

BASS BERRY + SIMS_{LLC}

Nashville Office
150 Third Avenue South, Suite 2800
Nashville, TN 37201
(615) 742-6244

R. Dale Grimes
dgrimes@bassberry.com

RECEIVED
Washington D.C. Office
1201 Pennsylvania Avenue NW, Suite 300
Washington, DC 20004
(202) 27-2961
2019 JAN -6 PM 1:47
T.P.U.C. DOCKET ROOM

January 6, 2020

Via Email and Hand-Delivery

The Honorable Earl Taylor
Executive Secretary, Tennessee Public Utility Commission
c/o Tory Lawless, Dockets and Records Manager
502 Deaderick Street
4th Floor
Nashville, TN 37243
tpuc.docketroom@tn.gov

2000005

Re: Proposed Transaction Between Fiona Harlan, as Trustee of the Harlan Family Trust dated August 21, 2018, and Southwest Tennessee Electric Membership Corporation (Aeneas Communications, LLC)

Dear Mr. Taylor:

On behalf of Southwest Tennessee Electric Membership Corporation, Fiona Harlan, as Trustee of the Harlan Family Trust dated August 21, 2018, and Aeneas Communications, LLC, this letter advises the Tennessee Public Utility Commission ("TPUC") of a proposed transaction between these entities, and explains why, after analysis of the applicable laws and regulations, we believe this transaction does not require approval by the TPUC and that no filings with the TPUC are necessary.

Entities Involved

The following entities are relevant to the proposed transaction:

- Fiona Harlan as Trustee of the Harlan Family Trust dated August 21, 2018 ("Trustee");
- Aeneas Communications, LLC ("Aeneas"), a Tennessee limited liability company (all the membership interests of which are owned by the Harlan Family Trust); and
- Southwest Tennessee Electric Membership Corporation ("STEMC"), a Tennessee non-profit corporation.

Description of the Parties

a. Mrs. Harlan and the Harlan Family Trust ("Trust")

Fiona Harlan is the sole trustee of the Trust and the President of Aeneas. Mrs. Harlan became the sole trustee of the Trust and the President of Aeneas following the passing of her

husband, Johnathan V. Harlan ("Mr. Harlan") in November of 2018. Mr. Harlan was the founder, President, and Chief Executive Officer of Aeneas until he assigned his interests to the Trust.

The Trust is a revocable living trust created and certified on August 21, 2018, under Tennessee law, Tenn. Code Ann. § 35-15-1013. The Trust holds all of the membership interests in Aeneas.

b. STEMC

STEMC is a member-owned, nonprofit electric distribution cooperative with headquarters in Brownsville, Tennessee. STEMC provides electric service to portions of 11 counties in western Tennessee. STEMC does not provide telecommunications services.

c. Aeneas

Aeneas is a provider of communications services headquartered in Jackson, Tennessee. Aeneas is a competitive local exchange carrier registered in Tennessee and authorized to provide service throughout the state pursuant to a Certificate of Convenience and Necessity issued by this agency. Aeneas offers services through a combination of its own facilities and resale arrangements with other carriers, providing competitive local telecommunications, long distance communications, high-speed Internet, and Voice over Internet Protocol services primarily in western Tennessee.

Description of Proposed Transaction

Pursuant to a Purchase Agreement dated as of August 15, 2019, STEMC plans to acquire all of the membership interests in Aeneas from the Harlan Family Trust. STEMC will then own 100% of the ownership of and membership interests in Aeneas. Post-consummation, Aeneas will continue to exist and operate under the same name, and the transaction will not result in a change to the terms and conditions of service pursuant to which Aeneas provides service to its customers. Closing is expected to occur no later than mid-January 2020.

The consummation of the transaction and transfer of the Aeneas membership interests to STEMC will benefit Tennessee residents by permitting the continued, uninterrupted provision of high-quality service to customers. The transaction will not result in an interruption, reduction, loss, or impairment of service to any subscriber. Aeneas is a small telecommunications provider that will benefit from greater operational and administrative efficiencies as a result of the transaction and the acquisition by STEMC. Under STEMC's ownership Aeneas will be able to improve and expand the provision of competitive service in Tennessee.

Applicable Legal Provisions and Rationale

Aeneas is a telecommunications company providing competitive local exchange carrier services in Tennessee. Aeneas elected market regulation pursuant to Tenn. Code Ann. § 65-5-109 on September 11, 2019. (See Exhibit 1, attached).

Tennessee law provides that companies that elect market regulation are exempt from all TPUC jurisdiction except for the specifically enumerated items set forth in subsection (n) of the statute. Tenn. Code Ann. § 65-5-109(n). It is our understanding that the proposed transaction does not implicate any of the explicit items in subsection (n) that would give rise to TPUC jurisdiction. Though approval is sometimes required for a public utility to transfer its authority to provide utility services derived from its certificate of public convenience and necessity under Tenn. Code Ann. § 65-4-113(a), subsection (n) does not provide the TPUC jurisdiction over transfer of certificates from market-regulated companies under Tenn. Code Ann. § 65-4-113. A recent Commission letter regarding a similar proposed transaction between Loretto Telephone Company, Inc. et al. and Skybest Holding Company, LLC, confirmed that approval of a transfer of control governed by § 65-4-113 is not a regulatory requirement which applies to market-regulated companies. (See Exhibit 2, attached (Letter to A. Scott Ross, Feb. 9, 2018, TPUC Docket No 18-00010)). It is our further understanding that the TPUC may not impose requirements related to the issuance or maintenance of a certificate on any market-regulated entity or its affiliates under Tenn. Code Ann. § 65-5-109(v). Thus, the proposed transaction does not require any filings or TPUC approval.

Should you have any questions concerning this matter, please do not hesitate to contact me at the email address or telephone number listed above.

Sincerely,



R. Dale Grimes

RDG:clb

cc: Mr. Jerry Kettles, Chief of Economic Analysis and Policy Division, TPUC
Mr. Scott Sims, Vice President of Finance & Member Services, Southwest Tennessee
Electric Corporation



Internet

Telephone

Tennessee's Leading
Internet and Telephone Provider

www.aeneas.com

Electronically Filed in TPUC Docket Room on September 11, 2019 at 10:44 a.m.

September 11th, 2019

The Honorable Earl Taylor
Executive Director
Tennessee Public Utility Commission
c/o Tory Lawless
502 Deaderick Street, 4th Floor
Nashville, Tennessee 37243

Via email and US Mail

Re: Aeneas Communications, LLC's Notice of Intent to Operate Pursuant to Market Regulation.

Docket No. **19-00083**

Dear Mr. Taylor:

Enclosed for filing please find the original and five (5) copies of this letter to notify the Tennessee Public Utility Commission of the intent of Aeneas Communications, LLC a Tennessee LLC, to operate pursuant to market regulation, in accordance with T.C.A. § 65-5-109.

Please stamp one copy "filed" and return to me in the enclosed self-addressed stamped envelope.

Should you have any questions concerning this matter, please do not hesitate to contact me (731-554-9200) or Stephen Thorpe (731-554-9263)

Best Regards,

Fiona Harlan, President
Aeneas Communications, LLC

Cc: Stephen Thorpe





TENNESSEE PUBLIC UTILITY COMMISSION

502 Deaderick Street
Nashville, Tennessee 37243

February 9, 2018

A. Scott Ross, Esq.
Neal & Harwell
1201 Demonbreun Street, Ste. 1000
Nashville, TN 37203

Mr. Ross:

I am writing to you concerning your filing in TPUC Docket No. 18-00010. Based upon information in the *Joint Application For Approval Of Transfer of Control* ("Joint Application"), control of Loretto Telephone Company, Inc. (Loretto Telephone) and Loretto Communications Services, Inc. (Loretto LD) will be transferred to Skybest Holding Company, LLC (SkyBest). The transfer of control results from SkyBest purchasing 100% of the stock of LTC Holding Company, Inc. (LTC HoldCo). LTC HoldCo wholly-owns Loretto Telephone and Loretto LD.

Loretto Telephone notified the agency that it elected Market Regulation pursuant to a letter dated December 29, 2014 placed in Docket No. 14-00167. Loretto LD filed its notice that it elected Market Regulation on January 31, 2018 in Docket No. 18-00015. T.C.A. § 65-5-109(n) provides a description of the regulatory requirements that apply to companies that elect Market Regulation. The transfer of control described in the Notice is governed by T.C.A. 65-4-113 which is not a regulatory requirement that applies to companies that have elected Market Regulation. As such, the transfer of control described in the *Joint Application* does not require approval. Given that no approval of the transaction described in *Joint Application* is required, this docket will be closed.

If you have any questions concerning this matter feel free to call me at 615-770-6894.

Sincerely,

Jerry Kettles
Director, Economic Analysis

