BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2005-188-C - ORDER NO. 2006-111

MARCH 3, 2006

IN RE: Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Horry Telephone Cooperative, Incorporated Concerning Interconnection and Resale under the Telecommunications Act of 1996	))))))	ORDER DENYING AND DISMISSING PETITION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Reconsideration or Rehearing filed by MCImetro Access Transmission Services LLC (MCI), seeking reconsideration or rehearing of Order No. 2006-2. Because of the reasoning stated below, the Petition is denied and dismissed.

First, MCI limits itself to a discussion of why it believes that this Commission's rulings on issues 2, 4(a), 7, and 9 in this arbitration matter are erroneous and states that it "reserves its right to challenge in federal court all of the Commission's adverse rulings in the Order." Since MCI failed to allege what "adverse rulings" it was referring to, other than those in issues 2, 4(a), 7, and 9, this Commission has no way of evaluating and adjudicating any alleged errors in such additional "adverse rulings." Accordingly, we will limit our discussion to the allegations of error with regard to our rulings in issues 2, 4(a), 7, and 9.

The primary ruling in Order No. 2006-2 was that MCI is not entitled to obtain interconnection, traffic exchange or number portability arrangements from Horry for

purposes of providing services to Time Warner Cable Information Services, LLC (TWCIS), and other "indirectly" served customers, and that MCI is limited under the proposed interconnection agreement to providing telephone exchange service directly to MCI's end user customers, which the proposed agreement defines as "retail business or residential end-user subscriber[s]." See Order at 6 and 13-14. MCI takes exception to this holding and all of the subsidiary holdings that emanate from this holding on a number of grounds, including the statements that the holdings are erroneous as a matter of law, arbitrary and capricious, an abuse of discretion, and are clearly erroneous, in view of the reliable, probative and substantial evidence in the record of the proceeding. All of the allegations are without merit, and most, if not all of them, have been asserted previously and addressed in Order No. 2006-2. The findings and conclusions of Order No. 2006-2 are clearly supported by the evidence of record, and are well grounded in the law. In response to the allegations of error in MCI's Petition, we reaffirm our holdings in Order No. 2006-2.

We will respond to certain individual allegations of error in Order No. 2006-2. First, MCI alleges that this Commission "principally relies" on the decision in *Virgin Islands Telephone Corp. V. FCC*, 198 F. 3d 921 (D.C. Cir. 1999) for the proposition that a telecommunications carrier must offer a service "directly to the public, or to such classes of users to be effectively available directly to the public," and ultimately construes the term "telecommunications carrier" too narrowly. Order 2006-2 at 11. Such is not the case. Although this Commission cited the *Virgin Islands* case as some support for our conclusion, we also cited federal statutory law as a basis for our conclusion. Order 2006-2 thoroughly discussed the statutory definitions of "telecommunications carrier"

and "telecommunications service," found at Sections 153 (44) and 153 (46) of the Telecommunications Act of 1996, respectively, and found that the services that MCI is attempting to provide to TWCIS and other third parties carriers is not "telecommunications service" and MCI is not a "telecommunications carrier" for those purposes. Although the *Virgin Island* case construed the terms "telecommunications carrier" and "common carrier" as synonymous, our decision is not overruled by the later FCC statement that "[c]ommon carrier services may be offered on a retail or wholesale basis because common carrier status turns not on who the carrier serves, but on how the carrier serves its customers, i.e. indifferently and to all potential users." TRO at paragraph 153. Without more explanation on the part of MCI, this statement simply does not merit a modification of our position, when we base our holding on the statutory law.

Again, MCI raises issues in its Petition that have already been addressed in depth in Order No. 2006-2. For example, in the Petition on Page 7, MCI once again alleges that Horry Telephone Cooperative, Inc. (Horry) and Spirit Telecom, in which Horry has an ownership interest, provide VoIP and other services that compete with MCI and TWCIS, through interconnection and number porting arrangements and agreements that contain no limitations as to the types of service provided, or for providing service directly to the parties' end user customers. The allegation is that Horry is already doing what the Commission has said that MCI can not do. Order 2006-2 clearly holds that while Horry may have a small percentage ownership in Spirit Telecom, the evidence of record does not support MCI's claim that Spirit Telecom is an affiliate of Horry. Further, the Order holds that the testimony in the hearing shows that Horry does not provide VoIP service to customers, either itself or through an affiliated entity. See Order at 13. Clearly, MCI is

simply attempting to relitigate issues in its Petition which have already been decided by this Commission, based on the substantial evidence of record. Repeating the same issues on multiple occasions does not give them more validity. Order 2006-2 stated the correct holding on this issue.

The additional issues raised by MCI are similarly unavailing. We simply disagree with MCI's statement that our rulings on the issues presented are based on a mistaken interpretation of the law and the facts in this case. Order No. 2006-2 thoroughly analyzed the applicable law and applied it to the facts in this case. Our reexamination of these matters as occasioned by MCI's Petition does not persuade us to change our original decision. Accordingly, MCI's Petition is denied and dismissed.

This Order shall remain in full force and effect until further Order of this Commission.

BY ORDER OF THE COMMISSION:

Randy Mitchell, Chairman

ATTEST:

G. O'Neal Hamilton, Vice-Chairman

(SEAL)