

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 3, 2008

IN RE:)
)
COMPLAINT BY AENEAS COMMUNICATIONS, LLC) DOCKET NO.
AGAINST BELL SOUTH TELECOMMUNICATIONS) 02-01274
ALLEGING ANTICOMPETITIVE BUSINESS)
PRACTICES)

ORDER GRANTING REQUEST FOR LEAVE TO DISMISS TIME-DATED CLAIMS
& DIRECTING PARTIES TO SUBMIT JOINT ISSUES MATRIX
AND PROPOSED PROCEDURAL SCHEDULE

This matter is before the Hearing Officer upon the filing of a letter by Aeneas Communications, LLC (“Aeneas”) requesting leave to dismiss the time-dated claims set forth in its *Complaint* and to file its attached *Restated Petition of Aeneas Communications, LLC* (“*Restated Petition*”) filed with the Tennessee Regulatory Authority (“TRA” or the “Authority”) on September 15, 2006. A *Response to Restated Petition* denying the specific allegations identified by Aeneas as outstanding was filed by AT&T on October 16, 2006.

BACKGROUND

On December 5, 2002, the Authority received a letter from Aeneas alleging “questionable” trade practices by BellSouth Telecommunications, Inc.¹ (“AT&T”). The Authority forwarded the letter to BellSouth and requested a response thereto within thirty days. After receiving BellSouth’s data response, the Authority issued an Order on September 22, 2003² directing the Parties to attempt to resolve the dispute or to at least narrow the issues. This Order

¹ On January 23, 2007, the Authority approved a name change filed to BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee (hereinafter referred to as “AT&T”), in Docket No. 07-00001.

² See *Order Directing Parties To Meet To Resolve Disputed Matters, Appointing Mediator And Permitting Filing Of Complaint* (September 22, 2003).

also designated a mediator to dispose of any issues that remain unresolved by the Parties. Should the mediation prove unsuccessful, the Authority directed Aeneas to reassert the matter in a filing consistent with Tenn. Comp. R. & Regs. 1220-1-2-.09.

On May 6, 2005, the Authority issued an *Order Leaving Docket Open and Directing Parties to Provide Case Status* memorializing its decision made at the regularly scheduled Authority Conference held on March 14, 2005. In the May 6, 2005 Order, the Authority noted that it had not received any correspondence from the Parties regarding the status of negotiations. In fact, two requests for status reports issued by the TRA on May 14, 2004 and August 4, 2004 were unanswered. The Authority had received only one status report which was submitted by Aeneas on March 14, 2005. Nevertheless, Aeneas requested that the above-captioned docket be left open so that the Authority may settle any matters which remain unresolved by the Parties, and AT&T did not object to Aeneas' request. Periodically thereafter, the parties provided updates to the Authority concerning the status of the case and their attempts to resolve the disputes.

On September 15, 2006, Aeneas filed a letter requesting leave of the Authority to dismiss its time-dated claims against AT&T and to thereafter file its attached *Restated Petition* containing all outstanding issues to be resolved. In its *Restated Petition*, Aeneas asserts that there remain three claims for resolution by the Authority:

1. Confiscation of SEEMS overpayments;
2. Discriminatory pricing for collocation; and
3. AT&T's refusal to reimburse Aeneas for porting customer numbers (payment of Local Service Request ("LSR") charges).

On October 16, 2006, AT&T filed its *Response to Restated Petition*, therein denying Aeneas' allegations. In its *Response to Restated Petition*, AT&T denies all three claims asserted

by Aeneas and additionally asserts two affirmative defenses: failure to state a claim upon which relief can be granted and, specifically as to Aeneas' third claim, that the payment of LSR charges on a retroactive basis is barred by the doctrine of laches.

On December 18, 2006, the Authority issued an Order appointing General Counsel or his designee to serve as Hearing Officer for the purpose of identifying the issues, determining whether dismissal of the dated claims is appropriate, setting a procedural schedule to completion and preparing the matter for a hearing before the panel.³

FINDINGS AND CONCLUSIONS

Based on the record in this docket, the Hearing Officer finds that Aeneas' request for leave to dismiss its time-dated claims and to file its *Restated Petition* should be GRANTED. Further, the parties are directed to submit a joint matrix of issues and a proposed procedural schedule to completion no later than Monday, October 20, 2008.

IT IS THEREFORE ORDERED THAT:

1. Aeneas Communications, LLC's request for leave to dismiss its time-dated claims and to file its *Restated Petition* should be GRANTED.

2. The time-dated claims filed by Aeneas in its *Complaint* are dismissed with prejudice, and the claims presented in the *Restated Petition* may be considered by the Authority panel at a Hearing on the merits.

3. The parties shall submit a joint issues matrix and a proposed procedural schedule to completion of the docket no later than Monday, October 20, 2008.



Kelly Cashman-Grams, Hearing Officer

³ See, *Order Appointing a Hearing Officer* (December 18, 2006).