
- 2.2 CONTRACTOR shall notify JEA in writing of any customer receiving Commercial Services who will not receive the JEA Billing Support Services from JEA. CONTRACTOR shall be responsible for providing all billing and customer support services to any such customer.

**3.0 JEA Requirements**

- 3.1 JEA shall be responsible for providing the staff and resources required to perform all of the JEA Billing Support Services contained in this Agreement.

- 3.2 In providing the JEA Billing Support Services as specified herein, JEA shall provide a level of service quality that is equivalent to that provided to its utility customers.
- 3.3 For the Initial Term of this Agreement, JEA shall not publicly endorse the services of any provider who offers services over the JEA Network. For purposes of this Section 3.3 "endorse" shall mean to recommend the services of one provider utilizing the JEA Network over the services of another provider utilizing the JEA Network or to exclusively approve the services of any provider. Nothing herein shall prevent the JEA from doing joint advertisements with service providers utilizing the JEA Network so long as the JEA does not explicitly recommend the services of any of those providers in such advertisements.
- 4.0 **Term of Agreement**
- 4.1 The initial term of this Agreement shall be three (3) years, beginning on the Effective Date ("Initial Term") and, unless either Party gives written notice of its intention not to renew the Agreement at least two hundred seventy (270) days prior to the expiration of the then current term, the Agreement shall automatically renew for successive seven (7) year renewal terms. The Agreement shall apply to the JEA Network Territory.
- 4.2 In the event that either Party provides proper notice of its intention not to renew this Agreement, within fifteen (15) days of delivery of such notice, either Party may make written request for the commencement of negotiations for a new agreement ("Subsequent Agreement") to be effective beginning on the expiration date of this Agreement. Upon such request, the Parties shall negotiate in "good faith" and make reasonable efforts to enter into a Subsequent Agreement within ninety (90) days of commencing negotiations.
- 4.3 If, within ninety (90) days of commencing such negotiations, the Parties are unable to negotiate new terms, conditions, and prices for a Subsequent Agreement, this Agreement shall terminate.
- 4.4 Termination of the Interconnection Agreement automatically terminates this Billing and Support Services Agreement.
- 5.0 **JEA Billing Support Services**
- 5.1 CONTRACTOR agrees to arrears billing for all of its services billed by the JEA.
- 5.2 CONTRACTOR services that are billed on JEA billing statements shall be issued over a number of billing cycles throughout the month. Customers may be offered the option of receiving a consolidated billing statement for JEA's utility and cable television services and CONTRACTOR's telephone and/or high-speed data service, or receiving a separate billing statement combining only JEA cable television service and CONTRACTOR's services. JEA shall provide all materials and labor necessary to print, process, and mail all customer billing statements. CONTRACTOR may add inserts to customer bills, at CONTRACTOR's sole cost and expense. JEA shall approve any such billing insert

developed by CONTRACTOR to ensure that the insert meets JEA's billing specifications for production standards, content and space availability.

- 5.3 CONTRACTOR will transmit to JEA, according to JEA's bill cycle schedules, and in the format required by JEA, all pertinent billing information for the customer's account including a listing of the services billed as described by CONTRACTOR and itemized charges for each service such as recurring and non-recurring charges, long distance CDRs and call rating data, taxes, subscriber line charges, and regulatory charges.
- 5.4 JEA may apply a 20% discount on all CONTRACTOR residential service: sold to JEA active and retired employees and board members in so doing, recurring network access fees due under the Interconnection Agreement and recurring fees due under this Agreement shall be discounted by an offsetting amount.
- 5.5 JEA shall provide customer account management services to include entry of new account orders, billing and general information inquiry support, payment collection and posting, and repair service order entry for those CONTRACTOR customers receiving JEA Billing Support Services.
- 5.6 CONTRACTOR will provide JEA with an interface to its billing and order management system into which JEA customer service personnel may enter orders, post payments, and enter adjustments to customer accounts as approved by CONTRACTOR.
- 5.7 Collection efforts for past due accounts shall include late payment notification letters, service disconnect notices, and service disconnects. To mitigate any CONTRACTOR related potential uncollectible accounts, JEA and CONTRACTOR agree to coordinate collection procedures to address the timing of late payment and service disconnect notification, as well as service disconnect policy. For those customers electing a single bundled services bill, JEA will first disconnect electric service, where applicable, on all such past due accounts as is current practice. For those customers being disconnected who are utilizing a separate bill statement for cable television and telecommunications services, all billed services will be shut off simultaneously, to the extent permitted by the TRA.
- 5.8 All fees due under the Contractor Agreements shall be paid in accordance with the procedures set forth in Attachment "1" which is attached hereto and made a part of this Agreement.
- 5.9 Both Parties acknowledge that CONTRACTOR is a regulated telecommunications provider subject to state and federal billing laws and regulations, including but not limited to the FCC's "truth-in-billing" requirements. Accordingly, CONTRACTOR shall pre-approve the format of any CONTRACTOR charges appearing on a JEA bill, or produced by JEA on behalf of CONTRACTOR, prior to distribution to CONTRACTOR's customers. As may be requested by CONTRACTOR from time-to-time, JEA shall also make any changes to its billing format that may be required to ensure that CONTRACTOR stays in compliance with state and federal regulatory billing requirements. Such changes to the JEA billing format shall be made at CONTRACTOR's expense.



**6.0 Technical Operations Conditions and Requirements**

- 6.1 CONTRACTOR shall be capable of automatically accepting JEA data feeds into the CONTRACTOR's Operations Support System with appropriate time for interface development by JEA and CONTRACTOR.
- 6.2 CONTRACTOR shall be able to interface with JEA's trouble ticket system to ensure timely tracking and completion of service repair orders with appropriate time for such interface development by JEA and CONTRACTOR.

**7.0 Support Services Charges**

- 7.1 JEA shall charge CONTRACTOR Two Dollars and 25/100 (\$2.25) per billed account for all JEA Support Services. On each anniversary of the Effective Date of this Agreement, with thirty (30) days prior written notice to CONTRACTOR, JEA may adjust the charge for the JEA Support Services annually by the amount of any increase in the CPI for the prior year plus 1.5%.

**8.0 Remittance of Net Collected Receipts**

- 8.1 In accordance with the procedures set forth in Attachment 1, JEA shall remit, via wire transfer to CONTRACTOR, receipts of collected revenue on a weekly basis, net of applicable network access charges due under the Interconnection Agreement, sales residual commissions due under the Sales Commission Agreement and billing and support charges due under this Agreement determined on an individual customer basis. JEA shall send via email a report to accompany the wire transfer of net receipts detailing collections by account and the amounts deducted for any fees due under the Contractor Agreements. Throughout the term of this Agreement and for a period of two (2) years thereafter, JEA shall keep and maintain detailed records of all billing activities, including but not limited to bank statements, invoices and collection information related to CONTRACTOR's customers. CONTRACTOR shall have the right to audit, at its expense, JEA's billing and collections records with reasonable advance notice. In the event such audit reveals that JEA owes CONTRACTOR additional funds, CONTRACTOR shall present to JEA reasonable documentation evidencing any such additional funds. Upon receipt of such documentation and agreement of the audit findings by JEA, JEA shall have thirty (30) days to pay such additional amount.

**9.0 Taxes and Fees**

- 9.1 For purposes of this Section, the terms "taxes", "fees", and "surcharges" shall include but are not limited to federal, state or local sales taxes, and regulatory fees or other taxes or tax-like fees or charges of whatever nature and however designated that are regularly passed through and charged to the customer. Any such taxes, fees, and charges billed to CONTRACTOR's customers by JEA shall be collected and remitted to CONTRACTOR in total at the time that JEA wire transfers the net service receipts according to Section 8.1 above.

#### 10.0 Indemnification

- 10.1 By Contractor – Except to the extent that any loss, cost, damage or liability is due to the negligence of JEA, CONTRACTOR shall indemnify, defend and hold harmless JEA and its affiliates, employees, directors, officers and representatives ("Indemnified Parties") from and against all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses, interest, penalties and disbursements (collectively, "Claims"), to the extent any such Claim is asserted by a third party against JEA or any of its Indemnified Parties, directly or indirectly, by reason of or resulting from any Contractor failure to perform an obligation under this Agreement or any action or inaction of CONTRACTOR or its employees or agents that is illegal or constitutes negligence or intentional misconduct, or as a result of: (i) claims for damage to property and/or personal injuries (including death) arising out of the negligence or willful act or omission of CONTRACTOR; and (ii) claims arising for CONTRACTOR's failure to comply with any state or federal billing laws or requirements.
- 10.2 By JEA – Except to the extent that any loss, cost, damage or liability is due to the negligence of CONTRACTOR, and to the extent legally permissible and subject to the statutory liability limitations of the Governmental Tort Liability Act (TCA 29-20-201), JEA shall indemnify, defend and hold harmless CONTRACTOR, its employees, directors and officers from and against all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses, interest, penalties and disbursements, to the extent any such Claim is asserted by a third party against Contractor directly or indirectly, by reason of or resulting from any JEA failure to perform an obligation under this Agreement or any action or inaction of JEA or its employees or agents that is illegal or constitutes negligence or intentional misconduct, or incurred as a result of: (i) claims for infringement of any valid U.S. patent or copyright relating to the equipment or software used by JEA hereunder; and (ii) claims for damages to property and/or personal injuries (including death) arising out of the negligence or willful act or omission of JEA.
- 10.3 Procedures – A Party seeking indemnification for itself or an Indemnified Party shall notify the other Party promptly after becoming aware of the Claim, and shall provide or cause the Indemnified Party to provide reasonable and customary cooperation (e.g. providing copies of documents or testimony of witnesses) in the defense of the Claim. The Party being asked to provide indemnification shall not be bound to honor any settlement or compromise of a claim affected by an Indemnified Party without the prior written consent of the indemnifying Party.

#### 11.0 Limitation of Liability

- 11.1 Definition – For purposes of this Article 11, "JEA" shall be defined as JEA, its Affiliates, and its and their employees, directors, officers, agents and representatives, "Contractor" shall be defined under this Article 11 as Contractor, its Affiliates, their employees, directors, officers, agents and representatives.

- 11.2 Limitation of Liability - THE ENTIRE LIABILITY OF EITHER PARTY FOR CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT, IF NOT OTHERWISE LIMITED BY ANOTHER PROVISION OF THIS AGREEMENT, SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED PER CLAIM (OR IN THE AGGREGATE DURING ANY THREE MONTH PERIOD) THE TOTAL NET PAYMENTS MADE BY CONTRACTOR TO JEA UNDER THIS AGREEMENT FOR THE APPLICABLE SERVICE DURING THE SIX (6) MONTHS PRECEDING THE MONTH IN WHICH THE DAMAGE OCCURRED.
- 11.3 No Consequential or Punitive Damages - IN NO EVENT SHALL JEA OR CONTRACTOR BE LIABLE TO THE OTHER OR TO ANY THIRD PARTIES FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OF ANY KIND OR INCREASED COST OF OPERATIONS, WHETHER OR NOT JEA OR CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 11.4 Technical Limitations - NEITHER JEA OR CONTRACTOR SHALL BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, INTERACTION OR INTERCONNECTION PROBLEMS WITH APPLICATIONS, EQUIPMENT, SERVICES OR NETWORKS PROVIDED BY THE PARTIES OR THIRD PARTIES; OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF THE PARTIES', END USERS' OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, EQUIPMENT, NETWORK OR SYSTEMS.
- 11.5 Form of Claim - THE LIMITATIONS OF LIABILITY SET FORTH IN THIS ARTICLE 11 AND IN ANY ATTACHMENT SHALL APPLY: (i) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE; AND (ii) WHETHER OR NOT DAMAGES WERE FORESEEABLE. THESE LIMITATIONS OF LIABILITY SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDIES PROVIDED IN THIS AGREEMENT, AND (iii) ONLY TO DISPUTES WHICH ARISE FROM THE PERFORMANCE OF THIS AGREEMENT AND ANY ATTACHMENT THERETO.
- 11.6 No Third Party Beneficiaries - This Agreement does not expressly or implicitly provide any third party (including End-Users) with any remedy, claim, liability, reimbursement, cause of action or other right or privilege.
- 12.0 Default and Remedies**
- 12.1 Default. The following shall constitute a "Default" under this Agreement:
- a. Either Party fails to make a payment, in accordance with the terms of section 7.0 or 8.0 *et seq.* above, when due and such failure continues for more than fifteen (15) days after written notice.

- b. Either Party fails to perform any obligation required under this Agreement, and such failure continues for thirty (30) days after receipt of written notice, and such failure is not cured within said thirty (30) days, then the Party in default may have additional thirty (30) day period(s) as required, such period(s) approved in writing by the non-defaulting Party.
- 12.2 Remedies – Upon the occurrence of a Default, the non defaulting Party may seek any and all remedies available at law and/or equity, except to the extent any such remedy is specifically limited or prohibited by this Agreement.
- 12.3 Suspension of Service – In the event of Default by CONTRACTOR as described in Section 12.1 above, JEA, in its sole and absolute discretion, shall have the right, after the thirtieth (30<sup>th</sup>) calendar day after JEA has given CONTRACTOR written notice of Default, in addition to exercising any remedies available for such Default, to suspend order entry activity for new CONTRACTOR customer additions. In the event that a default has not been cured within the allocated time frame as stated above, either Party may terminate this Agreement by written notification to the other Party.
- 13.0 Force Majeure
- 13.1 If the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, terrorism, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Contractor, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided, however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.
- 14.0 Modification of Agreement
- 14.1 No modification, amendment, supplement to, or waiver of this Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.
- 14.2 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of CONTRACTOR or JEA to perform any material terms of this Agreement, CONTRACTOR or JEA may, on thirty (30) days' written notice, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, this Agreement shall terminate pursuant to the provisions of Section 4.3.

**15.0 Severability**

- 15.1 If any provision of this Agreement, or the application of such provision to either Party or circumstance, shall be held invalid, the remainder of the Agreement, or the application of any such provision to the Parties or circumstances other than those to which it is held invalid, shall not be affected thereby, provided that the Parties shall attempt to reformulate such invalid provision to give effect to such portions thereof as may be valid without defeating the intent of such provision.

**16.0 Waivers**

- 16.1 A failure or delay of either Party to enforce any of the provisions hereof, to exercise any right which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

**17.0 Governing Law**

- 17.1 This Agreement shall be governed by and construed in accordance with federal and Tennessee substantive law, including applicable rules and regulations of the FCC and the TRA.

**18.0 Assignments**

- 18.1 Any assignment by either Party to any non-affiliated entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party shall be void. Consent to assignment shall not be unreasonably withheld. A Party may assign this Agreement in its entirety to an Affiliate of the Party without the consent of the other Party; provided, however, that the assigning Party shall notify the other Party in writing of such assignment thirty (30) days prior to the effective date thereof and, provided further, if the assignee is an assignee of CONTRACTOR, the assignee must provide evidence of TRA CLEC certification. The Parties shall amend this Agreement to reflect such assignments and shall work cooperatively to implement any changes required due to such assignment. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. Notwithstanding anything to the contrary herein, neither Party shall assign this Agreement to an Affiliate without first obtaining the consent of the other Party if such Affiliate does not have the financial and technological resources, including qualified personnel, to meet all the assigning Party's obligations and duties under this Agreement.

**19.0 Notices**

- 19.1 Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by overnight courier or by US mail postage prepaid, address to:

**Jackson Energy Authority**

Mr. Kim K. Kersey  
Senior Vice President - Telecommunications  
Jackson Energy Authority  
119 East College Street  
Jackson, TN 38301

with a copy to:

Ms. Teresa Cobb, General Counsel  
Jackson Energy Authority  
119 E. College Street  
Jackson, TN 38301

**Cinergy Communications Company**

Mr. Michael Farmer  
Cinergy Communications Company  
5856 West 74th St.  
Indianapolis, Indiana 46278

with a copy to:

Legal Department c/o Mr. John Campbell  
Cinergy Communications Company  
8829 Bond Street  
Overland Park KS 66214

Mr. John Cinelli  
Cinergy Communications Company  
1419 W. Lloyd Expressway  
Evansville, IN 47710

or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

- 19.2 Unless otherwise provided in this Agreement, notice by mail shall be effective and Receipt shall be accomplished on the date it is officially recorded as delivered by return receipt or equivalent.

**20.0 Rule of Construction**

- 20.1 No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

**21.0 Headings of No Force or Effect**

21.1 The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

**22.0 Multiple Counterparts**

22.1 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

**23.0 Necessary Approvals**

23.1 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, governmental authorities, building and property owners, other carriers, and any other persons that may be required in connection with the performance of its obligations under this Agreement. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which such Party is responsible.

23.2 Each Party shall file and maintain any necessary tariffs with appropriate authorities. Both Parties agree to comply with all state and federal statutes and regulations and administrative orders applicable to it, including but not limited to those addressing minimum performance standards, slamming and cramming, confidentiality, free choice with respect to customer premises equipment, toll dialing parity plans, telephone numbering plans, end user customer deposits, and the like.

23.3 Both Parties warrant that the person executing this Agreement on its behalf below is lawfully authorized to do so. The Board of the Jackson Energy Authority has given the representative executing this Agreement authority to do so by virtue of action taken at its meeting on the 23rd day of September, 2004 and as reflected in the minutes of said meeting.

**24.0 Good Faith Performance**

24.1 Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

**25.0 Resolution of Disputes**

25.1 Any claim or controversy related to or arising out of this Agreement, whether in contract or in tort ("Dispute"), will be resolved on a confidential basis, according to the following process, which either party may start by delivering to the other party a written notice describing the Dispute and the amount involved ("Demand"):

- 25.2 After receipt of a Demand, authorized representatives of the parties will meet at a mutually agreed upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved after thirty (30) days after the receipt of the Demand, either Party may start binding arbitration in Evansville, Indiana if the claim is brought by the JEA or Jackson, Tennessee if the claim is brought by Contractor. The arbitration will be before a three (3) arbitrator panel. Each Party will select one arbitrator to represent its interest, at its sole expense. The final arbitrator, who shall be impartial, will be selected by the two partial arbitrators. In the event the two (2) partial arbitrators shall fail to select an impartial arbitrator, either party may apply to a court of law in the jurisdiction where the arbitration is being conducted to have a judge select an impartial arbitrator. Discovery shall be controlled by the impartial arbitrator and shall be permitted to the extent set forth in this Section 25.2. Each Party shall be entitled to any combination of thirty-five (35) discovery requests, without subparts, consisting of any of the following: interrogatories, demands to produce documents or requests for admission. Upon receipt of any such discovery requests, each Party shall respond within a reasonable time period as determined by the impartial arbitrator. At a time and place mutually agreed upon between the Parties, or, if the Parties cannot agree on a time and place, at a time and place determined by the impartial arbitrator, each Party shall also be entitled to take the oral deposition of one individual of the other Party. Additional discovery may be permitted upon mutual agreement of the Parties. The three (3) arbitrators, by majority rule, shall adopt any other procedures they deem efficient and appropriate for making the determinations submitted to them for adjudication. No statements by or communications between the Parties during negotiations or mediation, or both, will be admissible for any purpose in arbitration. Each Party shall bear its internal expenses, the costs of its partial arbitrator and its attorney's fees and expenses, and jointly share the cost of the impartial arbitrator. The decision(s) of a majority of the arbitrators shall be final and binding on the Parties.
- 25.3 The foregoing notwithstanding, this Section shall not prevent either Party from seeking any temporary equitable relief, including a temporary restraining order.
- 26.0 **Entire Agreement**
- 26.1 "This Agreement" means the Billing and Support Services Agreement and Attachment 1, as such may be amended from time to time as provided herein and those (if any) which are incorporated herein by reference, all of which, when taken together, are intended to constitute one indivisible agreement. This Agreement sets forth the entire understanding between the Parties regarding the subject matter hereof. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as universally accepted in the telecommunications industry or is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.



IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

JACKSON ENERGY AUTHORITY

John W. Williams  
Signature

John W. Williams  
Name

President  
Title

12/28/04  
Date

CINERGY COMMUNICATIONS COMPANY

John P. Cancelli  
Signature

John P. Cancelli  
Name

as President  
Title

01/03/05  
Date

Approved as to form  
Legal

By JMC Date 12/30/04

## Attachment 1.

### **Payment Procedures**

The following procedures shall govern the payment of all fees due to JEA under the Contractor Agreements.

A. Collected Revenue. Unless otherwise indicated, all fees due to JEA, under any of the Contractor Agreements shall be paid out of collected revenue. Notwithstanding the foregoing, JEA shall separately invoice CONTRACTOR for all access fees due under the Interconnection Agreement and all commissions due under the Sales Commission Agreement for customers directly billed by CONTRACTOR. Such fees for directly billed customers shall be invoiced starting on the date service is initiated and shall be billed in advance thereafter. All invoices shall be due and payable within thirty (30) days of the invoice date.

B. JEA Discount. Because the Parties have agreed to deduct the recurring fees due under the Contractor Agreements from collected revenue, JEA shall be entitled to a discount fee for its loss in the use of money from the time services are billed by JEA to the time the revenue is due from CONTRACTOR's customers. The discount rate applied to the CONTRACTOR's share of monthly collected revenue shall be .9975 based on a three percent (3%) per annum discount rate.

C. Uncollected Revenue Allocation. The following allocation methodology shall apply to any revenue, including late fees, collected from a customer that is less than the billed charges for the services provided to that customer regardless of when such revenue is collected by JEA:

Step 1 Percentage of Collected Revenue – The percentage of collected revenue shall first be determined by taking the total billed charges from the customer's monthly bill and dividing those charges by the total revenue collected.

Step 2 Taxes and Regulatory Fees – All taxes and regulatory fees shall then be totaled amongst all services on the bill and subtracted from the collected revenue. (All other charges excluded from billed revenue under the Interconnection Agreement including the SLC, long distance revenue and ancillary service revenue, if applicable to a customer, shall be deducted based on the percentage of collected revenue determined in Step 1.

Step 3 Allocation of Collected Revenue Amongst Services – The collected revenue shall then be allocated amongst the various services appearing on the bill by the percentage each service bears in relation to the total billed charges for all services appearing on the bill.

Step 4 Assessment of Interconnection Fees and Commissions – Within that portion of the collected revenue allocated to a CONTRACTOR service, the applicable fee for interconnection access and JEA's sales commission shall then be deducted from the collected revenue based on the percentage of collected revenue as determined in Step 1. For instance if the percentage of collected revenue is 50%, then 50% of the access fee normally due, and 50% of the sales commission normally due, would be deducted from the collected revenue.

**Step 5 Assessment of Fees for JEA Billing Support Services** – Upon completion of Step 4 for each CONTRACTOR service appearing on the bill, all revenue due to CONTRACTOR for each CONTRACTOR service on the bill is then added together. From this collective amount, the fee for JEA Billing Support Services is then deducted. If there is a shortfall between CONTRACTOR's share of collected revenue and the fee for the JEA Billing Support Services, JEA shall invoice CONTRACTOR separately for such shortfall.

**Step 6 Deduction of JEA Discount** – The remaining balance of collected revenue for all CONTRACTOR services is then multiplied by JEA's discount rate of .9975.

**Step 7 Revenue Remitted to CONTRACTOR** - Upon completion of Step 6, the remaining balance of collected revenue along with CONTRACTOR's portion of taxes fees and surcharges, long distance charges and SLC revenue is then remitted to CONTRACTOR.

The following is an example of this methodology being applied to a customer bill.

Customer	Gas	Cable	Phone	Internet	Total	
John Doe	\$ 85.72	\$ 47.70	\$ 40.05	\$ 20.00	\$ 173.47	Past Due Amounts
	\$ 0.99	\$ 0.72	\$ 0.60	\$ 0.30	\$ 2.61	Finance Charges
	\$ 82.00	\$ 46.00	\$ 35.00	\$ 20.00	\$ 182.00	Current Charges
			\$ 20.00		\$ 20.00	Long Distance charges
	\$ 128.71	\$ 93.42	\$ 65.65	\$ 40.30	\$ 358.08	Sub total
	\$ 3.72	\$ 2.70	\$ 5.05		\$ 11.47	Taxes and Regulatory Fees
	\$ 132.43	\$ 96.12	\$ 100.70	\$ 40.30	\$ 369.55	Total Due
	36%	28%	27%	11%	100%	Percentage of overall charges

Amount collected from Customer: \$200

**Step 1 Percentage of Collected Revenue**

Total Due:	\$ 369.54
Amount Collected	\$ 200.00
% of Collected Revenue	54%

**Step 2 Taxes and Regulatory Fees**

\$ 200.00	Amount Collected
\$ 11.47	Taxes and Regulatory Fees
\$ 189.53	Amount to be allocated

**Assessment of Long Distance Charges**

#(Long Distance Revenue	\$20	\$ 189.53	Amount to be allocated
% Collected Revenue	54%	\$ 10.82	#Long Distance Allocation
	\$ 10.82	\$ 177.71	Amount to be allocated

**Step 3 Allocation of Collected Revenue**

Service	Gas	Cable	Telephone	Internet	Total
% of Charges	36%	28%	27%	11%	100%
Allocation	\$63.98	\$46.20	\$47.98	\$19.55	\$177.71

**Step 4 Assessment of Access Fees and Commissions**

	Telephone	Internet
Allocated Revenue	\$ 47.88	\$ 19.55
Access Fee	40%	50%
Commission	3%	3%
Total Fee	\$ 20.63	\$ 10.36
Remaining Balance	\$ 27.35	\$ 8.19

**Step 5 Assessment of JEA Billing Service Support Charges**

# (Telephone Revenue	\$ 27.35	\$ 36.54	# Total Revenue
Internet Revenue	\$ 9.19	\$ 2.25	Billing Fee
Total Revenue	\$ 36.54	\$ 34.28	Remaining Balance

Step 6 Assessment of JEA Discount	\$ 34.28	Remaining Balance
	* 0.9975	Discount Rate
	\$ 34.20	Remaining Balance

**Step 7 Revenue Remitted to Contractor**

\$ 34.20	Remaining Balance
\$ 10.82	Long Distance Assessment
\$ 5.05	Taxes and Regulatory Fees
\$ 50.07	Total to be Remitted

## **ATTACHMENT J**

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## **JACKSON ENERGY AUTHORITY SALES COMMISSION AGREEMENT**

THIS AGREEMENT is made and entered into this 22nd day of December, 2004, by and between Jackson Energy Authority (hereinafter referred to as "JEA"), a public utility authority created by 2001 Tennessee Private Acts, Chapter 55, and Cinergy Communications Company, a privately held company organized under the laws of Kentucky (hereinafter referred to as "CONTRACTOR"). The Agreement may refer to either JEA or CONTRACTOR or both as a "Party" or "Parties".

### **WITNESSETH**

WHEREAS, JEA and CONTRACTOR have entered into the JEA Interconnection Agreement (Version 2.0) dated December 22, 2004 ("Interconnection Agreement") under which JEA shall provide transport for CONTRACTOR's data and telephony traffic across JEA's telecommunications network in and around the City of Jackson and the County of Madison Tennessee, and

WHEREAS, JEA offers cable television service and CONTRACTOR provides telephone and data services to residential and business consumers in Jackson, Tennessee over JEA's telecommunications network, and

WHEREAS, CONTRACTOR and JEA desire to enter into an agreement whereby each Party will have the ability to market and sell the services of the other Party;

NOW THEREFORE, in consideration of the mutual agreements contained herein, JEA and CONTRACTOR agree to the following terms and conditions as follows:

### **DEFINITIONS**

**Affiliate** means an entity: (i) that is wholly owned by a Party; or (ii) is wholly owned by the parent entity of the Party; or (iii) where the Party, or the parent entity of the Party, controls the voting rights of all outstanding equity in such entity.

**Contractor Network** shall mean any integral portion of a network outside of the JEA network.

**Effective Date** shall mean the date this Agreement is fully executed by the Parties.

**JEA Network** shall mean JEA's fiber optic cabling and equipment between the designated network interface point and the output side of the JEA gateway at an end user premises.

**JEA Network Territory** shall mean the service area of the JEA Network within the City of Jackson and Madison County, Tennessee.

**Sales** shall mean the solicitation of new customer accounts by various means and may include the completion of necessary forms or applications to document the customer's authorization for

the provision and billing of services, and the acceptance by the customer of the terms and conditions of their business relationship with JEA and/or CONTRACTOR.

**1.0 Nature of Relationship**

- 1.1 The Parties to this Agreement are entering into a business relationship whereby each Party will have the ability to market and sell those products and services of the other Party more particularly described in Exhibit "A", which is attached hereto and incorporated by reference, to business and residential customers located within the JEA Network Territory.
- 1.2 Each party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation, and discharge of its employees assisting in the performance of such obligations. Nothing contained herein shall constitute the Parties as joint venturers, partners, employees, or agents of one another, and neither Party shall have the right to bind or obligate the other. Except for any provisions herein expressly authorizing a party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other party.

**2.0 Contractor Requirements**

- 2.1 Within a maximum of sixty (60) days from the Effective Date of this Agreement, CONTRACTOR shall provide JEA with the following:
  - a. confirmed pricing and feature sets for all categories of its services
  - b. CONTRACTOR product and service training for JEA personnel
- 2.2 In providing any sales services specified herein, CONTRACTOR shall provide a level of service quality that is equivalent of that provided to its own customer base.

**3.0 JEA Requirements**

- 3.1 In providing the sales services as specified herein, JEA shall provide a level of service quality that is equivalent to that provided to its utility customers.
- 3.2 For the term of this Agreement, JEA agrees to waive all Port Charges otherwise due under the Interconnection Agreement.
- 3.3 Within a maximum of sixty (60) days from the Effective Date of this Agreement, JEA shall provide CONTRACTOR with the following:
  - a. Confirmed pricing and feature sets for all categories of JEA cable service
  - b. JEA product and service training for CONTRACTOR personnel.

**4.0 Term of Agreement**

- 4.1 The term of this Agreement shall commence on the Effective Date and shall remain in effect so long as CONTRACTOR utilizes the JEA Network to provide services to its end users. The Agreement shall apply to the JEA Network Territory.

**5.0 Sales of Services**

- 5.1 JEA hereby authorizes CONTRACTOR to market and sell those JEA services described in Exhibit "A" in accordance with the terms and conditions of this Agreement. JEA may require CONTRACTOR sales and customer services personnel to follow a sales contract script provide by JEA to close sales. CONTRACTOR will be responsible for following any procedures established by JEA to order its services. Nothing in this Agreement shall constitute an obligation on the part of CONTRACTOR to perform sales activities for JEA.
- 5.2 CONTRACTOR authorizes JEA to market and sell those CONTRACTOR services described in Exhibit "A" in accordance with the terms and conditions of this Agreement. CONTRACTOR may require JEA sales and customer service personnel to follow a CONTRACTOR provided sales contact script to close sales or to direct potential sales to qualified CONTRACTOR sales agents, and enter the order into JEA's order entry system for order processing as required. Nothing in this Agreement shall constitute an obligation on the part of JEA to perform sales activities for the CONTRACTOR.
- 5.3 CONTRACTOR shall offer telephone and high-speed data service to all classes of JEA's residential and business customer base consistent with its tariff and any applicable state or federal law and in a non-discriminatory manner. JEA shall offer cable television services in compliance with any applicable state or federal law and in a non-discriminatory manner.
- 5.4 CONTRACTOR shall offer free installation of services to all residential customers during the construction build out of the JEA Network. Such build out is scheduled to be concluded by June 30, 2005, and the free installation offer period may be extended beyond this date with the mutual consent of both Parties.
- 5.5 CONTRACTOR and JEA shall be required to screen all new account orders sold by either party utilizing the scoring methodology and credit score table of the Party supplying the service to determine if a security deposit or pre-payment may be required. Each Party shall independently determine its credit scoring methodology and the amount of the security deposit or pre-payment subject to any applicable state or federal law. In the event a customer meets the appropriate credit requirements of the Party supplying the service, such customer may be accepted by the Party selling the service. However, new accounts requiring a security deposit or pre-payment will not be installed by JEA until the deposit or pre-payment has been made by the potential customer.
- 5.6 CONTRACTOR agrees not to impose term commitments for residential customers.



**6.0 JEA Sales Commissions**

- 6.1 CONTRACTOR will only be assessed a sales commission fee on those sales completed by JEA, for which they provide direct order entry, or where a qualified referral results in a subsequent sale. In the case of a direct JEA sale, the customer must meet CONTRACTOR's stated credit requirements and any technical specifications for provisioning service set forth by CONTRACTOR. A referral shall be considered qualified if it includes the name and telephone number of the business account sales prospect, service address, services desired, and the expected date for sales contact follow-up by a CONTRACTOR sales representative. Any sales made by CONTRACTOR directly or through an authorized CONTRACTOR sales agent will not be commissionable. To insure accurate sales commission tracking, JEA will identify the order entry owner in their service address database.
- 6.2 Sales commissions will be paid in accordance with the schedule in Attachment 1. Sales will become commissionable upon installation of the service.
- 6.3 Sales commissions will be billed monthly by JEA for the prior month's activity and shall be due within thirty (30) days following the invoice date. Residual sales commissions shall be billed monthly for the prior month's billing or collection activity. Late payments of billed charges will result in a monthly penalty of 1.5%.

**7.0 CONTRACTOR Sales Commissions**

- 7.1 JEA will only be assessed a sales commission fee on those sales completed by CONTRACTOR, for which they procure a direct sale from a customer, or where a qualified referral results in a subsequent sale. In the case of a direct sale, the customer must meet JEA's stated credit requirements and any technical specifications for provisioning service set forth by JEA. A referral shall be considered qualified if it includes the name and telephone number of the business or residential sales prospect, service address, services desired, and the expected date for sales contact follow-up by a JEA sales representative. Any sales made by JEA directly or through an authorized JEA sales agent will not be commissionable.
- 7.2 Sales commissions will be paid in accordance with the schedule in Attachment 1. Sales will become commissionable upon installation of the service.
- 7.3 Sales commissions will be billed monthly by CONTRACTOR for the prior month's installation activity and shall be due within thirty (30) days following the invoice date. Late payments of billed charges will result in a monthly penalty of 1.5%.

**8.0 Joint Marketing**

- 8.1 From time to time the Parties may agree to individually or jointly market their services as in combination with other services or individually. For such purposes each Party shall have the limited right to use the name, logo or brand of the other Party. All marketing and advertising materials or content, regardless of the media being utilized, using a

Party's name, logo or brand shall be approved by that Party in writing prior to publication or use. Such approval shall not be unreasonably withheld, conditioned or delayed.

**9.0 Taxes and Fees**

- 9.1 For purposes of this Section, the terms "taxes", "fees", and "surcharges" shall include but are not limited to federal, state or local sales taxes, subscriber line charges, and regulatory fees or other taxes or tax-like fees or charges of whatever nature and however designated that are regularly passed through and charged to the customer. Unless otherwise agreed to in writing between the Parties, each Party shall be responsible for the billing, collection, and payment of all such taxes, fees, and charges, as applicable.

**10.0 Indemnification**

- 10.1 By Contractor – Except to the extent that any loss, cost, damage or liability is due to the negligence of JEA, CONTRACTOR shall indemnify, defend and hold harmless JEA and its affiliates, employees, directors, officers and representatives ("Indemnified Parties") from and against all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses, interest, penalties and disbursements (collectively, "Claims"), to the extent any such Claim is asserted by a third party against JEA or any of its Indemnified Parties, directly or indirectly, by reason of or resulting from any Contractor failure to perform an obligation under this Agreement or any action or inaction of CONTRACTOR or its employees or agents that is illegal or constitutes negligence or intentional misconduct, or as a result of: (i) claims for infringement of any valid U.S. patent or copyright relating to the equipment or software used by CONTRACTOR providing the CONTRACTOR services; and (ii) claims for damages to property and/or personal injuries (including death) arising out of the negligence or willful act or omission of CONTRACTOR (iii) claims for libel, slander, infringement of copyright or unauthorized use of trademark, logo, trade name or service mark arising out of the sale of any JEA service by CONTRACTOR; (iv) claims for damages resulting from any: (a) false or misleading advertising materials regarding JEA services issued by CONTRACTOR and not pre-approved by JEA; (b) false or misleading representations made by a CONTRACTOR employees or agent regarding JEA's services; or (c) any representations or warranties regarding the services not previously approved by JEA; and/or (v) claims, demand or actions or causes of action, assessments, losses, damages, liabilities, costs and expenses, interest and penalties incurred by JEA as a result of CONTRACTOR's failure to comply with any state or federal laws or requirements.
- 10.2 By JEA – Except to the extent that any loss, cost, damage or liability is due to the negligence of CONTRACTOR, and to the extent legally permissible and subject to the statutory liability limitations of the Governmental Tort Liability Act (TCA 29-20-201), JEA shall indemnify, defend and hold harmless CONTRACTOR, its employees, directors and officers from and against all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses, interest, penalties and disbursements, to the extent any such Claim is asserted by a third party against Contractor directly or indirectly, by reason of or resulting from any JEA failure to perform an obligation under this Agreement or any action or inaction of JEA or its employees or agents that is illegal or constitutes negligence or intentional misconduct, or incurred as a result of: (i) claims

for infringement of any valid U.S. patent or copyright relating to the equipment or software used by JEA hereunder; and (ii) claims for damages to property and/or personal injuries (including death) arising out of the negligence or willful act or omission of JEA (iii) claims for libel, slander, infringement of copyright or unauthorized use of trademark, logo, trade name or service mark arising out of the sale of any CONTRACTOR service by JEA; or (iv) claims for damages resulting from any: (a) false or misleading advertising materials regarding CONTRACTOR services issued by JEA and not pre-approved by CONTRACTOR; (b) false or misleading representations made by a JEA employee or agent regarding CONTRACTOR's services; or (c) any representations or warranties regarding the services not previously approved by CONTRACTOR and/or (v) claims, demand or actions or causes of action, assessments, losses, damages, liabilities, costs and expenses, interest and penalties incurred by CONTRACTOR as a result of JEA's failure to comply with any state or federal laws or requirements.

- 10.3 Procedures – A Party seeking indemnification for itself or an Indemnified Party shall notify the other Party promptly after becoming aware of the Claim, and shall provide or cause the Indemnified Party to provide reasonable and customary cooperation (e.g. providing copies of documents or testimony of witnesses) in the defense of the Claim. The Party being asked to provide indemnification shall not be bound to honor any settlement or compromise of a claim affected by an Indemnified Party without the prior written consent of the indemnifying Party.

#### 11.0 Limitation of Liability

- 11.1 Definition – For purposes of this Article 11, "JEA" shall be defined as JEA, its Affiliates, and its and their employees, directors, officers, agents and representatives, "Contractor" shall be defined under this Article 11 as Contractor, its Affiliates, their employees, directors, officers, agents and representatives.
- 11.2 Limitation of Liability – THE ENTIRE LIABILITY OF EITHER PARTY FOR CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT, IF NOT OTHERWISE LIMITED BY ANOTHER PROVISION OF THIS AGREEMENT, SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED PER CLAIM (OR IN THE AGGREGATE DURING ANY THREE MONTH PERIOD) THE TOTAL NET PAYMENTS MADE BY CONTRACTOR TO JEA UNDER THIS AGREEMENT FOR THE APPLICABLE SERVICE DURING THE SIX (6) MONTHS PRECEDING THE MONTH IN WHICH THE DAMAGE OCCURRED.
- 11.3 No Consequential or Punitive Damages – IN NO EVENT SHALL JEA OR CONTRACTOR BE LIABLE TO THE OTHER OR TO ANY THIRD PARTIES FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OF ANY KIND OR INCREASED COST OF OPERATIONS, WHETHER OR NOT JEA OR CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.4 Form of Claim – THE LIMITATIONS OF LIABILITY SET FORTH IN THIS ARTICLE 11 AND IN ANY ATTACHMENT SHALL APPLY: (i) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE; AND (ii) WHETHER OR NOT DAMAGES WERE FORESEEABLE. THESE LIMITATIONS OF LIABILITY SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDIES PROVIDED IN THIS AGREEMENT, AND (iii) ONLY TO DISPUTES WHICH ARISE FROM THE PERFORMANCE OF THIS SALES AND SUPPORT SERVICES AGREEMENT AND ANY ATTACHMENT THERETO.

11.5 No Third Party Beneficiaries – This Agreement does not expressly or implicitly provide any third party (including End-Users) with any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

#### 12.0 Default and Remedies

12.1 Default. The following shall constitute a "Default" under this Agreement:

- a. Either Party fails to make a payment, in accordance with the terms of section 6.0 and 7.0 *et seq.* above, when due and such failure continues for more than fifteen (15) days after written notice.
- b. Either Party fails to perform any obligation required under this Agreement, and such failure continues for thirty (30) days after receipt of written notice, and such failure is not cured within said thirty (30) days, then the Party in default may have additional thirty (30) day period(s) as required, such period(s) approved in writing by the non defaulting Party.

12.2 Remedies – Upon the occurrence of a Default, the non defaulting Party may seek any and all remedies available at law and/or equity, except to the extent any such remedy is specifically limited or prohibited by this Agreement.

#### 13.0 Condition Precedent

13.1 As a condition for entering into this Sales Services Agreement, both Parties shall execute the JEA Interconnection Agreement (Version 2.0) prior to this Agreement.

#### 14.0 Force Majeure

14.1 If the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, terrorism, acts of public enemy, embargo, acts of the government in its sovereign capacity, labour difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Contractor, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party

shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided, however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.

**15.0 Modification of Agreement**

15.1 No modification, amendment, supplement to, or waiver of this Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

15.2 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of CONTRACTOR or JEA to perform any material terms of this Agreement, CONTRACTOR or JEA may, on thirty (30) days' written notice, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, this Agreement shall terminate.

**16.0 Severability**

16.1 If any provision of this Agreement, or the application of such provision to either Party or circumstance, shall be held invalid, the remainder of the Agreement, or the application of any such provision to the Parties or circumstances other than those to which it is held invalid, shall not be affected thereby, provided that the Parties shall attempt to reformulate such invalid provision to give effect to such portions thereof as may be valid without defeating the intent of such provision.

**17.0 Waivers**

17.1 A failure or delay of either Party to enforce any of the provisions hereof, to exercise any right which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

**18.0 Governing Law**

18.1 This Agreement shall be governed by and construed in accordance with federal and Tennessee substantive law, including applicable rules and regulations of the FCC and the TRA.

**19.0 Assignments**

19.1 Any assignment by either Party to any non-affiliated entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written

consent of the other Party shall be void. Consent to assignment shall not be unreasonably withheld. A Party may assign this Agreement in its entirety to an Affiliate of the Party without the consent of the other Party; provided, however, that the assigning Party shall notify the other Party in writing of such assignment thirty (30) days prior to the Effective Date thereof and, provided further, if the assignee is an assignee of Contractor, the assignee must provide evidence of TRA CLEC certification. The Parties shall amend this Agreement to reflect such assignments and shall work cooperatively to implement any changes required due to such assignment. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. Notwithstanding anything to the contrary herein, neither Party shall assign this Agreement to an Affiliate to avoid any of its obligations under this Agreement or otherwise avoid liability to the other Party.

**20.0 Notices**

- 20.1 Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by overnight courier or by US mail postage prepaid, address to:

**Jackson Energy Authority**  
Mr. Kim K. Kersey  
Senior Vice President - Telecommunications  
Jackson Energy Authority  
119 East College Street  
Jackson, TN 38301

with a copy to:

Ms. Teresa Cobb, General Counsel  
Jackson Energy Authority  
119 E. College Street  
Jackson, TN 38301

**Cinergy Communications Company**

Mr. Michael Farmer  
Cinergy Communications Company  
5856 West 74th St.  
Indianapolis, Indiana 46278

with a copy to:

Legal Department c/o Mr. John Campbell  
Cinergy Communications Company  
8829 Bond Street  
Overland Park KS 66214

Mr. John Cinelli  
Cinergy Communications Company  
1419 W. Lloyd Expressway  
Evansville, IN 47710

or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

- 20.2 Unless otherwise provided in this Agreement, notice by mail shall be effective and Receipt shall be accomplished on the date it is officially recorded as delivered by return receipt or equivalent.

**21.0 Rule of Construction**

- 21.1 No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

**22.0 Headings of No Force or Effect**

- 22.1 The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

**23.0 Multiple Counterparts**

- 23.1 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

**24.0 Necessary Approvals**

- 24.1 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, governmental authorities, building and property owners, other carriers, and any other persons that may be required in connection with the performance of its obligations under this Agreement. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which such Party is responsible.
- 24.2 Each Party shall file and maintain any necessary tariffs with appropriate authorities. Both Parties agree to comply with all state and federal statutes and regulations and administrative orders applicable to it, including but not limited to those addressing minimum performance standards, slamming and cramming, confidentiality, free choice with respect to customer premises equipment, toll dialing parity plans, telephone numbering plans, end user customer deposits, and the like.

24.3 Both Parties warrant that the person executing this Agreement on its behalf below is lawfully authorized to do so. The Board of the Jackson Energy Authority has given the representative executing this Agreement authority to do so by virtue of action taken at its meeting on the 23rd day of September, 2004 and as reflected in the minutes of said meeting.

**25.0 Good Faith Performance**

25.1 Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

**26.0 Resolution of Disputes**

26.1 Any claim or controversy related to or arising out of this Agreement, whether in contract or in tort ("Dispute"), will be resolved on a confidential basis, according to the following process, which either party may start by delivering to the other party a written notice describing the Dispute and the amount involved ("Demand"):

26.2 After receipt of a Demand, authorized representatives of the parties will meet at a mutually agreed upon time and place to try to resolve the Dispute by negotiation. If the Dispute remains unresolved after thirty (30) days after the receipt of the Demand, either Party may start binding arbitration in Evansville, Indiana if the claim is brought by the JEA or Jackson, Tennessee if the claim is brought by Contractor. The arbitration will be before a three (3) arbitrator panel. Each Party will select one arbitrator to represent its interest, at its sole expense. The final arbitrator, who shall be impartial, will be selected by the two partial arbitrators. In the event the two (2) partial arbitrators shall fail to select an impartial arbitrator, either party may apply to a court of law in the jurisdiction where the arbitration is being conducted to have a judge select an impartial arbitrator. Discovery shall be controlled by the impartial arbitrator and shall be permitted to the extent set forth in this Section 26.2. Each Party shall be entitled to any combination of thirty-five (35) discovery requests, without subparts, consisting of any of the following: interrogatories, demands to produce documents or requests for admission. Upon receipt of any such discovery requests, each Party shall respond within a reasonable time period as determined by the impartial arbitrator. At a time and place mutually agreed upon between the Parties, or, if the Parties cannot agree on a time and place, at a time and place determined by the impartial arbitrator, each Party shall also be entitled to take the oral deposition of one individual of the other Party. Additional discovery may be permitted upon mutual agreement of the Parties. The three (3) arbitrators, by majority rule, shall adopt any other procedures they deem efficient and appropriate for making the determinations submitted to them for adjudication. No statements by or communications between the Parties during negotiations or mediation, or both, will be admissible for any purpose in arbitration. Each Party shall bear its internal expenses, the costs of its partial arbitrator and its attorney's fees and expenses, and jointly share the cost of the impartial arbitrator. The decision(s) of a majority of the arbitrators shall be final and binding on the Parties.



26.3 The foregoing notwithstanding, this Section shall not prevent either Party from seeking any temporary equitable relief, including a temporary restraining order.

27.0 Entire Agreement

27.1 "This Agreement" the Attachments and all documents identified therein, as such may be amended from time to time as provided herein and those (if any) which are incorporated herein by reference, all of which, when taken together, are intended to constitute one indivisible agreement. This Agreement sets forth the entire understanding; and supersedes prior agreements and understanding between the Parties relating in any way to the subject matter of this Agreement. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as universally accepted in the telecommunications industry or is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

JACKSON ENERGY AUTHORITY

Robert W. Williams  
Signature

John W. Williams  
Name

President  
Title

12/28/04  
Date

CINERGY COMMUNICATIONS COMPANY

[Signature]  
Signature

John P. Cinelli  
Name

as president  
Title

12/28/04 01/03/05  
Date

Approved as to form  
Legal

By \_\_\_\_\_ Date \_\_\_\_\_

EXHIBIT "A"

COMMISSIONABLE SERVICES

Pursuant to the terms of Section 6.0 and 7.0 of this Agreement, either Party shall be paid commissions for the sales of the following services. This list of services may be amended from time to time, as agreed to in writing by both Parties, to include additional services.

JEA SERVICES:

Cable Television

CONTRACTOR SERVICES:

High Speed Data

Circuit-switched Telephone service

Voice over IP Telephone Service

Gaming services

Security services

Attachment 1

Sales Commissions

JEA shall charge CONTRACTOR the commission amounts below in accordance with the terms and conditions in Section 6.0 and Section 7.0 of this Agreement:

I. One time Payments

A. For each new residential telephone account sold by JEA personnel, CONTRACTOR will pay a one-time commission of \$20.00 for the first line and \$10.00 for each additional line. For each new residential high-speed data account, CONTRACTOR will pay a one-time commission of \$20.00.

B. For each new business telephone account sold by JEA personnel, CONTRACTOR will pay a one-time commission of \$20.00 for each line, or 50% of the retail price of any DS1/T1.

C. For each new business high-speed data account sold by JEA personnel, CONTRACTOR will pay a one-time commission equal to the first month's retail price.

D. For any other services sold by JEA personnel, CONTRACTOR shall pay a one-time commission equal to the first month's retail price for that service.

E. For each new cable television account sold by CONTRACTOR personnel, JEA will pay a one-time commission of \$20.00.

II. Residual Payments

A. For each customer account opened by JEA personnel on behalf of CONTRACTOR, CONTRACTOR shall pay a monthly residual commission as a percentage of collected revenue for the services sold by JEA under such account. Such residual payments shall continue throughout the life of the account. The monthly residual commission percentages shall be as follows for the various categories of services:

Residential Telephone, Data or any other residential service	5.0 % of monthly collected revenue
Small/Medium Business Telephone or Data or any other small/medium business service	3.0 % of monthly collected revenue
Business T1 Telephone or any other service offered to a large business customer	1.5 % of monthly collected revenue

B. CONTRACTOR shall provide JEA with a certified statement of all accounts billed by the CONTRACTOR within ten (10) days of invoice date for those services that will be used to compute the above commission amounts.

C. For purposes of this Section II "revenue" shall mean all revenue derived from a commissionable service received by the Party supplying such service to the customer excluding any regulatory fees, SLC, taxes, or surcharges.

## **ATTACHMENT K**

Transcription of voice message left by Ken Keim on November 23, 2005

"Hey Jonathan I hope your having a great time. I wanted to pass this along to you. I stopped by uh JEA today to see about getting signed up for the service and uh parenthetically the clerk that I talked to was horrible I mean I uh was more confused when I left than I was when I got there. But, I need to schedule a time for them to come put the box on the side of the house. And in her conversation she said to me um if I were you I wouldn't sign up with Aeneas right now, I'd wait 'til after the first of the year because we're going to have another carrier. And I was just kind of shocked that she would say that um I'm shocked that even if that kind of thought uh exists in upper management how it would get to a clerk down at first floor, but anyway I wanted you to know about it. Um, sorry to be the bearer of bad news. But anyways, probably not anything that you're shocked to hear or maybe this isn't even the first time, but I hope you having a great vacation. I enjoyed the hour visit with you on the way down there. And um, look forward to seeing you when you get back. Bye."

Mike McCaghren  
173 Oak Grove Road  
Jackson, Tennessee 38301  
731-424-0817

Monday, April 03, 2006

Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

Office of the Attorney General  
State of Tennessee  
Division of Consumer Affairs  
P.O. Box 20207  
Nashville, TN 37202-0207

Federal Communications Commission  
Washington, DC 20554

Subject: Consumer Complaint relative to misrepresentations and failure to deliver services by Jackson Energy Authority

Ladies/Gentlemen:

I am writing to solicit your assistance in resolving the subject matter.

On January 18 of this year, in response to Television and Print Media promotion, I contacted Jackson Energy Authority and ordered their Internet, Television, and Telephone package.

On January 23, the JEA Service Technician connected the telephone connection, transferring my phone service from Bell South to the JEA Service.

Immediately after the conversion, incoming callers complained about our phone generating ear shattering noise to incoming callers. We also discovered that the JEA Phone service denies us the ability to interact with our Bank's Automated Attendant.

We immediately called JEA to have the problem corrected. JEA Service Technicians were dispatched on several occasions to no effect. During conversations with family members and friends, I discovered that they had experienced similar unresolved problems with Cinergy Communications. The problems were resolved by changing to Aeneas for telephone service.

When I originally ordered the Internet, Television, and Telephone service from JEA, I was under the distinct impression that the Telephone and Internet service components would be provided by the local service provider, Aeneas. When I discovered that this was not the case and that, as a consequence, the Telephone service was unsatisfactory,

I contacted JEA to request that my phone service be provided by Aeneas. I was informed (or misinformed) as follows:

- There would be a substantial cost increase to change to Aeneas
- That I would not be able to retain my existing Telephone number without "porting the number" through Cinergy to Aeneas, thereby sustaining the existing problems with phone service
- I would have to personally appear at the JEA office and complete special forms for the transaction.
- I was not permitted to speak to a senior JEA manager about the issue.

In the technology industry segments in which I have intimate experience, Information Technology (IBM) and Document Technology (Xerox), such behavior by a supplier is characterized as "Predatory Marketing Practice". I think it is inappropriate for representatives of Jackson Energy Authority to either inadvertently or intentionally deny Subscribers the opportunity to consider all available providers, particularly when they do so at the Subscribers peril.

I am disturbed that Jackson Energy Authority represents an Indiana based provider, Cinergy Communication, as a "Local" provider. I was under the impression that Telephone and Internet services would be provided by Aeneas. I was never given the option to elect Aeneas.

In the meantime, my telephone service problems continue unabated and without the expectation that they will ever be resolved.

Additionally, since I began preparing this correspondence on March 21, 2006, my internet connection has been altered by Cinergy so that I no longer have access to mission critical Virtual Private Network Connections. This morning, I have spoken with Mr. Ben Luvin and Mr. Tate Austin of JEA for assistance. After JEA escalated the Internet issues to Cinergy, I was contacted by Mr. Ryan Postlin of Cinergy and informed that Cinergy did not "block" access to any Internet sites. This is an incorrect assertion. My conclusion is that I am left without remedy. I have contacted Mr. Tate Austin once more. He has assured me that JEA is now attempting to expedite my conversion to Aeneas for both Telephone and Internet Service, though my most recent experience gives me little confidence that this is a reasonable expectation.

In short, it appears that I may presently be left without recourse nor any way to have my service issues corrected. This is why I am appealing to you to advocate on my behalf. Here is what I believe should be reasonably expected of Jackson Energy Authority:

- To provide the services as promoted, at the pricing initially quoted.
- To provide Telephone and Internet Services using Aeneas as the local service provider
- To credit my account for phone charges incurred since my conversion from Bell South
- To offer a formal apology to Subscribers for past and current misrepresentations and to ensure that Subscribers are provided with full disclosure of service offering providers along with Subscriber opinions of the service delivery

It is my hope that, with your help, this matter can be amicably resolved.

I look forward to your soonest possible response.

Mike McCaghren

Attachment (1) *(not attached)*





STATE OF TENNESSEE  
DEPARTMENT OF COMMERCE AND INSURANCE

(615) 741-4737

**DIVISION OF CONSUMER AFFAIRS**  
500 JAMES ROBERTSON PARKWAY, FIFTH FLOOR  
NASHVILLE, TENNESSEE 37243-0600

TN TOLL FREE 1-800-342-8385  
FAX 615-532-4984

May 18, 2006

Mike McCaghren  
173 Oak Grove Road  
Jackson, TN 38301

RE: Jackson Energy Authority  
File Number 06-02201

Dear Mr. McCaghren:

Thank you for contacting the Division of Consumer Affairs in the Department of Commerce and Insurance. This division of Tennessee state government was created in 1977 by the Tennessee General Assembly to enforce the Tennessee Consumer Protection Act and to assist consumers and business owners who have been affected by unfair business practices.

I want to acknowledge receipt of your complaint and let you know that we are happy to intervene on your behalf and we will attempt to mediate a solution whenever possible. The Consumer Protection Specialist who has been assigned to handle this matter is Paul W. Vanstrum and you will be contacted as soon as we have more information to share with you. If you reach a settlement with the business, we would appreciate an acknowledgement so we can close your file.

In the meantime, please feel free to contact our office at 615-741-4737, or our toll free number (in Tennessee) 1-800-342-8385 if you have any questions regarding this or any other consumer concern.

Sincerely,

A handwritten signature in cursive script that reads "Mary Clement".

Mary Clement  
Director

IL

# TENNESSEE REGULATORY AUTHORITY



460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

May 3, 2006

Mr. Mike McCaghren  
173 Oak Grove Road  
Jackson TN 38301

Re: Complaint Jackson Energy Authority.

Dear Mr. McCaghren,

Per our conversation yesterday, please find a copy of the response from Jackson Energy Authority, which appears to resolve your complaint.

Thank you for allowing the TRA to assist you with this matter. Please don't hesitate to call me at extension 197, if you have further concerns.

Sincerely,

*Gloria Ananaba*

Gloria Ananaba  
Consumer Services and External Affairs Division



Jackson Energy Authority

Senior Vice President, Telecommunications

April 25, 2006

RECEIVED  
CONSUMER SERVICES DIVISION  
APR 27 2006

TN REGULATORY AUTHORITY

Chief, Consumer Services & External Affairs Division  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

VIA FAX (615) 741-8953 AND OVERNIGHT MAIL

Re: Mike McCaghren Complaint dated April 3, 2006

Dear [REDACTED]

This letter shall serve as Jackson Energy Authority's ("JEA") response to the referenced complaint. Mr. McCaghren's telephone and Internet service will be switched to Aeneas Communications, LLC ("Aeneas") effective May 1, 2006. Because we believe that Mr. McCaghren's representations of the events leading to his complaint are incorrect and/or unfounded, we offer the following in response.

As a carrier's carrier, JEA does not provide Internet or telephone service. Rather, JEA transports customer traffic for its two Internet/Telephone providers - Aeneas Communications and Cinergy Communications. JEA does have sales/marketing and customer billing/support agreements with Cinergy and has offered the same to Aeneas, who has declined to participate in this arrangement with JEA. As a result, JEA does not actively market or sell Aeneas services and does not engage in predatory marketing practices.

In his complaint, Mr. McCaghren made a number of accusations that JEA refutes below as erroneous or unfounded.

1. Mr. McCaghren stated that when he originally ordered the Internet, Television, and Telephone service from JEA, he was under the distinct impression that the Telephone and Internet components would be provided by Aeneas.

Response: From our emails and recordings of our customer service telephone calls, we have determined the following:

P. O. Box 68, Jackson, Tennessee 38302-0068  
• (Fax) 731.422.7221

- 01-04-06 Ann McCaghren sent JEA an email via our website requesting Classic Nation Bundle package, which is clearly identified on our website as being offered by Cinergy, not Aeneas.
- 01-06-06 Our customer service representative ("CSR") called Mrs. McCaghren to follow-up on Mrs. McCaghren's request. Mr. McCaghren spoke to our CSR and discussed the elements of the Classic Nation Bundle package (mentioning the 1500 free long distance). A third-party verification was required for the change in telephone provider from BellSouth. We have listened to the recording of this conversation and the third party verification specifically states the phone service will be through Cinergy Communications. Mr. McCaghren authorized this.
- 01-18-06 Service was connected.

2. **Mr. McCaghren complained of the following service issues with this Internet and telephone service:**

- His Internet connection had been altered by Cinergy so that he did not have access to certain Virtual Private Network connections.
- "Ear shattering" noise to incoming telephone callers
- "JEA Phone" service denies him the ability to interact with this bank's Automated Attendant.
- JEA service technicians were dispatched to his home on several occasions to no effect.

Response: Mr. McCaghren has experienced some service issues since his connection to Cinergy Communications. However, Cinergy's and JEA's Service Department records below indicate that both companies have been responsive and effective in resolving Mr. McCaghren's service problems.

- 01-18-06 Customer made two help desk Internet calls, both of which were resolved.
- 02-03-06 Customer called regarding the phone popping and a lot of feedback. JEA made adjustments to the gain at the gateway at his home.
- 02-08-06 Customer called with a complaint that he could not dial long distance. The long distance issue was a global problem relative to a network upgrade, and was fixed within two hours.
- 02-09-06 Customer called and stated he could not access automated bank features. A truck was sent to the residence and the problem was resolved on site.


3. JEA has always put a premium on customer service issues. JEA executives routinely field the toughest customer complaints through resolution of all issues. Over the past three months, Mr. McCaghren dealt with two key JEA manager employees, Mr. Ben Lovins, Broadband Operations Manager, and Mr. Ted Austin, Customer Service Supervisor, as well as Cinergy Communications top Jackson market representative, John Byler. JEA and Cinergy do not deny their customers access to personnel at higher levels of either organization.
4. Mr. McCaghren stated "I am disturbed that Jackson Energy Authority represents an Indiana based provider, Cinergy Communications, as a "Local" provider. I was under the impression that Telephone and Internet services would be provided by Aeneas. I was never given an option to elect Aeneas."


Response: JEA conducts joint marketing campaigns with Cinergy per our sales and marketing agreement, however, JEA does not promote Cinergy as a local company. JEA does promote JEA's local customer support that we provide Cinergy under our customer support agreement. Mr. McCaghren was never denied the opportunity to elect Aeneas as a service provider. As previously stated, Mr. McCaghren responded to advertisements that clearly identified Cinergy Communications as the provider of phone and Internet service. JEA customer service records indicate Mr. McCaghren specifically referenced Cinergy Communications service plans when initialing responding to these advertisements. He also verbally verified that he wanted to switch his phone service from BellSouth to Cinergy Communications. In short, JEA was simply giving Mr. McCaghren what he was requesting.

JEA has no affirmative obligation to promote the services of Aeneas or ensure that all customers are aware that Aeneas services are also available over its network. Aeneas was given the opportunity and still has the opportunity to enter into marketing and customer service agreements

**Response to Mr. McCaghren's Request for Relief**

As outlined above, JEA's actions concerning Mr. McCaghren were neither inappropriate nor predatory. JEA and Cinergy Communications have worked hard to address Mr. McCaghren's complaints despite his allegations to the contrary. After working with Cinergy Communications to do an exhaustive review of Mr. McCaghren's customer service history, we believe that his complaints are without merit and his request for relief inappropriate. Once his phone and Internet services have been moved to Aeneas, as he requested, we will consider this matter closed.

  
April 26, 2006  
Page 5

Should you have any questions, please feel free to contact me at . Thank you

Sincerely,



Senior Vice President – Telecommunications

## **ATTACHMENT L**

---

November 29, 2004

Mr. Kim Kersey, VP  
Jackson Energy Authority  
125 E. College St.  
Jackson, TN 38301

RE: Parity Violations by JEA

Dear Kim,

We noticed that the enclosed Jackson Sun article creates the impression that Lambuth's internet and voice service over the fiber is provided by JEA. We also understand that JEA is advising potential customers not to buy Aeneas voice services and is recommending those of a competitor. We understand that Sam Turner stepped up in this case to provide appropriate corrective action, and we appreciate that. However, this fulfills predictions we shared with you over a year ago; JEA will have trouble selling for multiple competitors while honoring the parity provisions in its contract with Aeneas.

We continue to believe that the parity provision in paragraph 1.8 in our Interconnect Agreement is the key to developing vigorous competition over the fiber for data and voice services and is ultimately in JEA's best interests if public satisfaction is the goal. I don't see how things can get anything but worse as you try to integrate JEA into a conflicted fiduciary (or at least an agency) relationship with multiple and competing providers. Even if you can police a good faith effort to be impartial respecting commission fees, installation fees, network transport fees, and discounts for bundling with JEA cable, the providers will not be competing on a level playing field if JEA employees and contractors are lending JEA's goodwill to one provider rather than equally to all providers.

We request that prior to soliciting customers for our competitors, JEA implement the "Customer Choice" selection sheet that I mentioned months ago, similar to ones used by police departments to allow consumers to select which wrecker or taxicab company they want to use, and such as Jackson General has used for patients to select home health care providers when they get out of the hospital (General operates a home health care business in competition with private enterprise). "Triple Packs" and 'cable plus voice' and 'cable plus internet' retail discounts will still be possible, but these promotions will need to be compliant with paragraphs 1.8 and 21.1 of our Interconnect Agreement.





Tennessee's Leading  
Internet and Telephone Provider  
[www.aeneas.net](http://www.aeneas.net)

I would respectfully ask that JEA create the "Customer Choice" list and share it with us so that we can voice any concerns we have as to form. I trust JEA will immediately instruct its staff to cease any further comments that tend to divert customers away from Aeneas or to a particular carrier, such as those reported by Ken Keim, who has given his permission to record and share the enclosed audio left on Jonathan Harlan's voice mail server. We can talk about this further the next time we get together.

Sincerely,

A handwritten signature in dark ink, appearing to read "P. F. Rice". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Paul F. Rice, Esq.

Enc: CD Rom  
Cc: Teresa Cobb sans/ CD

# Lambuth University EPlus' first commercial customer

The Jackson Sun 11-15-04

EPlus Broadband, Jackson Energy Authority's telecommunications network of cable, Internet and telephone services, recently officially recognized Lambuth University as its first broadband commercial customer, according to a JEA news release.

"We are pleased to have been the first commercial installation of JEA's EPlus Broadband technology," said Dr. Fred Zuker, Lambuth University president, during their recognition ceremony in Varnell-Jones Hall at Lambuth University.

As an EPlus Broadband customer, Lambuth officials will be plugged into "the most advanced broadband network in the country" and will be able to better serve their university, the release said.

"It is an incredible tool that enhances the research capabilities



Zuker

Kersey

of our professors and students," Zuker added.

Beyond just the technology, JEA officials state that Lambuth is "connected to an organization committed to serve the Jackson community" through its local television operation — EPlusTV Channel 6. "This local channel will help Lambuth communicate its accomplishments and capabilities to our community," said Steve Bowers, EPlusTV 6 television manager.

To further the relations between

"We are pleased to have been the first commercial installation of JEA's EPlus Broadband technology. It is an incredible tool that enhances the research capabilities of our professors and students."

Dr. Fred Zuker,  
Lambuth University president

JEA and Lambuth, Dr. Larry Ray, a Lambuth professor, is host of a EPlusTV 6 local show titled "At Home and Away" with Larry Ray, which combines his world travels with his expertise in the field of interior design.

"I am pleased and gratified that Lambuth has chosen to support EPlus Broadband as our first commercial customer. We have always had a strong relationship," added

Kim Kersey, JEA senior vice president of telecommunications, "and we see this relationship growing even stronger as we seek to better serve each other and our community together."

JEA began its broadband venture several years ago and connected its first live customer in April 2004. Since then, EPlus Broadband has signed approximately 4,501 customers to its services.

## Choose Your Broadband Services



You have a choice in who you would like to provide your services over the fiber. Please indicate your choice for each of the services you're signing up for. Thank you.

### EPlus Broadband Cable

Please check the box if you are receiving cable:

☐

### Broadband Internet

Please indicate the Internet provider you'd like to choose:

☐

**Aeneas**  
Internet Telephone

☐

**CINERGY**  
COMMUNICATIONS

### Broadband Telephone

Please indicate the telephone provider you'd like to choose:

☐

**Aeneas**  
Internet Telephone

☐

**CINERGY**  
COMMUNICATIONS

Signature: \_\_\_\_\_

Customer's Name: \_\_\_\_\_

Cinergy Communications is a wholly-owned subsidiary of Q-Comm Corporation. Although Cinergy Corporation has licensed the use of its name to Q-Comm, it has no management oversight, control or responsibility for Cinergy Communications Company.

## **ATTACHMENT M**





**ATTACHMENT N**

# **LOCAL / LONG DISTANCE TELEPHONE SERVICE**

**Submitted October 27, 2006**

**By:  
Dan Dennis  
Jackson Commercial Account Executive  
Cinergy Communications/Jackson Energy Authority  
(731) 426-2261**



**INVITATION TO BID NO. 45 (AS REVISED - SEE PAGE 29) REQUISITION NO.**

Issued by: MADISON COUNTY FINANCE DEPT., 701 SOUTH HIGHLAND AVE., Jackson, TN 38301

**NOTE:** Envelopes containing bids **MUST BE SEALED AND MARKED** in lower left corner with invitation to bid number.

SEALED BIDS, subject to the conditions specified on all sheets attached hereto, will be received in

The Madison County Purchasing Office, 701 South Highland Ave., Jackson, TN 38301, until **11:00 AM, OCTOBER 27, 2006** and then publicly opened for furnishing the following supplies, materials and/or services. The right is reserved as the interest of the County may require, to reject or accept any and/or all bids, to waive any informality in bids received, and to accept or reject any items of any bids.**SUPPLIES OR SERVICES****TELECOMMUNICATION PROPOSAL  
(LOCAL AND LONG DISTANCE TELEPHONE SERVICES)****AS PER THE ATTACHED SPECIFICATIONS AND INSTRUCTIONS****LOCATIONS FOR REQUESTED SERVICE:** CONTAINED WITHIN ATTACHED**RETURN BIDS/PROPOSALS TO:** SEE ABOVE (ALL REQUESTED INFORMATION MUST BE INCLUDED)**PRIOR TO PROCEEDING, PLEASE NOTE THE FOLLOWING:**

THIS REQUEST FOR BIDS/PROPOSALS CONSISTS OF 29 PAGES (1 THRU 29, INCLUDING THIS PAGE). IF THE BID PACKAGE RECEIVED BY YOU DOES NOT CONTAIN ALL PAGES, CONTACT BILL VINSON AT 731/554-3801 OR map@co.madison.co.tn.us

In compliance with the above invitation to bid, and subject to all the conditions thereof, the undersigned offers, and agrees, if this bid be accepted within \_\_\_\_\_ calendar days (60 calendar days if no shorter period be specified) from the date of the opening, to furnish any or all of the items upon which prices are quoted at the price set opposite each item, delivered as above specified within \_\_\_\_\_ days after the receipt of order.

Discounts will be allowed for payment as follows: \_\_\_\_\_ % 10 days; \_\_\_\_\_ % 20 days; \_\_\_\_\_ % 30 days

\*\*\* MADISON COUNTY'S PREFERRED METHOD OF PAYMENT: **VISA BASED PURCHASING CARD** \*\*\*DO YOU ACCEPT THIS METHOD OF PAYMENT: YES ☒ NO ☐

DATE OF BID: 10/27/06

Signature of person authorized to sign this bid

Mark Demman

Title

Commercial Account Executive

Show Company Name and Address of Bidder below

Cinergy Communications  
125 East College St  
JACKSON TN 38301

Phone Number: 731-426-2261

MADISON COUNTY GOVERNMENT, NOR ANY OF ITS DEPARTMENTS, OFFICES OR AGENCIES, DISCRIMINATES ON THE GROUNDS OF RACE, COLOR, RELIGION, DISABILITY, SEX, AGE OR NATIONAL ORIGIN

ACCEPTANCE BY MADISON COUNTY, TENNESSEE

DATE:

Accepted as to items numbered:

MADISON COUNTY, TENNESSEE, FINANCE DEPT.

\*\* TAX EXEMPT GOVERNMENTAL AGENCY \*\*

Accepted By \_\_\_\_\_, Purchasing Officer

<b>Bld Pricing Sheet for Local Voice Service &amp; Long Distance.</b>	<b>Quantity</b>	<b>Individual Cost</b>	<b>Total Cost</b>
<b>Basic Business Lines (new on Copper facilities)</b>	25	\$24.95	\$623.75
Touchtone		\$0.00	\$0.00
Hunting		\$0.00	\$0.00
Emergency 911 Service		\$1.64	\$41.00
FCC Access Charge		\$7.13	\$178.25
Universal Service Charge		\$0.75	\$18.75
Long Distance Access Fee		\$0.00	\$0.00
Local Number Portability		\$0.35	\$8.75
Property Tax Recovery Charge		\$0.37	\$9.25
Other Applicable Charges - Regulatory Compliance Charge		\$1.72	\$43.00
<b>Primary Rate ISDN Service (Full)</b>	2	\$600.00	\$1,200.00
<b>Primary Rate ISDN Service (Partial)</b>	1	\$552.00	\$552.00
DID Blocks of 20	11	\$4.00	\$44.00
Emergency 911 Service		\$0.00	\$0.00
FCC Access Charge		\$0.00	\$0.00
Universal Service Charge		\$0.00	\$0.00
Long Distance Access Fee		\$0.00	\$0.00
Local Number Portability		\$8.05	\$24.15
Property Tax Recovery Charge		\$28.94	\$28.94
Other Applicable Charges - Regulatory Compliance Charge		\$0.00	\$0.00
Telecom Relay Charge		\$0.00	\$0.00
<b>T-1 DS1 Service (new on copper facilities) or (fiber)</b>	4	\$350.00	\$1,400.00
Other Applicable Taxes		\$0.00	\$0.00
<b>DSL 256 X 1.544 Mbps with Static IP (or ethernet)</b>	4	\$39.95	\$159.80
<b>Long Distance Service</b>			
Price per minute: Intra-Lata		2.9	
Price per minute: Intra-State		2.9	
Price per minute: Inter-State		2.9	
Price per minute: International (price varies per country)			
<b>Total Volume Pricing:</b>			<b>\$4,329.54</b>
<b>Discounts: ALL INSTALL CHARGES ARE WAIVED</b>			
<b>Other Applicable Charges</b>			

**ATTACHMENT O**

1	2
IN THE CHANCERY COURT OF MARSHALL COUNTY, TENNESSEE	<b>APPEARANCES</b>
AT JACKSON	For the Plaintiff: MR. PAUL RICE
AENEAS COMMUNICATIONS, INC.	Attorney at Law
Plaintiff.	116 Old Humboldt Road
Defendant.	Jackson, Tennessee 38201
THE CITY OF JACKSON, TENNESSEE, AND THE JACKSON ZWING AUTHORITY.	For the City: MR. LEWIS L. COBB, JR.
Defendant.	Sprague, Barnett, Cobb & Butler
	312 East Lafayette Street
	Jackson, Tennessee 38201
THE DEPOSITION OF TOMMY NANNEY	For DEB: MR. SCOTT SMITH
November 1, 2002	Attorney at Law
	115 East College Street
	Jackson, Tennessee 38201
	AND
	MR. ROBERT S. KOOPER
	Real Estate Broker
	314 Decker Street, Suite 2700
	Nashville, Tennessee 37214-3001
CHRISTINA K. SHUPERT	
Notary Public	
P.O. Box 116412	
Jackson, Tennessee 38201	
177-1 604-4442	

3	4
The deposition of TOMMY NANNEY was taken	<u>TOMMY NANNEY,</u>
at the instance of the plaintiff pursuant to	after having been first duly sworn, was examined and
agreement, on the 1st day of November, 2002,	testified as follows:
beginning at approximately 1:00 at the law	
offices of Sprague, Barnett, Cobb & Butler,	<u>DIRECT EXAMINATION</u>
Jackson, Tennessee, for use pursuant to the	BY MR. RICE:
Tennessee Rules of Civil Procedure before	Q Mr. Nanney, my name is Paul Rice. I am
Christina K. Shupert, Notary Public at Large in	representing AENEAS Communications, and, of course,
and for the State of Tennessee.	we're here today for your deposition. I'll ask you
	a series of questions, and if I ask you something
	that you don't understand or it doesn't make sense,
	which is possible, just ask me to rephrase. Don't
	try to guess what I mean because we'll get an apples
	and oranges answer and question. Have you ever
	given a deposition before?
	A No.
	Q Okay. Like I say if you don't understand
	something, just ask me to repeat it. Let me ask you
	a few questions about your background. And I'll
	tell you a little bit about what we're going to do.
	I've got a bunch of questions here. I've tried to
	lay them out in an orderly fashion so that we can
	move more quickly. Of course, that probably won't
	work. But after we get through the questions, I'm
	going to turn over to -- turn over here to the

9

1 Q Okay When you were promoted to this  
2 level, who promoted you?  
3 A John Williams.  
4 Q And how were you advised of the promotion?  
5 A Mr. Williams called me in for a meeting  
6 and discussed our decisions to investigate this type  
7 of business and asked me to head up that initiative.  
8 Q Okay. Was there a board approval to  
9 investigate entering into this business, to your  
10 knowledge?  
11 A Yes, there has been.  
12 Q Okay. You kind of qualified on me. Prior  
13 to JEA beginning to investigate whether to go into  
14 this line of business, meaning cable TV, telephone,  
15 and internet, to your knowledge was there board  
16 approval of the expenditures necessary to  
17 investigate it and the time necessary to investigate  
18 it?  
19 A From our initial investigations, I cannot  
20 say, because those investigations began several  
21 years ago, and I was not involved directly at that  
22 point in time.  
23 Q When you say that, are you talking about  
24 cable TV only?  
25 A I'm not sure what all parts of it were

10

1 involved in that initial investigation.  
2 Q The -- have you had a chance to look at  
3 the complaint that I filed --  
4 A Yes.  
5 Q -- and the answers that have been filed?  
6 A (The witness nods head affirmatively.)  
7 Q In those answers -- I think we're in  
8 agreement that the Open Meetings Act and the Open  
9 Records Act would apply to JEA. Do you believe that  
10 they apply to JEA?  
11 MR. COOPER: Object to the  
12 extent you're asking the witness for a legal  
13 conclusion.  
14 MR. RICE: Okay. I'm asking  
15 what he believes.  
16 MR. COOPER: Same objection.  
17 Q (By Mr. Rice) You can go ahead and  
18 answer.  
19 MR. COOPER: You can answer the  
20 question.  
21 A Since I'm not really qualified to make  
22 legal opinions, that's for our legal staff to  
23 provide that opinion.  
24 Q (By Mr. Rice) Okay. Do you consider  
25 yourself a public employee?

11

1 A I really have not thought of it in that  
2 manner, but -- not to the sense of a public employee  
3 as defined by a city employee, someone that works  
4 for the City of Jackson. I am an employee of the  
5 Energy Authority which is a public entity, and  
6 thereby we are employees working for the good of our  
7 customers.  
8 Q So are you -- do you consider yourself a  
9 public employee or not?  
10 A Not knowing the exact definition of a  
11 public employee --  
12 Q Okay. Do you consider the Jackson Energy  
13 Authority a public entity, publicly owned entity?  
14 MR. COOPER: Object to the  
15 extent you're asking the witness for a legal  
16 conclusion, and objection to form.  
17 MR. RICE: Okay. Again, I'm  
18 asking what he believes.  
19 MR. COOPER: If you have a  
20 personal opinion on that, feel free to state  
21 it.  
22 A My understanding, we are a public entity.  
23 Q (By Mr. Rice) And would you not be a  
24 publicly employed person if you worked for a public  
25 entity? Wouldn't you think that would be the case?

12

1 MR. COOPER: Same objection. If  
2 you can answer the question, feel free to do  
3 so.  
4 A Really not sure of how to answer that  
5 question.  
6 Q (By Mr. Rice) All right. So if the City  
7 of Jackson rate payers become concerned with what  
8 JEA is doing with the money they're paying in, you  
9 apparently do not think you have any obligation --  
10 JEA has any obligation to tell these rate payers  
11 what's going on with the money?  
12 MR. COOPER: Object to form.  
13 Mischaracterization of the witness' testimony.  
14 Q (By Mr. Rice) You can go ahead and  
15 answer.  
16 A We are answerable to our rate payers  
17 through our board of directors. Our board of  
18 directors are there to represent our rate payers, as  
19 well as the input we take from the rate payers  
20 directly and their inquiries to us.  
21 Q All right. Let's try to move on then. Is  
22 money -- do you consider money in the JEA bank  
23 account to be public funds?  
24 A No.  
25 Q Whose funds are they?

...lands are the funds of our  
...operation of the utility

...So you don't want to get committed  
...JEA -- well, you did say it was a

MR. COOPER: I have the same  
...objection to those questions to the  
...you're asking for legal conclusions.

MR. RICE: Got ya.  
... (By Mr. Rice) The JEA fiber optic system  
...do you consider that to be a public  
...publicly owned asset?

MR. COBB: Let me ask you to  
...your question. I think that's what's  
...the confusion. When you say is that a  
...asset, would you clarify for him and  
...for me what you mean? I mean, it's  
...like a public park that's going to be open  
...anybody that wants to walk their dog. See  
...I'm saying?

MR. RICE: No. But we'll try  
...another word.

MR. COBB: I think that word  
..."public" is loaded up with a lot of possible

meanings, and that's what's causing the  
problems.

Q (By Mr. Rice) Would you agree that the  
fiber optic systems to be built will be a  
governmental asset?

A No.

Q Do you consider JEA to be a governmental  
entity?

A We are an entity that was created by the  
government as a subdivision of the state, but in my  
opinion we do not follow under the definition of  
what I would consider a governmental entity.

Q Okay. And in managing JEA from your  
position as senior vice-president, you make  
decisions based upon that opinion?

A Our decisions at the Energy Authority  
ultimately are based on our understanding of what is  
good for our community and is good for our rate  
payers.

Q Who is your boss now?

A John Williams.

Q All right. Do you have any  
vice-presidents underneath you in the chain of  
command?

A No.

Q Will there be some? If you're the senior  
president, I assume there's some junior ones.

A Under our organization structure directly.

Q Do you take orders from City Hall on  
occasion?

A No.

Q Okay. From the mayor's office  
specifically.

A No.

Q Give me a broad overview and let's see if  
we can pick it up a little bit. Give me a broad  
overview of what this broadband project is. I'm  
aware that the Tisdale House is going to be a  
construction behind the JEA headquarters over here.  
You're going to have the overbuild, and then you're  
going to provide some services, cable TV. Is there  
any other major component of it that I've left out?

A The broadband project does not involve the  
Tisdale House at all. The only construction that is  
being used for the broadband project itself will  
actually be connected to an existing building, but  
they are on our existing site.

Q Okay.

A That does not involve the property on

Highland.

Q Now, what is your role with the broadband  
project?

A My duties with broadband project strictly  
is in handling the original study of feasibility of  
the project, the ultimate construction of the  
project, and the operation of the project.

Q What do you have to do -- let me ask it  
more specifically. What do you have to do with the  
construction operation or even feasibility of the  
cable TV part of it?

A My involvement in that is somewhat  
limited.

Q You and Mr. Kersey work together to a  
degree that you overlap?

A Yes.

Q Okay. What is the scope of your  
decision-making authority? In other words -- and  
you can help me out a little bit. I would foresee  
that you would be able to make some decisions on  
your own. Some you might have to talk to  
Mr. Williams or go to the board. And I'm trying to  
find out where those dividing lines are. Can you  
help me?

A The decision-making process in this

**ATTACHMENT P**

Paul Rice

From: Paul Rice [mrprrice@aeneas.net]  
Sent: Monday, February 04, 2008 2:40 PM  
To: 'Paul Rice'  
Subject: FW: Subsidy vs loan

XXXXXX,

One of the challenges to be faced when the government wants to compete against local business is the government's temptation to push some of the commercial operation's overhead off on unsuspecting ratepayers of other services. JEA's Telecom Division is prohibited from doing that in its Private Act (however, it can "borrow" up to \$34 million from the electric division).

<http://tennessee.gov/sos/acts/102/priv/pr0055.pdf> That is JEA's Private Act that created IL

Section 4, paragraph 7  
Section 5  
Section 18

Those each speak to prohibited subsidization.

...

As the attached annual audit shows, JEA's principal bond debt went up, the borrowing from Regions went up, the borrowing from the Electric ratepayers went up, the date to start paying principal on the over half the bonds was pushed back but they did improve the interest rate on \$38M of the bonds. Page 22 notes that revenue went up because cable rates went up. (Page 56 notes the closing cost of the bond refinance were an eye-popping \$665,194.00).

If you look at page 26, you'll see operating expenses; notice "Taxes, Payroll" of \$138,813; back on page 75, they report this is 100% tax. Telecom has no payroll?

Also on that page, 'cost of sales and services' and 'operations expense', together totaling about \$8M. What is in that total?

Head over to pages 67 through 75 and find 2 pages schedules of operating expenses of each division except Telecom, which is one page. This shows what makes up the figures on page 26.

Where are the equivalent line items for "customer account expenses" or "administrative and general expense" or "customer information and sales" that the other divisions break out? Where is the overhead for billing, tech support, debt collection, bad debt, etc, etc? Whose ratepayers are funding all that?

P



Sec 4 (7) To acquire, construct, improve, furnish, equip, finance, own, operate and maintain within and outside the corporate limits of the city of Jackson, a system for the furnishing of telecommunications service and to provide telecommunication service to any person, governmental entity, or other user or consumer of telecommunications services within or outside the city of Jackson; provided, the system shall be operated as a separate system independent of, and separate from, the other utility systems of the authority; and provided, further, to the extent that the authority, or any joint venture, partnership or cooperative arrangement of which the authority is a party, or any limited liability company or not-for-profit corporation of which the authority is a member provides telephone or telegraph services, the authority, or such other entity, shall be subject to regulation by the Tennessee regulatory authority in the same manner and to the same extent as other certified providers of such services, including, without limitation, rules or orders governing anti-competitive practices, and shall be considered as and have the duties of a public utility, as defined in Section 65-4-101, but only to the extent necessary to effect such regulation and only with respect to the authority's provision of telephone and telegraph services; and provided, further, that the authority shall have all the powers and authority conferred upon municipalities by Sections 7-52-401, 7-52-403, 7-52-405, 7-52-406, 7-52-601, 7-52-602, 7-52-603 (except Section 7-52-603(a)(1)(A)), 7-52-604, 7-52-605, and 7-52-609, and in the exercise of said powers and authority shall be subject to all the obligations, restrictions and limitations imposed upon municipalities by said sections and imposed upon providers of the services described therein by federal law; provided, that all actions authorized by said sections to be taken by the board or supervisory body having responsibility for a municipal electric plant or authorized to be taken by the chief legislative body of the municipality shall be authorized to be taken by the board of directors of the authority and all powers granted to a municipal electric system under said sections shall be exercised by the electric division of the authority; and provided further, that, notwithstanding the provisions of Section 5 hereof, the telecommunications system shall not be combined with any of the other systems.

SECTION 5. Each system of the authority shall operate independently of the others and shall be self-sustaining, except insofar as the board may by resolution combine any of the systems which in the opinion of the board shall be advisable and economical and which by the general laws of the state or any federal laws or any contracts or indentures are not required to be operated separately.

#### SECTION 18.

(a) The authority shall not be operated for gain or profit or primarily as a source of revenue to the city of Jackson or any other person or entity. The authority shall, however, prescribe and collect reasonable rates, fees or charges for the services, facilities and commodities made available by it, and shall revise such rates, fees or charges from time-to-time whenever necessary so that each system, or any combined systems as authorized herein, shall be and always remain self-supporting, and shall not require appropriations by the city of Jackson or any other municipality, the state or any political subdivision to carry out its purpose. Any one system of the authority shall not subsidize any other system, unless the systems are operated as a combined system in accordance with the terms hereof, in which case the combined system shall be self-supporting.

(b) The rates, fees, or charges prescribed for each system shall be such as will produce revenue at least sufficient:

(1) To provide for the payment of all expenses of operation and maintenance of such system;

(2) To pay when due principal of, and interest on, all bonds of the authority payable from the revenues of such system;

(3) To pay any payments in lieu of taxes authorized to be paid pursuant to the terms hereof; and

(4) To establish proper reserves for the system.

JACKSON ENERGY AUTHORITY

FINANCIAL STATEMENTS AND  
SUPPLEMENTARY INFORMATION

FOR THE FISCAL YEARS ENDED JUNE 30, 2007 AND 2006  
NLS

5579

**JACKSON ENERGY AUTHORITY**  
**STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET ASSETS**  
**JUNE 30, 2007**

	ELECTRIC DIVISION	GAS DIVISION	WATER DIVISION	WASTEWATER DIVISION	TELECOMM- UNICATIONS DIVISION	ELIMINATING ENTRIES	COMBINED
<b>Operating revenues:</b>							
Charges for sales and services	\$ 117,335,383	\$ 48,416,131	\$ 12,116,919	\$ 12,311,363	\$ 11,544,989	\$ -	\$ 192,744,815
Other revenue	1,405,520	-	-	-	-	-	1,405,520
Total operating revenues	118,740,903	48,416,131	12,116,919	12,311,363	11,544,989	-	203,149,305
<b>Operating expenses:</b>							
Cost of sales and services	37,511,107	14,056,421	-	-	3,944,131	-	55,511,659
Operation expense	7,219,826	8,147,271	1,342,381	6,244,888	5,947,356	-	29,913,722
Maintenance expense	1,944,014	1,244,914	1,134,005	1,117,462	-	-	5,440,416
Provision for depreciation	5,403,163	3,015,894	2,110,049	1,190,141	4,210,181	-	18,014,427
Taxes, payroll	118,917	101,422	241,137	216,841	118,815	-	787,132
Total operating expenses	52,197,027	26,575,529	4,597,575	8,561,372	14,220,573	-	106,152,076
Operating income (loss)	66,543,876	21,840,602	7,519,344	3,749,991	(2,675,584)	-	95,998,229
<b>Nonoperating revenues (expenses):</b>							
Interest and other income	2,139,979	570,421	490,497	447,881	147,144	-	3,796,922
Interest, amortizations and other expense	(1,169,342)	(1,102,774)	(1,643,913)	(1,397,915)	(1,672,070)	-	(6,986,014)
Gain (loss) on disposition of fixed assets	-	-	33,222	4,400	-	-	37,622
Total nonoperating revenues (expenses)	906,637	(532,353)	(1,110,214)	(1,345,634)	(1,524,926)	-	(2,495,490)
<b>Contributions and in flow of cash:</b>							
Contributions	147,240	73,344	1,046,870	1,240,391	271,410	-	2,779,255
In flow of cash	(2,023,968)	(1,195,073)	(115,113)	(123,617)	-	-	(4,457,771)
Net contributions and in flow of cash	(1,876,728)	(1,121,729)	931,757	1,116,774	271,410	-	(1,687,516)
Change in net assets	1,171,437	2,116,319	1,434,101	1,010,444	(1,928,674)	-	4,804,527
Total net assets - beginning	\$ 2,114,218	\$ 6,410,786	\$ 9,911,100	\$ 6,813,716	\$ 2,814,916	\$ -	\$ 28,064,836
Plus period adjustment	-	3,897,109	-	-	-	-	3,897,109
Total net assets - beginning (restated)	\$ 2,114,218	\$ 10,307,895	\$ 9,911,100	\$ 6,813,716	\$ 2,814,916	\$ -	\$ 32,972,956
Total net assets - ending	\$ 3,285,655	\$ 12,424,214	\$ 11,345,201	\$ 7,824,160	\$ 816,242	\$ -	\$ 47,695,472

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**OTHER SUPPLEMENTARY INFORMATION SECTION**

**JACKSON ENERGY AUTHORITY - ELECTRIC DIVISION**  
**SCHEDULES OF OPERATING EXPENSES**

	FOR THE YEARS ENDED JUNE 30,			
	2007		2006	
	Actual	Percent	Actual	Percent
Operating expenses:				
Cost of sales and services:				
Purchased power	\$ 97,514,107	86.71	\$ 91,136,701	36.64
Operations expenses:				
Transmission expenses:				
Station expense	317	0.00	62	0.00
Load dispatching	96,816	0.09	94,007	0.09
Overhead line expense	12,057	0.01	24,490	0.02
Total transmission	109,190	0.10	118,559	0.11
Distribution expenses:				
Load dispatching	103,848	0.09	99,693	0.09
Station expense	27,073	0.02	29,045	0.03
Overhead line expense	174,011	0.15	157,676	0.15
Underground line expense	6,500	0.01	8,157	0.01
Underground line pipe location	11,262	0.01	50,977	0.05
Street lighting and signal system	98,407	0.09	95,388	0.09
Meter expense	131,474	0.16	168,093	0.16
Customer installations expense	412,174	0.37	376,738	0.36
Supervision and engineering	42,413	0.04	61,821	0.06
Miscellaneous	429,421	0.38	388,137	0.37
Rents	86,393	0.08	84,955	0.08
Total distribution expenses	1,572,976	1.40	1,520,680	1.45
Customer accounts expenses:				
Supervision	43,693	0.04	38,892	0.04
Meter reading expense	181,759	0.16	185,068	0.18
Customer contracts and orders	261,852	0.23	285,292	0.27
Customer collections	192,624	0.35	363,566	0.35
Customer billing and accounting	115,574	0.10	128,492	0.12
Data processing	424,038	0.38	380,808	0.36
Stand-By time	21,021	0.02	11,535	0.01
Uncollectible accounts	156,692	0.14	220,743	0.21
Total customer accounts	1,597,253	1.42	1,614,696	1.54
Customer information and sales expense:				
Assistance	280,963	0.25	223,509	0.21
Demonstrations and advertising	22,608	0.02	25,077	0.02
Miscellaneous	46,296	0.04	39,425	0.04
Total Customer information and sales expense	349,867	0.31	288,011	0.27

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**JACKSON ENERGY AUTHORITY - ELECTRIC DIVISION**  
**SCHEDULES OF OPERATING EXPENSES (Cont.)**

	FOR THE YEARS ENDED JUNE 30,			
	2007		2006	
	Actual	Percent	Actual	Percent
Operating expenses (cont.):				
Administrative expenses:				
Administrative salaries	\$ 145,192	0.13	\$ 148,985	0.14
Office salaries	641,482	0.57	639,505	0.61
Employee training	16,994	0.02	15,777	0.01
Office supplies and expense	437,355	0.39	440,292	0.42
Professional services	85,637	0.08	111,873	0.11
Insurance	363,084	0.32	376,312	0.36
Employee pension and benefits	1,770,878	1.57	1,670,757	1.59
Miscellaneous and penalties	129,918	0.12	71,254	0.07
Total administrative expenses	1,590,540	3.19	3,474,755	3.30
Total operations expense	7,219,826	6.42	7,016,701	6.67
Maintenance expenses:				
Station equipment	27,890	0.02	10,162	0.01
Overhead lines	13,939	0.01	9,526	0.01
Total transmission expenses	41,829	0.04	19,688	0.02
Distribution expenses:				
Supervision and engineering	35,086	0.03	40,334	0.04
Station equipment	330,596	0.29	216,975	0.21
Poles	25,911	0.02	55,221	0.05
Lines	851,575	0.76	729,767	0.69
Transformers	145,919	0.13	141,403	0.13
Street lighting and signals	303,633	0.27	274,598	0.26
Meters	104,743	0.09	136,357	0.13
Total distribution expenses	1,797,463	1.60	1,594,655	1.52
Administrative and general expenses:				
Structures and improvements	88,273	0.08	114,300	0.11
Office furniture and fixtures	29,038	0.03	39,355	0.04
Communications equipment	27,421	0.02	24,489	0.02
Total administrative and general expenses	144,732	0.13	178,144	0.17
Total maintenance expenses	1,981,024	1.76	1,792,487	1.70
Depreciation and amortization	5,000,565	4.60	4,927,983	4.68
Taxes and tax equivalent	336,937	0.30	315,449	0.30
Total operating expenses	\$ 112,455,459	100.00	\$ 105,188,321	100.00

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JACKSON ENERGY AUTHORITY - GAS DIVISION  
SCHEDULES OF OPERATING EXPENSES

FOR THE YEARS ENDED JUNE 30,					
		2007		2006 Restated	
		Actual	Percent	Actual	Percent
<b>Operating expenses:</b>					
Cost of sales and services:					
Gas purchased	\$	34,035,124	76.00	\$ 34,257,646	75.25
Production		21,347	0.05	9,074	0.02
Total cost of sales and services expense		34,056,471	76.04	34,266,720	75.27
<b>Operations expense:</b>					
Distribution expenses:					
Mains and services		141,683	0.32	156,346	0.34
Measuring and regulating		61,804	0.14	71,742	0.16
Meter house and regulation		210,704	0.47	229,788	0.50
Jobbing expenses		58,024	0.13	60,385	0.13
Customer installations expense		397,537	0.89	422,847	0.93
Supervision and engineering		273,159	0.61	279,079	0.61
Maps and records		35,130	0.08	52,825	0.12
Rents		2,011	0.00	2,827	0.01
Office expense		263,519	0.59	204,372	0.45
Propane delivery		152,175	0.34	144,414	0.32
Total distribution expenses		1,593,746	3.56	1,624,625	3.57
Customer accounts expenses:					
Supervision		65,023	0.15	56,180	0.12
Meter reading expense		213,622	0.48	211,537	0.46
Customer contracts and orders		227,011	0.51	252,140	0.55
Customer collections		264,500	0.59	247,949	0.54
Customer billing and accounting		91,624	0.20	107,487	0.24
Data processing		389,084	0.87	325,774	0.72
Uncollectible accounts		25,804	0.06	-	-
Total customer accounts		1,346,668	3.01	1,201,067	2.64
Customer information and sales expense:					
Assistance		279,843	0.62	207,363	0.46
Demonstrations and advertising		24,652	0.06	26,123	0.06
Miscellaneous		43,963	0.10	35,216	0.08
Total Customer information and sales expense		348,458	0.78	268,702	0.59

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JACKSON ENERGY AUTHORITY - GAS DIVISION  
SCHEDULES OF OPERATING EXPENSES (Cont.)

	FOR THE YEARS ENDED JUNE 30,			
	2007		2006 Restated	
	Actual	Percent	Actual	Percent
Operating expenses (cont.):				
Administrative expenses:				
Administrative salaries	\$ 136,060	0.70	\$ 133,401	0.74
Office salaries	462,137	1.03	472,411	1.04
Employee training	-	-	-	-
Office supplies and expense	339,517	0.76	332,710	0.73
Special services	86,363	0.19	116,865	0.26
Insurance	154,478	0.34	293,394	0.64
Employee pension and benefits	1,561,382	3.49	1,505,254	3.31
Miscellaneous and penalties	112,174	0.25	75,586	0.17
Rents	2,072	0.00	4,662	0.01
Total administrative expenses	<u>2,854,493</u>	<u>6.37</u>	<u>2,934,283</u>	<u>6.45</u>
Total operating expense	<u>6,147,275</u>	<u>13.73</u>	<u>6,028,677</u>	<u>13.46</u>
Total operating expenses	<u>\$ 40,203,746</u>	<u>89.77</u>	<u>\$ 40,295,397</u>	<u>88.51</u>
Maintenance expenses:				
Production	<u>23,495</u>	<u>0.05</u>	<u>9,622</u>	<u>0.02</u>
Total production expenses	<u>23,495</u>	<u>0.05</u>	<u>9,622</u>	<u>0.02</u>
Distribution expenses:				
Supervision and engineering	30,394	0.07	35,025	0.08
Structures and improvements	2,551	0.01	4,994	0.01
Mains	592,180	1.32	597,861	1.31
Measuring and regulating	29,094	0.06	33,469	0.07
Services	291,873	0.63	257,421	0.57
Meters and regulators	146,571	0.33	135,761	0.30
Other equipment	<u>38,507</u>	<u>0.09</u>	<u>18,144</u>	<u>0.04</u>
Total distribution expenses	<u>1,131,170</u>	<u>2.53</u>	<u>1,082,675</u>	<u>2.36</u>
Administrative and general expenses				
Administrative and general expenses	<u>110,249</u>	<u>0.23</u>	<u>111,781</u>	<u>0.25</u>
Total administrative and general expenses	<u>110,249</u>	<u>0.23</u>	<u>111,781</u>	<u>0.25</u>
Total maintenance expenses	<u>1,264,914</u>	<u>2.82</u>	<u>1,204,078</u>	<u>2.64</u>
Depreciation and amortization	<u>3,015,096</u>	<u>6.71</u>	<u>2,676,107</u>	<u>5.88</u>
Taxes and tax equivalent	<u>301,811</u>	<u>0.67</u>	<u>1,351,339</u>	<u>2.97</u>
Total operating expenses	<u>\$ 44,785,360</u>	<u>100.00</u>	<u>\$ 45,526,921</u>	<u>100.00</u>

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JACKSON ENERGY AUTHORITY - WATER DIVISION  
SCHEDULES OF OPERATING EXPENSES

	FOR THE YEARS ENDED JUNE 30,			
	2007		2006	
	Actual	Percent	Actual	Percent
Operating expenses:				
Operations expense				
Source of supply:				
Supervision and engineering	\$ 1,748	0.02	\$ 250	0.00
Labor	29,569	0.30	32,969	0.36
Miscellaneous	366,844	3.76	349,478	3.79
Total source of supply expense	397,761	4.08	382,697	4.15
Pumping				
Supervision and engineering	3,734	0.04	311	0.00
Labor	698	0.01	-	-
Purchased power	372,969	3.83	339,183	3.68
Miscellaneous	3,035	0.03	1,306	0.01
Total pumping expense	380,436	3.91	340,800	3.69
Treatment and disposal				
Supervision and engineering	55,612	0.57	43,448	0.47
Labor	321,920	3.31	315,251	3.42
Chemicals	115,469	1.39	120,225	1.30
Miscellaneous	136,311	1.40	112,913	1.22
Total treatment and disposal expense	629,312	6.67	591,837	6.41
Transmission and distribution				
Supervision and engineering	179,227	1.84	194,208	2.10
Storage facilities expense	19,805	0.20	20,614	0.22
Line expense	261,672	2.69	288,928	3.13
Meter expense	119,029	1.22	114,356	1.24
Miscellaneous	206,682	2.12	188,414	2.04
Customer installation	107,427	1.10	112,843	1.22
Total transmission and distribution expense	895,842	9.17	919,363	9.95
Customer accounts expenses:				
Supervision	28,441	0.29	24,408	0.26
Meter reading expense	145,827	1.50	137,254	1.49
Customer billing and collecting	477,087	4.90	485,779	5.26
Data processing	296,734	3.05	268,150	2.91
Assistance expense	197,818	2.03	180,327	1.96
Uncollectible accounts	60,716	0.62	32,335	0.35
Total customer accounts expense	1,206,643	12.39	1,128,453	12.33

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JACKSON ENERGY AUTHORITY - WATER DIVISION  
SCHEDULES OF OPERATING EXPENSES (Cont.)

	FOR THE YEARS ENDED JUNE 30,			
	2007		2006	
	Actual	Percent	Actual	Percent
Operating expenses (cont.):				
Operations expense (cont.)				
Administrative and general expense:				
Salaries	516,805	5.31	523,742	5.68
Office supplies and expense	358,287	2.65	255,264	2.77
Professional service	53,949	0.55	54,053	0.59
Insurance	205,714	2.11	168,629	1.83
Employees' benefits	1,289,302	13.24	1,313,277	14.23
Miscellaneous	96,234	1.01	67,303	0.73
Rent	2,096	0.02	4,342	0.05
Total administrative and general expense	2,410,187	24.81	2,186,520	23.88
Total operations expense	\$ 5,944,361	61.02	\$ 5,749,970	62.32
Maintenance expenses:				
Source of supply				
Supervision and engineering	\$ -	-	\$ -	-
Wells and springs	10,787	0.12	81,799	0.89
Total source of supply	10,787	0.12	81,799	0.89
Pumping				
Supervision and engineering	-	-	-	-
Pumping equipment	60,535	0.62	27,063	0.29
Total pumping expenses	60,535	0.62	27,063	0.29
Treatment and disposal				
Supervision and engineering	-	-	-	-
Structures and improvements	30,302	0.31	34,906	0.38
Treatment and disposal equipment	306,294	3.14	152,179	1.65
Total treatment and disposal	336,596	3.45	187,085	2.03
Transmission and distribution				
Supervision and engineering	14,012	0.14	19,943	0.22
Structures and improvements	1,520	0.04	75	0.00
Distribution reservoirs and standpipes	42,187	0.43	42,647	0.46
Mains and services	596,350	6.13	606,454	6.57
Service meters and hydrants	207,327	2.12	166,125	1.80
Total transmission and distribution	858,846	8.87	835,244	9.05
Administrative and general expenses				
Administrative and general expenses	87,067	0.89	98,408	1.07
Total administrative and general expenses	87,067	0.89	98,408	1.07
Total maintenance expenses	1,374,006	14.10	1,229,599	13.33
Depreciation and amortization	2,380,095	24.36	2,009,324	21.77
Taxes and tax equivalent	381,137	3.96	239,639	2.60
Total operating expenses	\$ 9,739,603	100.00	\$ 9,228,552	100.00

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JACKSON ENERGY AUTHORITY - WASTEWATER DIVISION  
SCHEDULES OF OPERATING EXPENSES

	FOR THE YEARS ENDED JUNE 30,			
	2007		2006	
	Actual	Percent	Actual	Percent
Operating expenses:				
Operations expense:				
Pumping				
Supervision and engineering	1,052	0.01	35	0.00
Labor	2,427	0.02	5,246	0.05
Purchased power	67,911	0.62	67,626	0.63
Miscellaneous	26,968	0.24	27,177	0.26
Total pumping expense	98,360	0.89	100,084	0.96
Treatment and disposal				
Supervision and engineering	104,541	0.95	87,613	0.85
Labor	1,273,179	11.58	1,347,767	13.05
Chemicals	57,567	0.52	66,399	0.64
Miscellaneous	481,629	4.37	402,136	3.89
Total treatment and disposal expense	1,918,916	17.42	1,903,935	18.41
Transmission and distribution				
Supervision and engineering	131,502	1.19	145,637	1.41
Line expense	165,896	1.51	161,284	1.56
Meter expense	83,356	0.76	82,827	0.80
Miscellaneous	156,196	1.42	140,503	1.36
Customer installation	38,328	0.35	39,899	0.38
Total transmission and distribution expense	575,338	5.23	569,150	5.51
Customer accounts expenses				
Supervision	21,713	0.20	18,575	0.18
Meter reading expense	108,521	0.99	99,436	0.96
Customer billing and collecting	368,474	3.35	386,491	3.74
Data processing	254,325	2.31	246,445	2.39
Assistance expense	190,209	1.73	199,811	1.93
Uncollectible accounts	30,788	0.28	14,053	0.14
Total customer accounts expense	974,030	8.86	964,811	9.34
Administrative and general expense				
Salaries	498,934	4.53	498,223	4.82
Office supplies and expense	214,490	1.95	209,046	2.01
Professional service	61,201	0.56	59,235	0.57
Insurance	577,448	5.24	268,400	2.60
Employees' benefits	1,247,538	11.33	1,271,772	12.32
Miscellaneous	81,029	0.74	48,757	0.47
Rent	1,604	0.01	3,866	0.04
Total administrative and general expense	3,082,244	28.10	2,360,139	22.85
Total operating expense	\$ 6,248,868	56.76	\$ 5,898,119	57.09

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JACKSON ENERGY AUTHORITY - WASTEWATER DIVISION  
SCHEDULES OF OPERATING EXPENSES (Cont.)

	FOR THE YEARS ENDED JUNE 30,			
	2007		2006	
	Actual	Percent	Actual	Percent
Operating expenses (cont.):				
Maintenance expenses:				
Pumping				
Supervision and engineering	\$ -	-	\$ -	-
Structures and improvements	4,923	-	783	0.01
Pumping equipment	120,684	1.10	110,881	1.07
Total pumping	125,607	1.14	111,664	1.08
Treatment and disposal				
Supervision and engineering	-	-	-	-
Structures and improvements	31,280	0.28	8,471	0.08
Treatment and disposal equipment	458,613	4.16	327,141	3.17
Total treatment and disposal	489,893	4.44	335,612	3.25
Transmission and distribution				
Supervision and engineering	11,709	0.11	16,809	0.16
Structures and improvements	730	0.01	-	-
Mains and services	626,822	5.69	596,288	5.77
Service meters and hydrants	17,533	0.16	17,376	0.17
Total transmission and distribution	656,794	5.97	630,473	6.10
Administrative and general				
Administrative and general expenses	65,668	0.60	66,279	0.65
Total administrative and general expenses	65,668	0.60	66,279	0.65
Total maintenance expenses	1,337,962	12.15	1,166,028	11.29
Depreciation and amortization	1,190,241	28.96	1,033,790	29.41
Taxes and tax equivalents	234,841	2.13	228,611	2.21
Total operating expenses	\$ 11,011,912	100.00	\$ 10,326,548	100.00

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JACKSON ENERGY AUTHORITY - TELECOMMUNICATIONS DIVISION  
SCHEDULES OF OPERATING EXPENSES

	FOR THE YEARS ENDED JUNE 30,			
	2007		2006	
	Actual	Percent	Actual	Percent
Operating expenses:				
Programming costs	<u>3,961,431</u>	<u>32.21</u>	<u>3,130,419</u>	<u>27.77</u>
Operations expenses				
Plant specific				
Network support	68,911	0.56	44,457	0.39
General support	150,541	2.85	145,982	1.07
Headend	(12,566)	(0.10)	37,699	0.33
Headend transmission	8,668	0.07	13,574	0.12
Cable and wire facilities	<u>132,444</u>	<u>1.08</u>	<u>204,543</u>	<u>1.81</u>
Miscellaneous	-	-	-	-
Total plant specific	<u>547,998</u>	<u>4.46</u>	<u>646,253</u>	<u>5.73</u>
Plant non-specific				
Other property and equipment	243	0.00	44,230	0.39
Network operations	<u>480,797</u>	<u>3.91</u>	<u>414,412</u>	<u>3.68</u>
Access	-	-	-	-
Total plant non-specific	<u>481,040</u>	<u>3.91</u>	<u>458,642</u>	<u>4.07</u>
Customer operations				
Marketing	544,015	4.42	977,951	8.68
Services	<u>683,610</u>	<u>5.56</u>	<u>730,707</u>	<u>6.48</u>
Total customer operations	<u>1,227,625</u>	<u>9.98</u>	<u>1,708,658</u>	<u>15.16</u>
Corporate operations				
Executive and planning	500,184	4.07	431,235	3.83
General and administrative	<u>1,210,749</u>	<u>9.84</u>	<u>1,364,546</u>	<u>12.11</u>
Total corporate operations	<u>1,710,933</u>	<u>13.91</u>	<u>1,795,781</u>	<u>15.93</u>
Total operations expenses	<u>3,967,596</u>	<u>32.26</u>	<u>4,609,336</u>	<u>40.90</u>
Depreciation and amortization	<u>4,239,661</u>	<u>34.40</u>	<u>3,360,611</u>	<u>29.81</u>
Taxes and tax equivalent	<u>138,813</u>	<u>1.13</u>	<u>171,181</u>	<u>1.52</u>
Total operating expenses	<u>\$ 12,298,501</u>	<u>100.00</u>	<u>\$ 11,270,947</u>	<u>100.00</u>

See independent auditor's report

## **ATTACHMENT Q**

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**From:** Kim Kersey [mailto:kkersey@jaxenergy.com]

**Sent:** Tuesday, November 13, 2007 4:30 PM

**To:** Jonathan V. Harlan

**Subject:** JEA Proposal

Jonathan,

Here is our latest proposal in which I have responded to your concerns and comments from our last meeting. I am available at 1:30 tomorrow afternoon and can come down to your office. Please let me know if that will work for you.

Kim

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***Kim Kersey***

***SVP - Telecommunications***

***Jackson Energy Authority***

***119 E. College Street***

***Jackson, TN 38301***

***(731) 422-7257***

***(731) 422-7221 (fax)***

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Excerpt

- 1) Our ICA will be amended to incorporate the above rates and charges, which will be in effect for three years. All existing and new accounts and will be moved under this rate plan and will be grandfathered for the remainder of the ICA. During the third year following adoption of these new rates, Aeneas and JEA will in good faith review current market conditions and adopt changes to rates and bandwidth as appropriate. In the event that both parties cannot agree upon changes, JEA may increase these new rates and charges annually by 5%.
- 2) JEA will be solely responsible for selling cable television services to new accounts.
- 3) All Aeneas accounts on the fiber network shall be required to have a minimum of two services, one of which may be cable television. In the event that the account has fewer than two services, Aeneas shall pay JEA a minimum access charge of \$30.00. Services must be delivered over the JEA network to qualify for the two service requirement or to qualify for the Internet/telephone price discounts.
- 4) JEA agrees to not directly solicit Aeneas accounts within certain classes of service based upon the following conditions:
  - a) Monthly recurring access billing for Aeneas Internet and telephone services is a minimum [REDACTED]
  - b) Non-solicitation protection shall apply to residential Internet service, residential telephone service, commercial asymmetrical Internet service, and commercial POTS telephone service. Non-solicitation protection shall not apply to commercial symmetrical Internet service and to T1 and PRI telephone circuits.
  - c) Non-solicitation protection shall be waived for any account that requests a pricing quote or bid price from JEA, or that voluntarily requests to be moved from Aeneas to JEA service.
  - d) Aeneas shall discontinue and refrain from any advertising that specifically targets JEA customers to switch to Aeneas service.
  - e) Access charges shall apply to VoIP telephone services in the same manner as they apply to traditional telephone services.
  - f) Aeneas shall withdraw its intervention at the TRA, or change its intervention to open support of JEA's retail services application.



# ATTACHMENT R



Jackson Energy, Inc.

Kim Kersey  
Senior Vice President, Telecommunications

COPY

Via Hand Delivery

January 11, 2008

Mr. Jonathan V. Harlan  
Aeneas Internet & Telephone  
300 N. Cumberland  
Jackson, TN 38301

Dear Jonathan,

We are responding to your recent request for special ICA pricing for a WAN to serve the school system.

It had been our hope that we could have avoided a protracted intervention by Aeneas in our TRA application by negotiating more favorable ICA access charges that you desired. Unfortunately, you chose to proceed with the intervention which has resulted in significant delays, legal expense, and loss of revenue for JEA. For that reason, JEA decided to withdraw its outstanding offer for ICA adjustments and place our discussions on hold. After we receive our expanded CCN, we may reconsider your request. Similarly, we will defer any consideration of your request for special WAN pricing until that time.

Sincerely,

Kim Kersey

CC: Mr. Danny Wheeler  
Ms. Teresa Cobb

# ATTACHMENT S

**PAUL F. RICE, ATTORNEY**

PO Box 1692, Jackson, TN 38302-1692

(731)554-9235

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Filed Electronically  
December 3, 2007

RE: WC Docket No. 07-245  
Comment on Pole Attachment Act

I am an attorney from Tennessee and represent several telecommunications companies, including Aeneas Communications, LLC. I am writing to comment on the need to eliminate exemptions for any entity which operates communications infrastructure and competes with other ISPs or CLECs. The exemption language is found in 42 USC 224(a).

In A Practical Primer On Pole Attachments, authors Jim Baller and Sean Stokes recount that "...in 1997, two trade associations...asked the FCC to recommend that Congress eliminate the Municipal Exemption because municipalities and cooperatives were abusing it. After conducting an inquiry, the FCC declined to make such a determination at that time. The FCC intimated, however, that it might do so in the future if circumstances warranted, noting that "[w]hen these cooperatives and municipal entities are themselves engaged in the provision of communications services a conflict of interest may result... Similarly, in 2001 the Ad Hoc Committee of the National Association of Regulatory Utility Commissioners recommended that states eliminate the municipal exemption..." [and adopt the federal rate formula].

As more and more municipalities get into the business of infrastructure operation and broadband retailing, the predicted conflict of interest is materializing and action is needed to insure government utilities serve the public and not just their own commercial aspirations. The following relates an example of such a conflict and the use of government power to frustrate private commerce:

The state legislature in Tennessee modified the Charter for the City of Jackson to remove the city's utility division and set it up as a free-standing subdivision of the state. 2001 Priv Act 55. The new utility entity was empowered to build and operate a fiber to the home broadband network, which it did. The new entity, called the Jackson Energy

Authority (JEA), opted to operate an "open network", leasing access to ISPs and CLECs, but also sold competing retail services over the network.

Aeneas Communications, a local facilities based ISP/CLEC developed a valuable business opportunity to interconnect with other carriers at a TVA Substation about four miles south of Aeneas' location; one of the other carriers, [xxxx] Networks, planned to collocate equipment at Aeneas in connection with the project. In March 2006, Aeneas related the details of the project to its utility and requested a Pole Attachment Agreement from the JEA Electric Division to review in anticipation of a fiber deployment. None was forthcoming. An Open Records Act request, dated April 12, 2006, was delivered to JEA seeking a copy of the JEA Telecom Division's Pole Attachment Agreement with the JEA Electric Division, however, the Vice President over the Telecom Division advised verbally that there was no written pole attachment agreement specifying engineering, pricing, or any other terms and conditions between the electric and telecom divisions.

To move matters forward, Aeneas obtained engineering drawings typical of those used in the city for pole attachment requests. These were submitted to JEA in April and rejected by letter from JEA's general counsel dated May 4, 2006. Now convinced that JEA was more interested in building and leasing the needed infrastructure to Aeneas than allowing Aeneas to own its own infrastructure, Aeneas requested a price from JEA to design, build, and lease fiber. Six months after the initial request to JEA, the Vice President over the Telecom Division affirmed that he was working up the pricing, and on August 15 left a voice message representing what the people working on it were doing. [Available upon request]

Aeneas subsequently learned that while JEA stalled for time, management was going behind Aeneas's back to the interconnecting carrier, providing the needed fiber for the project and leasing collocation space to the carrier in the JEA Central Office. An email from JEA's General Counsel, dated February 4, 2007, confirms the subterfuge-

"Aeneas did request quotes regarding lease of dark fiber from the Aeneas offices to the TVA substation. As you may recall, Aeneas requested more fibers within our existing route than JEA had available. Additionally, it was determined that Aeneas required a redundant route which would have to be installed by JEA. The economy of constructing a redundant route is undetermined at this point. It would be useful for JEA to know what uses are planned for the fiber route requested.

JEA is in fact renting dark fiber to [xxxx] Networks, a long haul carrier able to establish a redundant route through Southwest Tennessee Electrical Cooperative."

The route to the adjacent electric co-op, the collocation tenant, and ownership of infrastructure, were exactly the business opportunities Aeneas sought, only to have its local governmental utility usurp its position. Notice the government's inappropriate interest in the kind of traffic Aeneas planned to bring to town over the fiber.

Obviously, if JEA Telecom can utilize the public's utility poles without a contract, it is discriminatory for JEA Electric Division to require Aencas to have one. But without the certainty of the formula provided in the federal act, and the dispute resolution process, and possibility of punitive repercussions, exempt entities- especially in small towns- can easily abuse their control over network infrastructure to advance their own services at the expense of aspiring private entrepreneurs.

With federal policy now committed to requiring wireline CLECs and ISPs to find redundant and alternative facilities, it is imperative that the federal government police all local owners of the distribution infrastructure/poles for conflicts of interest, whether they are 'sub-divisions of the state' or otherwise.

We do hope you will take these concerns to Congress. Thank you.

Sincerely,



Paul F. Rice

Cc: Competition Policy Division [cpdcpolres@fcc.gov](mailto:cpdcpolres@fcc.gov)  
Best Copy [fcc@bepiweb.com](mailto:fcc@bepiweb.com)