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August 7, 2014

*Via Electronic Filing and
Via Federal Express*

Ms. Sharla Dillon, Docket Manager
Dockets and Records Office
Tennessee Regulatory Authority
502 Deaderick Street, 4th Floor
Nashville, Tennessee 37243

RE: Complaint of Aeneas Communications, LLC against Jackson Energy Authority –
Docket No. 14-00070

Dear Ms. Dillon:

We have enclosed for filing an original and four (4) copies of the *Jackson Energy Authority Motion To Dismiss and Motion in Opposition To Commencement of a Contested Case* and the *Answer of Jackson Energy Authority To Complaint and Request For Interim Relief* for filing in the above-captioned docket.

If you have any questions about the attached, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Smith', with a long, sweeping horizontal line extending to the right.

Mark W. Smith

MWS:cjb

cc: Henry Walker, Esq.
Teresa Cobb, Esq., JEA General Counsel

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

NASHVILLE, TENNESSEE

COMPLAINT OF AENEAS)	
COMMUNICATIONS, LLC AGAINST)	Docket No. 14-00070
JACKSON ENERGY AUTHORITY)	

JACKSON ENERGY AUTHORITY
MOTION TO DISMISS AND
MOTION IN OPPOSITION TO COMMENCEMENT OF A CONTESTED CASE

Jackson Energy Authority (“JEA”) files this *Motion to Dismiss and Motion in Opposition to Commencement of a Contested Case* pursuant to Tenn. R. & Regs. 1200-1-2-.02 and .03 in response to the *Complaint and Request for Interim Relief* (the “Complaint”) of Aeneas Communications, LLC (“Aeneas”).

Summary

In its Complaint, Aeneas asks that the Tennessee Regulatory Authority (the “Authority”) actively regulate the terms and conditions under which JEA would provide a host of broadband services over JEA’s fiber-to-the-home network. More significantly, Aeneas asks that the Authority create a new, unprecedented regulatory structure for broadband services that would permit one carrier to force access to another carrier’s network based upon a TRA-determined wholesale discount and TRA-determined terms and conditions.

As Aeneas admits, JEA is now a market-regulated provider operating pursuant to Tenn. Code Ann. § 65-5-109(m). As such, the Authority’s jurisdiction over JEA is quite limited. Additionally, since the enactment of the Broadband Business Certainty Act of 2006, the law in Tennessee has been clear that the Authority does not have state law jurisdiction over high-speed broadband services provided by any carrier. Tenn. Code Ann. §§ 65-5-201 – 203. In 2008, the Authority rejected Aeneas’ attempt to hold JEA to requirements usually imposed on incumbent

carriers.¹ Even incumbent carriers' obligations to provide unbundled network elements under the federal Telecommunications Act of 1996 are greatly diminished.

Notwithstanding this great weight of authority against it, Aeneas now attempts to assert a new cause of action based on Section 706(a) of the Federal Telecommunications Act, 47 U.S.C. 1302(a), broadly asserting that Section 706(a) affirmatively requires JEA to offer competitors access to its broadband transmission facilities on commercially reasonable terms and conditions. In support of this argument, Aeneas generally cites the decision of the United States Court of Appeals for the District of Columbia in *Verizon v. FCC*, 740 F.3d 623 (2014). In a single sentence appearing at the bottom of Page 7 of the Complaint, Aeneas attempts to assert a general rule of law based upon its one-sentence summary of six pages worth of the Court of Appeals' legal analysis – legal analysis that merely concluded, in dicta, that Section 706(a) may, in certain circumstances, provide authority to the FCC to regulate broadband services in certain cases. However, the *Verizon* Court was clear that that the exercise of regulatory authority under Section 706(a) must both be within the regulating agency's subject matter jurisdiction and be designed to achieve the particular purpose set forth in Section 706(a) – “to ‘encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.’” *Verizon*, 740 F.3d at 640. Contrary to Aeneas' contention, there is no uniform federal law requiring JEA to offer competitors access to its broadband transmission facilities. The FCC has not taken any steps to do promulgate rules or delegate jurisdiction to the Authority to regulate broadband services under the federal Telecommunications Act, and Section 706(a) does not provide any free-standing jurisdiction to the Authority to promulgate such rules on its own.

¹ *Order Resolving Objections to Discovery Requests*, Docket No. 07-00201 (January 11, 2008), as upheld by *Order Denying Interlocutory Appeal* (April 28, 2008).

Aeneas' contention is similarly flawed from a factual standpoint as well. Section 706(a) is narrowly focused on efforts to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans," and as the Court of Appeals recognized in *Verizon*, 740 F.3d at 640, Section 706(a) only provides authority to promulgate regulations that will fulfill this specific statutory goal. Aeneas has not alleged (nor could it) that permitting one carrier to force access to another competitive carrier's facilities-based network will in any way encourage the further development of additional advanced telecommunications networks. In fact, it is quite obvious that the purpose of Aeneas' Complaint is to expressly permit Aeneas to avoid constructing its own network.

Finally, Aeneas' Complaint is procedurally defective as well. If granted, the relief requested in the Complaint would represent a fundamental sea change in the broadband regulatory landscape nationally and at the State level. As such, the requested relief, if granted at all, may only be accomplished through a generic rule-making proceeding. A contested case is not the appropriate vehicle for the establishment of such a fundamental change in state law.²

For these reasons, JEA submits that the Authority should dismiss the Complaint and should deny Aeneas' request that the Authority convene a contested case.

ANALYSIS

The TRA should dismiss Aeneas' Complaint or decline to commence a contested case because Aeneas' request is not supported by state or federal law. Additionally, even if there were merit to Aeneas' Complaint (which JEA strongly contends there is not), Aeneas' requested relief is so far-reaching and would be such a fundamental change in the telecommunications

²In *Tennessee Cable Television Association v. Tennessee Public Service Commission*, 844 S.W.2d 151, 162 (Tenn.Ct.App. 1992), the Court of Appeals held that a rulemaking proceeding is the appropriate proceeding when an agency uses its legislative power to implement a generally worded statute.

regulatory landscape that the requested relief should only be considered within the confines of a generic rule-making proceeding.

1. **As a matter of state law, the Tennessee General Assembly has deregulated broadband services and has broadly limited the Authority's jurisdiction over market-regulated carriers like JEA.**

Through a steady series of state legislative enactments, the Tennessee General Assembly has removed broadband services from the jurisdiction of the Authority and has greatly limited the Authority's on-going jurisdiction over traditional telecommunications providers that have elected to become market-regulated companies.

In 2006, the Tennessee General Assembly enacted the Broadband Business Certainty Act of 2006 (the "2006 Act"), Tenn. Code Ann. §§ 65-5-201-203. That legislation squarely covers the vast majority of services that are the subject of Aeneas' Complaint. In the 2006 Act, the General Assembly defined broadband services to mean "any service that consists of or includes a high-speed access capability to transmit at a rate that is not less than 200 kilobytes per second (200 Kbps), either in the upstream or downstream direction" that, among other things, "[is] used to provide access to the Internet" Tenn. Code Ann. § 65-5-202(a)(1)(A). With respect to those services, the General Assembly plainly stated that the Authority "shall not exercise jurisdiction of any type over or relating to broadband services, regardless of the entity providing the services." Tenn. Code Ann. § 65-5-203. While the General Assembly preserved the Authority's jurisdiction under the federal telecommunications laws, the 2006 Act eliminated the Authority's state law jurisdiction over the broadband transport services that are the primary focus of Aeneas' Complaint.

In 2009 and 2013, the Tennessee General Assembly enacted additional regulation that effectively chose market-based competition over traditional regulation in the context of telecommunications carriers. In 2009, the Tennessee General Assembly enacted the original Market Regulation Act of 2009, which was codified at Tenn. Code Ann. § 65-5-109(m) & (n), and those two subsections defined the exclusive jurisdiction that the Authority holds over carriers like JEA that elect market-based regulation.³ Neither of these subsections provides the Authority with jurisdiction to grant the relief set forth in the Complaint.

The Market Regulation Act of 2009 did preserve limited jurisdiction over matters where federal law delegated jurisdiction to the Authority, but the same law also required that the Authority apply federal substantive law in addressing such matters. Specifically, Tenn. Code Ann. § 65-5-109(m) provides, in relevant part:

Notwithstanding the limitations on authority jurisdiction over market-regulated companies under state law as set forth in this section, it is the express intent of the general assembly that the Tennessee regulatory authority is authorized as a matter of state law to receive any jurisdiction delegated to it by the federal 1996 Telecommunications Act, in 47 U.S.C. § 214(e), or federal communications commission ("FCC") orders or rules, including, without limitation, jurisdiction granted to hear complaints regarding anti-competitive practices, to set rates, terms and conditions for access to unbundled network elements and to arbitrate and enforce interconnection agreements. In addition, the authority shall continue to exercise its jurisdiction in its role as a dispute resolution forum to hear complaints between certificated carriers, including complaints to prohibit anti-competitive practices and to issue orders to resolve such complaints. The authority shall interpret and apply federal, not state, substantive law, which is hereby adopted so that such law is applicable to intrastate services for the purpose of adjudicating such state complaints.

As noted in Section B, below, however, the FCC has not delegated any additional jurisdiction to the Authority to address matters referenced in the Complaint, and there is no other binding, uniform federal law that supports Aeneas' requested relief.

³On September 18, 2012, JEA filed its notice of election of market regulation in Docket No. 12-00110.

In 2013, the General Assembly amended the original Market Regulation Act of 2009 and, among other things, removed the Authority's remaining jurisdiction with respect to the requirement of certificates pursuant to Tenn. Code Ann. § 65-4-201.⁴ As the Authority has already ruled in Docket No. 12-00060, this legislative change removed the Authority's jurisdiction to enforce requirements or conditions to include in a carrier's certificate of convenience and necessity.⁵ Based upon the holding in the *BTES* case, any claim of Aeneas under JEA's current certificate of convenience and necessity is without merit and must fail.

2. **Section 706 of the Federal Telecommunications Act and Sections 201 and 201 of the Communications Act of 1934 do not support Aeneas' Complaint.**

Section 706(a) of the federal telecommunications act does not, from a legal or a factual standpoint, provide the Authority jurisdiction to grant Aeneas' requested relief. From a legal standpoint, Aeneas has plucked dicta from one United States Court of Appeals case on an unrelated matter and attempted to present it as legally binding precedent for the Authority to consider. Additionally, Aeneas has failed to present a set of facts that would justify the application of Section 706(a) even if the FCC had promulgated orders or there was uniform federal law on the topic.

Section 706(a) of the Federal Telecommunications Act of 1996, 47 U.S.C. § 1302(a), provides in relevant part:

The [FCC] and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . by utilizing, in a manner consistent with the public interest, convenience and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local

⁴ Chapter 61 of the 2013 Public Acts of the Tennessee General Assembly.

⁵ See *In re Application of Bristol Tennessee Essential Services for Expanded Certificate of Convenience and Necessity to Provide Competing Telecommunications Services*, Final Order, Docket No. 12-00060 (October 16, 2013) (the "*BTES* case").

telecommunications market or other regulating methods that remove barriers to infrastructure investment.

While Section 706(a) was originally enacted as part of the federal Telecommunications Act of 1996, the January 2014 decision of the United States Court of Appeals for the D.C. Circuit in *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014), has very recently raised its profile within the regulatory arena. In the *Verizon* case, the Court of Appeals considered a challenge to the FCC's net neutrality rules. While the Court of Appeals ultimately struck down two of the FCC's rules, the decision in *Verizon* suggested in dicta that the FCC could utilize Section 706 to regulate broadband Internet access services in certain ways. Specifically, the *Verizon* Court upheld the FCC's determination that Section 706 provides it "affirmative authority to enact measures encouraging the deployment of broadband infrastructure," but also found that the FCC had exceeded this authority by imposing requirements that contravene express statutory mandates under the federal telecommunications laws. *Verizon*, 740 F.3d at 628.

While the scope and application of Section 706(a) is a complex issue of law in the net neutrality arena, it is actually quite simple – and simply inapplicable – in the context of the matters raised in the Complaint. In upholding the FCC's interpretation of the scope of Section 706, the *Verizon* Court focused on three foundational principles. First, Section 706 must be read in the context of other provisions of the federal Communications Act including, "most importantly, those limiting the Commission's subject matter jurisdiction" *Verizon*, 740 F.3d at 640. In expanding upon this point, the *Verizon* Court held that any regulatory action authorized by Section 706(a) "would thus have to fall within the Commission's subject matter jurisdiction over such communications – a limitation whose importance this court has recognized in delineating the reach of the Commission's ancillary jurisdiction." *Verizon*, 740 F.3d at 640. In other words, the authority under Section 706(a) is ancillary to and must be connected with

underlying jurisdiction over the matter. Second, the FCC may only enact regulations that are designed to achieve the particular purpose set forth in Section 706(a) – to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.” *Verizon*, 740 F.3d at 640. Third, as noted above, any new requirements cannot contravene or conflict with other provisions of the federal telecommunications laws.

Aeneas’ Complaint fails on all three counts. With respect to the Authority’s underlying subject matter jurisdiction under state law, through the enactment of the Broadband Business Certainty Act of 2006 and the Market Regulation Act of 2009, as amended, there is clearly none. While the provisions of Tenn. Code Ann. § 65-5-109(m) may provide a basis for the Authority to look to Section 706(a) in the first place, the *Verizon* decision sends the question back to the underlying state law to determine if there is foundational jurisdiction upon which the ancillary powers under 706(a) could be based. Clearly, there is no underlying state law jurisdiction here.

Second, from a factual standpoint, Aeneas has not alleged any facts suggesting that the application of Section 706(a) would be appropriate. Section 706(a) plainly states that the purpose of the regulatory activity must be to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.” Aeneas has not suggested – in any way – that the requested relief will “promote competition in the local telecommunications market” or will somehow “remove barriers to infrastructure investment,” as would be required to utilize authority under Section 706(a). In fact, Aeneas’ Complaint seeks to allow Aeneas to avoid making investment in infrastructure and plainly would discourage facilities based carriers from expanding their own facilities if those carriers would be required to share the facilities with their competitors and incur the costs of negotiating or arbitrating interconnection agreements.

Third, the relief requested in the Complaint is also plainly out of step with the general structure of long-standing telecommunications law. While incumbent carriers were required to provide unbundled network elements and to sell their services for resale on a wholesale basis to other carriers under Section 251(c) of the federal Telecommunications Act of 1996, 47 U.S.C. § 251(c), there were no similar obligations on competitive carriers like JEA. The Authority has previously rejected Aeneas' attempt to impose incumbent-like obligations on JEA and should do so again here.

Aeneas' invocation of Sections 201 and 202 of the Communications Act of 1934, 47 U.S.C. §§ 201 & 202, is similarly unavailing. The Market Regulation Act of 2009 does not provide jurisdiction over claims arising under these provisions of the 1934 Act, and these provisions are applicable to interstate services subject to the jurisdiction of the FCC.

3. **Aeneas' Complaint is procedurally defective, because the matters raised in the Complaint could only be addressed through a rulemaking proceeding.**

In addition to the legal and factual defects with Aeneas' Complaint, Aeneas' Complaint is procedurally defective as well. While JEA believes that the Authority should summarily dismiss the Complaint on its merits, the type of relief requested in the Complaint is the type of relief that could only be properly considered – if at all – within a generic rulemaking proceeding. While the line between the Authority's adjudicatory and rulemaking powers is not always clear, under the relevant case law, a rulemaking proceeding would plainly be required here.

In *Tennessee Cable Television Association v. Tennessee Public Service Commission*, 844 S.W.2d 151, 162 (Tenn. Ct. App. 1992), the Tennessee Court of Appeals referenced the holding in *Metromedia, Inc. v. Director, Division of Taxation*, 97 N.J. 313, 478 A.2d 742 (1984) and found the *Metromedia* test was compatible with its own view of when rulemaking rather than

contested case proceedings are required. Acknowledging that drawing the distinction may sometimes be difficult, in the *Metromedia* case, the New Jersey Supreme Court held that an agency's determination should take the form of rulemaking when:

“[If] it appears that the agency determination, in many or most of the following circumstances, (1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is, prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in an official and explicitly agency determination, adjudication or rule, or (ii) constitutes a material and significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of the law or general policy.

Metromedia, 478 A.2d at 751.

Applying the *Metromedia* test to Aeneas's Complaint, a rulemaking hearing rather than a contested case would clearly be required on all points. The relief sought in the Complaint would embody broad statements of new regulatory policy not found in the statutes, and would apply to a large segment of the telecommunications industry. The relief sought in the Complaint would prescribe a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the Authority's enabling legislation, and it would develop an administrative regulatory policy in the nature of the interpretation of the law.

Even if there were merit to Aeneas' Complaint, a rulemaking proceeding – rather than a contested case – would be the required forum in which to address Aeneas' contentions.

CONCLUSION

There is no legal or factual basis for the relief that Aeneas requests in the Complaint and, for the reasons set forth in this Motion, the Authority should dismiss Aeneas' Complaint or decline to commence a contested case.

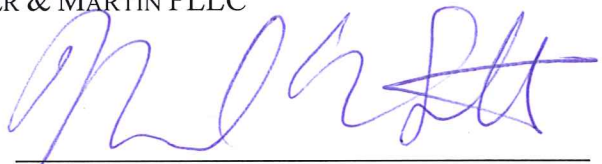
Respectfully submitted,

JACKSON ENERGY AUTHORITY

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Attorneys for: Jackson Energy Authority

Dated: August 7, 2014

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of August, 2014, a copy of the foregoing document was served on the parties of record, via hand delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

Henry Walker, Esq.
Bradley Arant Boult Cummings, LLP
1600 Division Street, Suite 700
Nashville, Tennessee 37203



Mark W. Smith

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

NASHVILLE, TENNESSEE

COMPLAINT OF AENEAS)	
COMMUNICATIONS, LLC AGAINST)	Docket No. 14-00070
JACKSON ENERGY AUTHORITY)	

**ANSWER OF JACKSON ENERGY AUTHORITY
TO COMPLAINT AND REQUEST FOR INTERIM RELIEF**

Jackson Energy Authority (“JEA”) files this *Answer* to the *Complaint and Request for Interim Relief* (the “Complaint”) of Aeneas Communications, LLC (“Aeneas”).

FIRST DEFENSE

The Complaint fails to state a claim against JEA upon which relief can be granted.

SECOND DEFENSE

The Authority lacks subject matter jurisdiction over the relief requested in the Complaint.

THIRD DEFENSE

Even if the Authority held subject matter jurisdiction over the matters raised in the Complaint (which JEA submits that it does not), the requested relief would represent such a material and significant change in telecommunications law that it could only be considered within a general rulemaking proceeding.

FOURTH DEFENSE

Without waiving any defenses, JEA responds to the Summary section of the Complaint and the specific allegations of the Complaint as follows:

Answer to Summary

JEA admits that it is a municipal provider of electric, gas and water service and that it has a broadband communications network and serves more than 18,000 residential and commercial customers in Madison County.

JEA admits that it offers telephone service pursuant to a certificate of convenience and necessity issued by the Tennessee Regulatory Authority although JEA would show that it elected market regulation by letter dated September 18, 2012, a copy of which is filed in Docket No. 12-00010. JEA admits that it has provided Aeneas access to JEA's transmission facilities under an agreement. JEA admits that this agreement was submitted to the Authority, but avers that approval was not required pursuant to the federal Telecommunications Act.

JEA admits that its agreement with Aeneas expired on March 1, 2014. JEA also admits that the agreement provides a "migration" period which ends September 1, 2014. JEA avers that it is not under a legal obligation to provide wholesale services to Aeneas after the "migration" period expires. JEA states that it and Aeneas have both tried to negotiate a new agreement, but have not been successful.

In the sixth paragraph of its Summary, Aeneas attempts to set forth legal theories which JEA denies are applicable to this case.

In the seventh paragraph of its Summary, Aeneas alleges that JEA has refused to offer Aeneas the use of JEA's broadband facilities on commercially reasonable terms. JEA denies these allegations.

JEA denies the allegations of the eighth paragraph of the Aeneas' Summary, and JEA submits that the Authority does not have the jurisdiction or authority to direct JEA to do what Aeneas requests be done.

Any allegations in the Aeneas' Summary which are not admitted, denied or explained are hereby specifically denied.

Answers to Specific Allegations

1. Upon information and belief, JEA admits the allegations of Paragraph 1 of the Complaint.

2. JEA admits the allegations of Paragraph 2 of the Complaint, but avers that as set forth in Tenn. Code Ann. § 65-5-109(m), JEA is exempt from the Authority's jurisdiction except as set forth in Tenn. Code Ann. § 65-5-109(m) & (n).

3. JEA admits Ben Lovins stated in a January 16, 2014 letter, that JEA would offer "rates for circuits on a negotiated basis as we do across the market." JEA denies that this statement meant, as Aeneas contends, that Aeneas could only negotiate rates as a retail provider without the benefit of a discount. JEA denies that Exhibit B to Aeneas' Complaint contains all of the letters exchanged between Aeneas and JEA, and JEA has attached a letter dated May 30, 2014 from JEA to Aeneas, which included discounts for both Residential Service Bundling and Volume (see letter from Ben Lovins to Jonathan Harlan dated May 30, 2014 with proposed Master Services Agreement, Attachment A). JEA denies that Jim Ferrell, JEA President and CEO, stated to Aeneas, "You need to look at it from our perspective. We would make more margin with you off the network. We need your margin."

4. JEA admits that on April 30, 2014, JEA proposed a Master Services Agreement containing rates for broadband transmission service. JEA denies Aeneas' allegations that a speed adder was not a part of its proposal. Further, JEA avers that Aeneas again fails to inform the Authority of the May 30, 2014 JEA offer which includes discounts for Residential Service Bundling and Volume. JEA denies the remaining allegations of Paragraph 4.

5. JEA denies that broadband access for Aeneas would increase from \$14,034.42 per month to \$43,630.00 per month.

6. JEA admits that the proposed Master Services Agreement also states that JEA will offer Aeneas a "residential analog port – transport only," *i.e.*, traditional telephone service, for "\$12 per line plus 50% of total retail charges per line over \$15." JEA specifically denies

Aeneas' allegations that there is no revenue sharing provision in the current ICA. JEA has attached as Attachment B to this Answer a copy of page 24 of the 2004 agreement with Aeneas, which includes revenue sharing provisions for both residential and commercial telephone services.

7. JEA admits that Aeneas has quoted portions of Tenn. Code Ann. § 65-5-109(m) in Paragraph 7 of the Complaint, but JEA denies that the Authority has jurisdiction over the Complaint.

8. JEA admits that Aeneas has quoted portions of 47 U.S.C. §§ 201 and 202 in Paragraph 8 of the Complaint, but JEA denies that these sections provide the Authority jurisdiction over the Complaint.

9. JEA admits that Aeneas has quoted portions of 47 U.S.C. § 1302(a) in Paragraph 9 of the Complaint, but JEA denies that this section provides the Authority jurisdiction over the Complaint.

10. As a market-regulated carrier, JEA denies that Tenn. Code Ann. §§ 65-5-202 and 203 provide any jurisdiction to the Authority over the Complaint.

11. JEA denies that Aeneas has set forth a valid cause of action in Paragraph 11 of the Complaint.

12. JEA denies that Aeneas has set forth a valid cause of action in Paragraph 12 of the Complaint.

13. JEA denies that Aeneas has set forth a valid cause of action in Paragraph 13 of the Complaint.

14. JEA denies that the relief sought in Paragraph 14 of the Complaint is appropriate or within the jurisdiction of the Authority.

15. JEA denies that the relief sought in Paragraph 15 of the Complaint is appropriate or within the jurisdiction of the Authority.

Except as specifically addressed in this Answer, JEA denies the remaining allegations of the Complaint.

Based upon the foregoing, JEA request that the Authority decline to convene a contested case and dismiss the Complaint.

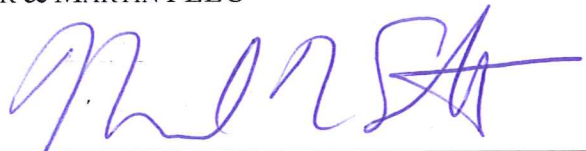
Respectfully submitted,

JACKSON ENERGY AUTHORITY

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Attorneys for: Jackson Energy Authority

Dated: August 7, 2014

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of August, 2014, a copy of the foregoing document was served on the parties of record, via hand delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

Henry Walker, Esq.
Bradley Arant Boult Cummings, LLP
1600 Division Street, Suite 700
Nashville, Tennessee 37203



Mark W. Smith

ATTACHMENT A

To

Answer of Jackson Energy Authority
to Complaint and
Request for Interim Relief



Jackson Energy Authority

Ben Lovins

Senior Vice President, Telecommunications Division

May 30, 2014

Aeneas Internet and Telephone
300 North Cumberland Street, Suite 200
Jackson, TN 38301-5406

RE: Aeneas-JEA Rates and Agreements

Dear Jonathan:

As previous letters have outlined, Section 2.4 of the Aeneas-JEA Interconnect Agreement (the ICA) states, in part, "If, after the expiration of this Agreement or after timely mediation, a Subsequent Agreement had not been executed by the Parties, this Agreement shall terminate." That section provides that upon termination, JEA must continue to provide Aeneas with Network transport for a period of six (6) months. This period is called the "Migration Period."

The ICA has terminated. JEA has performed, and will continue to perform, under Section 2.4 through the Migration Period, which expires on September 1, 2014.

I am including rates with this letter which take into account the volume Aeneas brings to the JEA network and the relationship between the parties. These rates will go into effect on September 1, 2014. Since Aeneas and JEA are no longer under an ICA, a Master Services Agreement must be executed.

Very truly yours,

Ben Lovins

Jackson Energy Authority – Aeneas Internet and Telephone Master Services Agreement

This Master Services Agreement is entered into as of ____ May, 2014 (Effective Date) by and between Jackson Energy Authority (JEA) and Aeneas Internet and Telephone (Aeneas), (collectively or individually referred to as the Parties).

Whereas JEA is a provider of telecommunications services and Aeneas desires to purchase certain of these services from JEA, and JEA is willing to provide the services pursuant to the rates, terms and conditions set forth in this Master Services Agreement, any attachments or exhibits hereto, or in the applicable JEA tariffs.

The Parties do hereby agree as follows:

TERMS AND CONDITIONS

1. SERVICES

JEA will provide dedicated, switched access and private line services, local dial tone and 911 services (collectively and individually referred to as the Services) to Aeneas. A description of the Services and pricing is provided in Attachment A.

2. TERM

The Term of this Agreement shall be five (5) years from the Start of the Service Date of each Service.

3. PAYMENT AND BILLING

- (a) All JEA charges for the Services purchased by Aeneas shall be included on Aeneas' monthly bill from JEA. Such charges shall be individually listed by Service.
- (b) Aeneas is responsible for payment of all charges for the Services furnished under this Agreement.
- (c) Taxes, tax-like charges and other local, state or federally charged, imposed or authorized fees, charges and surcharges are not built into JEA's rates, and therefore, will be included on Aeneas' monthly bill. Aeneas agrees to pay all such amounts.
- (d) If Aeneas fails to pay all amounts due, JEA may charge Aeneas, in addition to all other payments due, all costs associated with the collection of past due amounts, including court costs, service fees, collection agency fees and attorney fees.

- (e) JEA reserves the right to require a security deposit from Aeneas to secure payment for the Services. Any such security deposit shall be returned to Aeneas in the net deposit amount upon full and final payment of all charges incurred under the Agreement.
- (f) JEA reserves the right to charge a late payment charge, not to exceed the highest rate allowed by law, on any amount due for the Services which is more than thirty (30) days past due.

4. ENFORCEABILITY

This Agreement is not valid and enforceable unless accepted and approved by JEA.

5. LIMITATION OF LIABILITY

JEA MAKES NO WARRANTY OR REPRESENTATION, EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO THE QUALITY, ACCURACY OR AVAILABILITY OF THE SERVICES. JEA DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE OR NON INFRINGEMENT. IN NO EVENT WILL JEA BE LIABLE FOR ANY DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH AENEAS' OR ANY OTHER PARTY'S USE OF OR INABILITY TO USE THE SERVICES INCLUDING ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER OR NOT THERE IS NEGLIGENCE BY JEA AND WHETHER OR NOT JEA HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES. JEA'S TOTAL AGGREGATE LIABILITY TO AENEAS FOR ANY CAUSE AND AENEAS' TOTAL REMEDY SHALL IN NO EVENT EXCEED THE AMOUNT ACTUALLY PAID BY AENEAS FOR THE SERVICES.

6. POWER OUTAGES

AENEAS EXPRESSLY ACKNOWLEDGES AND ACCEPTS THE SERVICES KNOWING THAT THE SERVICES DO NOT HAVE THEIR OWN POWER SOURCE AND ARE SUBJECT TO POWER OUTAGES WHICH MAY AFFECT AENEAS' ABILITY TO UTILIZE 911 SERVICES, HOME SECURITY MONITORING SERVICES, AND OTHER DEPENDENT SERVICES, UNTIL SUCH POWER IS RESTORED.

7. RELEASE OF PREMISES LIABILITY AND WAIVER OF SUBROGATION RIGHTS

In the event services in this Agreement include Co-Location Services, JEA's insurance policies shall insure the JEA Building and JEA's property therein against loss, damage, or destruction by fire or other casualty and the lease value thereof; and Aeneas' insurance policies shall insure Aeneas's property in the leased premises of JEA against loss, damage, or destruction by fire or other casualty. Both Parties shall include in their respective insurance policies: (a) a waiver of the insurer's right of subrogation against the other Party; (b) an express agreement that the policy will not be invalidated if the insured waives the right of recovery against any party responsible for a casualty covered by the policy before the casualty; or (c) any other form of permission for the other Party's release. If the waiver or permission is not, or ceases to be, obtainable, with or without additional charge, the insured party shall, upon learning that, promptly notify JEA. In the event Aeneas becomes unable to obtain such a waiver of insurance subrogation, Aeneas agrees to indemnify JEA for any subrogation claim made by Aeneas' insurer. Additionally, each Party hereby releases the other Party with respect to any claim (including a claim for negligence) which it might otherwise have against the other Party for loss, damages, or destruction with respect to its property by fire or other casualty (including lease value or business interest, as the case may be) occurring during the term of this Agreement and to the extent to which it is not prohibited under a policy or policies containing a waiver of subrogation or permissions to release liability or naming the other party as an additional insured, as provided above. The waiver of subrogation or permission for release referred to herein shall extend to the agents, affiliates and other Co-Location customers of JEA.

8. ADJUSTMENTS

JEA may, for regulatory reasons which adversely affect the cost of providing the Service, increase the rates charged to Aeneas, delete or modify services provided hereunder, or pass through to Aeneas all or a portion of any change or surcharge directly or indirectly related to such regulatory activity. JEA may also change the terms of its tariff and/or acceptable use policies. Aeneas' continued use of the Services shall be considered consent to any such changes.

9. SERVICE REVOCATION/TERMINATION

In the event that JEA reasonably believes that Aeneas is using a Service for any detrimental or unlawful purpose, or in contravention with the terms and provisions of this Agreement, without limiting any other legal remedies, JEA may immediately discontinue

such Service to the Aeneas without liability. Upon such occurrence any prepaid fees shall be forfeited by Aeneas. Aeneas agrees that any violation of the terms of this Agreement or illegal use by Aeneas may result in the termination of Service by JEA, without notice and at JEA's sole discretion. Revocation of Service by JEA does not relieve Aeneas of the obligation to pay any amounts due and/or owed up to the termination date.

10. EARLY TERMINATION BY AENEAS

By signing this Agreement, Aeneas agrees to maintain service with JEA for the Minimum Service Term. Early termination of this Agreement by Aeneas does not relieve Aeneas of the obligation to pay all fees owed under this Agreement for the duration of the Minimum Service Term.

11. GENERAL

This Agreement addresses the Services described in Attachments A and represents the entire understanding and agreement between the parties specifically regarding those Services only. Amendments to this Agreement must be in a writing signed by the parties. Notwithstanding anything to the contrary, Aeneas agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the Agreement or the Services, must be filed within one (1) year after such claim or cause of action arose or be forever barred. Except for the limitation above, no failure on the part of either party to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof. This Agreement is a legally binding contract between JEA and Aeneas which binds and inures to the benefit of their respective principals, successors and assigns. The format, words and phrases used in this Agreement shall have the meaning generally understood in the Telecommunications Industry. This Agreement shall be construed in accordance with its fair meaning and not against the drafting party.

12. MISCELLANEOUS

- (a) Force Majeure. Failure to deliver or transmit the Services due to any cause beyond the control of either party shall not constitute a breach of this Agreement.
- (b) Non-assignment. Neither party may assign this Agreement without the prior written consent of the other party.
- (c) Notice. Any notice required under this Agreement shall be in writing and sent via express mail service or registered U.S. Mail, return receipt requested. Notice shall be deemed effective upon receipt by the intended recipient.
- (d) Governing Law. Tennessee law shall govern the interpretation and enforcement of this Agreement.

I HAVE READ AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

Jackson Energy Authority

Aeneas Internet and Telephone

Title

Title

ATTACHMENT A

JEA will provide a demarcation point at the end-user premise for the services listed below. JEA will not be responsible for any wiring, equipment, or support beyond the demarcation point. All services are based on a 12-month minimum term of service. If the end-user chooses to move service to JEA retail from Aeneas retail within the first 12 months of the initial installation, JEA will reimburse Aeneas for installation charges paid by Aeneas to JEA that are associated with the initial service installation for such end-user.

A1. Commercial Asymmetric Data Transport Per Circuit – Non-Guaranteed Bandwidth

<u>Circuit Description</u>	<u>Downstream Bandwidth</u>	<u>Upstream Bandwidth</u>	<u>Monthly Recurring Charge</u>
65M/25M-NGC	65 Mbps	25 Mbps	\$70.00
80M/50M-NGC	80 Mbps	50 Mbps	\$125.00
100M/75M-NGC	100 Mbps	75 Mbps	\$350.00

A2. Commercial Metro E (P2P) Data Transport Per Circuit – Guaranteed Bandwidth

<u>Circuit Description</u>	<u>Downstream Bandwidth</u>	<u>Upstream Bandwidth</u>	<u>Monthly Recurring Charge</u>
2M/2M-GC	2 Mbps	2 Mbps	\$125.00
4M/4M-GC	4 Mbps	4 Mbps	\$219.00
6M/6M-GC	6 Mbps	6 Mbps	\$339.00
8M/8M-GC	8 Mbps	8 Mbps	\$450.00
10M/10M-GC	10 Mbps	10 Mbps	\$562.00
20M/20M-GC	20 Mbps	20 Mbps	\$960.00
40M/40M-GC	40 Mbps	40 Mbps	\$1,440.00

A3. Commercial Analog Port – Transport Only

Monthly Recurring Charge: \$20 per line plus 50% of total retail charges per line over \$25

A4. Commercial Service Installation

Per Service Installation with Truck Roll, Non-Recurring Fee,

Existing Fiber Drop at Demarcation Point: **\$100**

Electronic Change of Service Fee, Per Order without Truck Roll, Non-Recurring Fee: **\$20**

Per Service Installation with Truck Roll, Non-Recurring Fee,

New Drop Required: **\$100** plus the cost the fiber drop installation

A5. Residential Analog Port – Transport Only

Monthly Recurring Charge: \$12 per line plus 50% of total retail charges per line over \$15

A6. Residential Asymmetric Data Transport Per Circuit – Non-Guaranteed Bandwidth

<u>Circuit Description</u>	<u>Downstream Bandwidth</u>	<u>Upstream Bandwidth</u>	<u>Monthly Recurring Charge</u>
90M/50M-NGR	90 Mbps	50 Mbps	\$125.00
75M/25M-NGR	75 Mbps	25 Mbps	\$75.00
60M/10M-NGR	60 Mbps	10 Mbps	\$60.00

A7. Residential Service Installation

Per Service Installation with Truck Roll, Non-Recurring Fee,
Existing Fiber Drop at Demarcation Point: **\$100**

Electronic Change of Service Fee, Per Order without Truck Roll, Non-Recurring Fee: **\$25**

Per Service Installation with Truck Roll, Non-Recurring Fee,
New Fiber Drop Required: **\$100** plus the cost of the fiber drop installation

A8. Residential Service Bundling

For the period of time during which a residential Aeneas customer is being provided telephone transport, data transport, or both through this Agreement and concurrently subscribes to JEA's Standard Cable Service at that same premise, Aeneas will be entitled to the following bundled per circuit charges provided to that end user premise. For these premises, all charges referenced in A7 will still apply; however, these charges do not apply to JEA Cable Service installation, including fees related to new fiber drop installation.

<u>Circuit Description</u>	<u>Monthly Recurring Charges</u>
Residential Telephone Port, Transport Only	\$25.00 Flat Rate Per Port
75M/25M-NGR (Detailed Description in A6)	\$50.00

A9. Volume Discount

Aeneas shall be given a monthly volume discount based on the schedule below:

<u>Total Monthly Recurring Charges Billed to Aeneas</u>	<u>Corresponding Discount</u>
\$25,000 – \$50,000	2.5%

\$50,001 – \$75,000	4.0%
\$75,001 – \$100,000	6.0%
\$100,001 – \$150,000	9.0%
\$150,001 and greater	15.0%

ATTACHMENT B

To

Answer of Jackson Energy Authority
to Complaint and
Request for Interim Relief

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.

9.75