

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE ARBITRATION OF:</p> <p>COMMUNITY CABLE TELEVISION AGENCY OF O'BRIEN COUNTY, d/b/a THE COMMUNITY AGENCY AND TCA,</p> <p style="text-align:center">Petitioning Party,</p> <p style="text-align:center">v.</p> <p>MIDWEST WIRELESS IOWA L.L.C.,</p> <p style="text-align:center">Responding Party.</p>	<p style="text-align:center">DOCKET NO. ARB-06-3</p>
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ORDER DISMISSING PETITION FOR ARBITRATION

(Issued August 14, 2006)

On May 30, 2006, Community Cable Television Agency of O'Brien County, d/b/a The Community Agency and TCA (TCA), filed a petition with the Utilities Board (Board) requesting the Board arbitrate certain terms and conditions of a proposed Interconnection Agreement between TCA and Midwest Wireless Iowa L.L.C. (Midwest Wireless). The petition was filed pursuant to the provisions § 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 101-104, 110 Stat. 56 (1996) (hereinafter referred to as the "Act"). The petition has been identified as Docket No. ARB-06-3.

On June 20, 2006, Midwest Wireless filed a motion to dismiss the petition for arbitration, arguing the Board lacks jurisdiction under 47 U.S.C. § 252(b) to arbitrate

an interconnection agreement because the negotiation and arbitration process under 47 U.S.C. § 252 cannot be initiated by a formal negotiation request made by a competitive local exchange company (CLEC) to a commercial mobile radio service (CMRS) provider. Alternatively, Midwest Wireless argues the Board lacks jurisdiction because the petition for arbitration was filed more than 160 days after the request to negotiate was made.

On June 28, 2006, TCA filed its resistance to the motion to dismiss, arguing that the Federal Communications Commission (FCC) rules cited by Midwest Wireless were intended to ensure that "both incumbent and competitive carriers can obtain compensation terms consistent with the Act's standards through negotiated or arbitrated agreements."¹ With regard to Midwest Wireless's claim that the petition for arbitration was not timely filed, TCA argues that Midwest Wireless claimed it did not receive the initial request for negotiation that was sent on October 31, 2005, which prompted TCA to send another request for negotiation on January 30, 2006. TCA argues that Midwest Wireless should not be permitted to argue at this point that the October 31, 2005, date should govern the starting date for calculation of the filing of the arbitration petition after initially claiming that it was not received, prompting TCA to submit a new request on January 30, 2006.

On June 30, 2006, Midwest Wireless filed its answer to the petition for arbitration. A supplemental filing regarding the petition for arbitration was filed by

¹ 70 F.R. 16141-01 (2005), Summary, Action on Final Rule, 47 C.F.R. § 20.11.

TCA on August 4, 2006, consisting of copies of negotiated agreements entered into by TCA with other CMRS providers.

The Board's authority to consider issues raised through interconnection negotiations is set forth at 47 U.S.C. § 252(b)(1), which states:

During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

This statute limits the authority of a State commission to arbitrate to circumstances where an "incumbent local exchange carrier" has received a request for negotiation. That scope of authority has been expanded by the FCC pursuant to a Declaratory Ruling and Report and Order released February 24, 2005.² The FCC amended its rules to clarify that an incumbent local exchange carrier (ILEC) may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in 47 U.S.C. § 252.³

Although TCA points out that the FCC, in its summary of the final action on the changes to 47 U.S.C. § 22.11, indicates that the "rule changes will ensure that both incumbent and competitive carriers can obtain compensation terms consistent with the Act's standards through negotiated or arbitrated agreements," the language of the FCC's order and the actual rule do not cover a situation where a CLEC requests

² *In the Matter of Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, CC Docket No. 01-92, Declaratory Ruling and Report and Order, 20 FCC Rcd 4855 (2005).

³ *Id.* at ¶ 9.

interconnection from a CMRS provider, as is the case in this proceeding. 47 U.S.C.

§ 22.11(e) states:

An **incumbent** local exchange carrier may request interconnection from a commercial mobile radio service provider and invoke the negotiation and arbitration procedures contained in section 252 of the Act. A commercial mobile radio service provider receiving a request for interconnection must negotiate in good faith and must, if requested, submit to arbitration by the state commission. Once a request for interconnection is made, the interim transport and termination pricing described in § 51.715 of this chapter shall apply. (Emphasis added).

The FCC, in its discussion, stated:

In light of our decision to prohibit the use of tariffs to impose termination charges on non-access traffic, we find it necessary to ensure that LECs have the ability to compel negotiations and arbitrations, as CMRS providers may do today. Accordingly, we amend section 20.11 of our rules to clarify that an incumbent LEC may request interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in section 252 of the Act. (Footnotes omitted).⁴

In the petition for arbitration currently before the Board for consideration, a request for negotiation was made by TCA. TCA is not an ILEC, but is instead a CLEC. Although the FCC has expanded the authority of State commissions to include situations where a CMRS provider is provided with a request for negotiation,

⁴ *Id.* ¶ 16.

it only extends to requests made by ILECs. Because TCA is not an ILEC, the Board does not have the authority pursuant to 47 U.S.C. § 252 to consider the petition for arbitration.

Because the Board has determined it lacks jurisdiction pursuant to 47 U.S.C. § 252, it will not discuss the alternative arguments raised by Midwest Wireless in its motion to dismiss.

IT IS THEREFORE ORDERED:

The petition for arbitration filed by Community Cable Television Agency of O'Brien County, d/b/a The Community Agency and TCA, on May 30, 2006, is dismissed.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 14th day of August, 2006.