BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2005-67-C - ORDER NO. 2005-233

MAY 23, 2005

IN RE: Petition of MCImetro Access Transmission Services, LLC for Arbitration with Farmers Telephone Cooperative, Inc., Hargray Telephone Company, Home Telephone Co., Inc. and PBT Telecom, Inc. under the Telecommunications Act of 1996.	))))))	ORDER DENYING AND DISMISSING PETITION TO INTERVENE

This matter comes before the Public Service Commission of South Carolina (the Commission) on a letter from Farmers Telephone Cooperative, Inc., Home Telephone Company, Inc., PBT Telecom, Inc., and Hargray Telephone Company (collectively, the RLECs) in opposition to a Petition to Intervene in this Docket filed by Time Warner Cable Information Services, LLC (TWCIS or Time Warner). The RLECs request that the Commission deny TWCIS' request to intervene in this docketed arbitration proceeding between MCImetro Access Transmission Services, LLC (MCI) and the individual RLECs. The Petition to Intervene is denied and dismissed, pursuant to the discussion and reasoning below.

The RLECs note that arbitration proceedings filed pursuant to Section 252 of the Telecommunications Act of 1996 (the Act) are not like the typical contested cases that the Commission presides over pursuant to the South Carolina Administrative Procedures Act (the APA). Instead, arbitration proceedings are a method used by two parties who have been unable to come to an agreement through negotiation. Arbitration proceedings are conducted by the Commission to assist the parties in resolving the differences they

have identified through the negotiation process in order to reach a final agreement between the parties. In other words, according to the RLECs, they are the culmination of the negotiation process contemplated under Sections 251 and 252 of the Act. Arbitration proceedings relate to a particular agreement and to the particular parties to that agreement. The RLECs state the belief that the fact that a third party may be interested in the issues or as TWCIS asserts, be interested in the final agreement itself, does not mean that those third parties should be permitted to participate in an arbitration proceeding. The negotiation process has taken place without Time Warner's involvement and, according to the RLECs, it would not be appropriate to interject TWCIS in the middle of the process now.

Further, the RLECs point out that the Commission has previously denied a Petition to Intervene filed by the Consumer Advocate in an arbitration proceeding. See Order No. 96-715 in Docket No. 96-262-C (BellSouth/ACSI Arbitration). Since the Consumer Advocate had a unique statutory role, the Commission did permit the Consumer Advocate to observe the proceedings, submit non-binding questions to the Arbitrator, and make opening and closing statements in the proceeding. However, the Commission specifically denied the Consumer Advocate's request to be granted intervenor status as a party of record. The RLECs point out that there is no unique statutory role to be filled by Time Warner in this case, but that Time Warner is merely a potential future customer of MCI in the service areas of the RLECs with whom MCI is seeking interconnection agreements. Therefore, under the RLECs' theory, Time Warner should not be permitted even to play a limited role in the resolution of this matter.

TWCIS, of course, takes a different view of the matter. Time Warner states that the South Carolina Administrative Procedures Act (APA) applies to this proceeding by definition, in that this case is a "contested case" under that Act. The APA states that a "contested case" is a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for a hearing." S.C. Code Ann. Section 1-23-310(3). According to Time Warner, there is an existing contractual relationship between TWCIS and MCI which provides that MCI carry TWCIS' traffic over the public switched telephone network. Also, Time Warner states that TWCIS' legal rights will be directly affected by the decisions made during this proceeding, and that the decisions will directly impact TWCIS' provisioning of services to its customers in the ILECs service area.

TWCIS states that it has a unique status in relation to this arbitration, in that it has an established agreement with MCI which will be directly affected by the decisions made in this proceeding. Lastly, Time Warner states that if it is not allowed to intervene, it will be substantially prejudiced by the administrative process. TWCIS states that one of the primary issues in dispute is whether MCI will be able to provide wholesale services to TWCIS. TWCIS notes that South Carolina recognizes that third party beneficiaries have rights in contracts created for their benefit, and that the disposition of this arbitration may as a practical matter impair or impede TWCIS' ability to protect its interest in the current agreement with MCI. We understand the arguments proffered by TWCIS, but we agree with the position taken by the RLECs. The Petition to Intervene filed by TWCIS must be denied and dismissed.

Clearly, TWCIS is not a party to the agreement to be arbitrated, and has therefore not been a participant in the negotiation process contemplated by Sections 251 and 252 of the Telecommunications Act of 1996. Arbitration proceedings, pursuant to the Telecommunications Act of 1996 are not like the typical contested cases that the Commission presides over pursuant to the APA. We agree with the RLECs that arbitration proceedings are a method used by two parties who have been unable to come to an agreement through negotiation. An arbitration proceeding is clearly the culmination of the negotiation process contemplated under Sections 251 and 252. Arbitration proceedings relate to a particular agreement and to the particular parties to that agreement. We disagree with TWCIS that its particular interest gives them the right to intervene as a party of record in this case. Accordingly, the Petition to Intervene is denied and dismissed. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice-Chairman

(SEAL)