

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Petition of MCImetro Access Transmission Services,)
L.L.C. d/b/a Verizon Access Transmission Services)
for Arbitration of an Interconnection Agreement with) **Case No. TO-2008-0037**
Embarq Missouri, Inc. d/b/a Embarq Under Section)
252(b) of the Telecommunications Act of 1996)

ORDER DISMISSING PETITION FOR ARBITRATION

Issue Date: December 11, 2007

Effective Date: December 21, 2007

On August 8, 2007,¹ MCImetro Access Transmission Service, L.L.C. d/b/a Verizon Access Transmission Services ("Verizon Access") filed its petition for arbitration with the Commission pursuant to the Telecommunications Act of 1996, Section 386.230, RSMo 2000, 4 CSR 240-2 and 4 CSR 240-36. The petition asked the Commission to arbitrate issues related to Verizon Access's negotiation of an interconnection agreement with Embarq Missouri, Inc. ("Embarq").

On October 5, the parties filed a joint motion to suspend the procedural schedule set for the arbitration stating that they were in the process of adopting a new interconnection agreement and that arbitration may no longer be necessary. The Commission suspended the procedural schedule, finding the parties' request to be reasonable.

On November 30, Verizon Access filed a Notice of Dismissal pursuant to Commission Rule 4 CSR 240-2.116(1). Verizon Access served a copy of its voluntary dismissal on all parties to this matter.

Commission Rule 4 CSR 240-2.116 provides as follows:

(1) An applicant or complainant may voluntarily dismiss an application or complaint without an order of the commission at any time before prepared testimony has been filed or oral evidence has been offered, by filing a notice of dismissal with the commission and serving a copy on all parties. Once evidence has been offered or prepared testimony filed, an applicant or complainant may dismiss an action only by leave of the commission, or by written consent of the adverse parties.

(2) Cases may be dismissed for lack of prosecution if no action has occurred in the case for ninety (90) days and no party has filed a pleading requesting a continuance beyond that time.

(3) A party may be dismissed from a case for failure to comply with any order issued by the commission, including failure to appear at any scheduled proceeding such as a public hearing, prehearing conference, hearing, or mediation session.

(4) A case may be dismissed for good cause found by the commission after a minimum of ten (10) days notice to all parties involved.

Given the expeditious nature of arbitration proceedings, the parties had filed direct testimony in this action prior to the filing of the notice of dismissal. Consequently, the Commission must either grant leave for the dismissal, have received written consent from the adverse parties prior to dismissing the action, or find good cause to dismiss the action after a minimum of ten days notice to the parties.

As of this date, December 11, 2007, no party has filed a response to Verizon Access's Dismissal Notice. No party has objected to the dismissal of this action, and it appears that the parties have entered into, and that the Commission has approved, another interconnection agreement presumably resolving any issues between the parties.²

Indeed, there appears to be nothing in controversy between the parties and the Commission has previously recognized that "[t]he time and cost to hold hearings on [a]

¹ All dates throughout this order refer to the year 2007 unless otherwise noted.

matter when there is no genuine issue as to any material fact would be contrary to the public interest.”³ Consequently, the Commission finds good cause for, and grants leave for, dismissal of this action.

IT IS ORDERED THAT:

1. MCImetro Access Transmission Service, L.L.C. d/b/a Verizon Access Transmission Services’ Petition for Arbitration for an Interconnection Agreement, filed on August 8, 2007, is hereby dismissed.
2. This order shall be effective on December 21, 2007.
3. This case may be closed on December 22, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Harold Stearley, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 11th day of December, 2007.

² See Case Number TK-2008-0133.

³ Determination on the Pleadings, *In the Matter of the Application of Aquila Inc. for an Accounting Authority Order Concerning Fuel Purchases*, Case No. EU-2005-0041 (Oct. 7, 2004).