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BEFORE THE ARIZONA CORPORATION COMMISSION

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LEVEL 3 COMMUNICATIONS, LLC, Complainant *vs.* QWEST CORPORATION, Respondent	DOCKET NOS. T-01051B-05-0415 T-03654A-05-0415 **QWEST CORPORATION'S NOTICE OF FOURTH FILING OF SUPPLEMENTAL AUTHORITY**

Qwest Corporation ("Qwest") hereby files as supplemental authority the Opinion and Order on Petition for Arbitration entered on January 11, 2006, *In RE: Petition for MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Horry Telephone Cooperative, Inc. Concerning Interconnection and Resale under the Telecommunications Act of 1996*, Docket No. 2005-188-C, Order No. 2006-2, South Carolina Public Utility Commission (the "*Order*"). The *Order* is attached hereto. Qwest would like to call to the Commission's attention the portion of the *Order* designated as "Topic 2: ISP-Bound Traffic and Virtual NXX (Issues 3, 4(b) and 5)", which begins on the tenth page of the attached LEXIS publication of the *Order*.

RESPECTFULLY SUBMITTED this 28th day of March, 2006.

QWEST CORPORATION

By: _____

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IN RE: Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Horry Telephone Cooperative, Inc. Concerning Interconnection and Resale under the Telecommunications Act of 1996

DOCKET NO. 2005-188-C; ORDER NO. 2006-2

South Carolina Public Service Commission

2006 S.C. PUC LEXIS 2

January 11, 2006

OPINION: [*1]

ORDER RULING ON ARBITRATION

I. PROCEDURAL BACKGROUND

This matter comes before the Public Service Commission of South Carolina ("Commission") on the Petition for Arbitration ("Petition") filed by MCImetro Access Transmission Services, LLC ("MCI") for arbitration of certain issues pertaining to the terms and conditions of interconnection agreements between MCI and Horry Telephone Cooperative, Inc. ("Horry").

Pursuant to Section 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act"), n1 the negotiation of the Interconnection Agreement commenced on or about January 10, 2005. MCI filed its Petition, pursuant to the provisions of Section 252 of the Act, on June 20, 2005. MCI's Petition sets forth ten (10) unresolved issues between the Parties. Horry filed a response ("Response") on July 15, 2005, responding to the same issues raised in the Petition. Horry did not enumerate additional issues in their Response.

n1 *47 U.S.C. § § 252*(b)(1) and (2).

[*2]

The Parties filed a Joint Motion Regarding Procedure on July 27, 2005, requesting certain changes in the pre- and post-hearing procedures. Joseph Melchers, Esquire, was appointed by the Commission to serve as a Hearing Officer in the matter. Mr. Melchers issued a Hearing Officer Directive on August 11, 2005, extending the timeframe in which the Commission must resolve the unresolved issues remaining in this arbitration proceeding until January 11, 2006, modifying the briefing schedule, and making certain modifications in the procedure for conduct of the hearing.

A hearing on this Arbitration was held beginning on October 4, 2005, with the Honorable Randy Mitchell, Chairman, presiding. At the hearing, MCI was represented by Darra W. Cothran and Kennard B. Woods. MCI presented the Direct and Rebuttal Testimony of Greg Darnell.

Horry was represented at the hearing by M. John Bowen, Jr., and Margaret M. Fox. Horry presented the Direct and Surrebuttal Testimony of Douglas Duncan Meredith and of Valerie Wimer.

The Office of Regulatory Staff ("ORS") was represented at the hearing by Shannon B. Hudson. ORS did not present a witness.

In their pleadings, the Parties identified ten (10) unresolved [*3] issues that required the Commission's attention. The ten issues may be grouped conceptually into four topics for discussion purposes as follows: (1) Direct vs. Indirect Service (Issues 2, 4(a), 7 and 9); (2) ISP-Bound Traffic and Virtual NXX (Issues 3, 4(b) and 5); (3) Reciprocal Compensation Rate (Issue 10); and (4) Calling Party Identification (Calling Party Number ("CPN") and Jurisdictional Indicator Parameter ("JIP")) (Issues 1, 6 and 8). These issues are the same ten issues that were previously addressed by the Commission in the arbitration involving MCI and four other rural incumbent local exchange carriers in South Carolina in Docket No. 2005-67-C.

II. LEGAL STANDARDS AND PROCESSES FOR ARBITRATION

After a telecommunications carrier has made a request for interconnection with another telecommunications carrier, and negotiations have continued for a specified period, the Act allows either party to petition a state commission for arbitration of unresolved issues. *47 U.S.C. § 252*(b)(1). The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved, and must include all relevant [*4] documentation, including the position of each of the parties with respect to the unresolved issues. *47 U.S.C. § § 252*(b)(2)(A). A non-petitioning party to a negotiation under this section may respond to the other party's petition and may provide such additional information as it wishes within twenty-five (25) days after the state commission receives the petition. *47 U.S.C. § 252*(b)(3). The Act limits a state commission's consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and the response. *47 U.S.C. § 252*(b)(4).

Through the arbitration process, the Commission must now resolve the remaining disputed issues in a manner that ensures the requirements of Sections 251 and 252 of the Act are met. Once the Commission provides guidance on the unresolved issues, the parties will incorporate those resolutions into a final agreement that will then be submitted to the Commission for its final approval. *47 U.S.C. § 252*(e).

The purpose of this arbitration proceeding is the resolution by the Commission [*5] of the remaining disputed issues set forth in the Petition and Response. *47 U.S.C. § 252*(b)(4)(c). Under the Act, the Commission shall ensure that its arbitration decision meets the requirements of Section 251 and any valid Federal Communications Commission ("FCC") regulations pursuant to Section 252; and shall provide a schedule for implementation of the terms and conditions by the parties to the Agreement. *47 U.S.C. § 252*(c).

III. DISCUSSION OF ISSUES

As noted above, ten issues remain for the Commission to resolve, and those issues can be grouped as follows: (1) Direct vs. Indirect Service (Issues 2, 4(a), 7 and 9); (2) ISP-Bound Traffic and Virtual NXX (Issues 3, 4(b) and 5); (3) Reciprocal Compensation Rate (Issue 10); and (4) Calling Party Identification (CPN and JIP) (Issues 1, 6 and 8).

In this section, we will address and resolve the open issues that have not been settled by negotiation and, therefore, must be resolved by the Commission pursuant to Section 252(b)(4) of the Act. The issues which the Commission must resolve are set forth in this section, along with a discussion of each issue that sets [*6] forth the Commission's findings and conclusions.

TOPIC 1: DIRECT vs. INDIRECT SERVICE (Issues 2,4(a), 7 and 9)

We will discuss Issues 2, 4(a) and 7 together, because the argument is the same, and will address the separate but related Issue 9 separately.

ISSUE 2: Should End User Customer be defined as only the End User directly served by the Parties to the contract?

MCI's Position:

No. End User Customers may be directly or indirectly served. The Act expressly permits either direct or indirect service.

Horry's Position:

Yes. This agreement is limited in scope to the intraLATA traffic exchanged between customers of one party and the customers of the other party. Other carriers that provide local exchange services to customers and wish to exchange traffic with Horry must establish their own interconnection or traffic exchange agreements with Horry.

ISSUE 4(a): Should MCI have to provide service only directly to end users?

MCI's Position:

No. End User Customers may also be indirectly served by the Parties. The same "directly or indirectly" language is used in section 2.22 of Horry's model contract for defining interexchange customers.

Horry's [*7] Position:

For purposes of this agreement, yes. The traffic governed by this agreement is for telecommunications service provided by either Party to end-user customers.

ISSUE 7: Does this contract need this limit of "directly provided" when other provisions discuss transit traffic, and the issue of providing service directly to end users is also debated elsewhere?

MCI's Position:

No. This language is unnecessary and confusing in light of other provisions of the contract.

Horry's Position:

Yes. As discussed in Issues 2 and 4(a), third party traffic is not part of this agreement between Horry and MCI.

Discussion:

The issue here is whether Horry may appropriately limit the scope of its Agreement with MCI so that it applies only between Horry and MCI -- and relates to the exchange of their respective end user customers' traffic. We believe it is appropriate to limit the Agreement so that it applies only to Horry and MCI and to the traffic generated by the Parties' direct end user customers on their respective networks.

Horry is required to provide interconnection and to exchange traffic only with other telecommunications carriers. n2 This Agreement is properly [*8] limited in scope to the intraLATA traffic exchanged between customers directly served by one party and the customers directly served by the other party, and the definition of "end user" is properly limited to retail business or residential end-user subscribers (*i.e.*, it does not include other carriers).

n2 See Section 251 of the Federal Telecommunications Act of 1996 (the "Act").

The carrier directly serving the end user customer is the only carrier entitled to request interconnection for the exchange of traffic under Section 251(b) of the Act. Other carriers that provide local exchange service and wish to exchange traffic with Horry must establish their own interconnection or traffic exchange agreements with Horry. While it may be appropriate under certain circumstances for a telecommunications carrier to interconnect its facilities indirectly with Horry's network under Section 251(a) of the Act, this provision does not allow *non-telecommunications* service providers to interconnect (either directly or indirectly), [*9] nor does it relieve an interconnecting carrier of the obligation to establish its own arrangements for exchanging traffic and establishing an appropriate compensation agreement with the telecommunications carrier to which it is indirectly connected.

MCI's argument that Section 251(a) of the Act requires Horry to transport and terminate third-party traffic is erroneous. *47 U.S.C. § 251*(a) requires that:

Each telecommunications carrier has the duty --

> (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.

The duty to interconnect under Section 251(a) of the Act relates to "the physical linking of two networks for the mutual exchange of traffic." n3 It does *not* require a carrier to transport and terminate another carrier's traffic. n4 Transport and termination obligations extend from Section 251(b) of the Act and apply only directly between local exchange carriers. n5 Nothing in the Act supports MCI's contention that indirect *service* to *end user customers* was contemplated, much less permitted, by the Act. In fact, the FCC's rules implementing interconnection uniformly address [*10] interconnection as a bilateral agreement between two carriers, each serving end user customers within the same local calling area. Section 251(b) describes duties for each "local exchange carrier" with respect to other "local exchange carriers." The

FCC's *Local Competition Order* discusses the exchange of traffic for local interconnection purposes in which two carriers collaborate "to complete a local call." n6

n3 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996), aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068 (8th Cir. 1997)* and *Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), aff'd in part and remanded, AT&T Corp. v. Iowa Utils. Bd., 525 U.S. 366, 119 S. Ct. 721, 142 L. Ed. 2d 835 (1999); Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996),* Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295 (rel. Aug. 18, 1997) ("*Local Competition Order*") at P 11.

[*11]

n4 *See Total Telecommunications Services, Inc., and Atlas Telephone Company, Inc. v. AT&T Corporation*, File No. E-97-003, FCC 01-84, Memorandum Opinion and Order (rel. Mar. 13, 2001), at P 23 ("In the *Local Competition Order*, we specifically drew a distinction between interconnection' and transport and termination,' and concluded that the term interconnection,' as used in section 251(c)(2), does not include the duty to transport and terminate traffic").
n5 *See* Section 251(b)(5); *Local Competition Order*, CC Docket 96-98, FCC 96-325 at P 1034.
n6 *See Local Competition Order*, CC Docket 96-98, FCC 96-325 at P 1034.

Interconnection under Section 251(a) is available only to telecommunications carriers. n7 Likewise, the obligations imposed by Section 251(b), including the duty to transport and terminate traffic, relate to parallel obligations between two competing telecommunications carriers serving within a common local calling area. Whether Voice over Internet Protocol ("VoIP") will be classified as a telecommunications service or information service is currently [*12] an open question before the FCC. n8 Unless and until the FCC does classify VoIP as a telecommunications service, VoIP providers do not have rights or obligations under Section 251. Thus, where MCI intends to act as an intermediary for a facilities-based VoIP service provider (e.g. TimeWarner), the VoIP provider would most likely argue that it is currently not required (and may never be required) to provide dialing parity or local number portability and, therefore, the duties of Horry and the VoIP service provider would not be parallel. This type of a non-parallel relationship was not contemplated or provided for under the Act.

n7 See Section 251(a)(1) of the Act ("Each telecommunications carrier has the duty . . . to interconnect . . . with the facilities and equipment *of other telecommunications carriers* . . .") (emphasis added).
n8 See Notice of Proposed Rulemaking, *IP-Enabled Services, 19 FCC Rcd 4863 (2004); Vonage Holdings Corp., Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, FCC 04-267, Memorandum Opinion and Order (rel. Nov. 12, 2004), ("*Vonage Order*"), fn 46 ("We do not determine the stature classification of Digital Voice under the Communications Act, and thus do not decide here the appropriate federal regulations, if any, that will govern this service in the future.").

[*13]

Furthermore, the FCC's regulation on reciprocal compensation specifically refers to the direct relationship of the carrier to the end user customers in the exchange of traffic.

For purposes of this subpart, a reciprocal compensation arrangement *between two carriers* is one in which *each of the two carriers* receives compensation *from the other carrier* for the transport and termination *on each carrier's network facilities* of *telecommunications traffic that originates on the network facilities of the other carrier*. n9

Horry's position that only traffic directly generated by Horry and MCI end user customers should be exchanged pursuant to the Agreement is in keeping with the language and intent of the Act, as well as FCC rules and orders.

n9 *47 CFR § 51.701(e)* (emphasis added).

An interconnection agreement is between two parties. Neither third parties nor their traffic are part of an interconnection agreement between Horry and MCI. MCI attempted to point [*14] out that the proposed Agreement provides for transit traffic, which, according to MCI, is third party traffic. However, the issue of performing a transit function is separate and distinct from the issue of indirect traffic exchange of third parties' end-user customers. It is necessary for the agreement to have language regarding transit traffic because Horry has a tandem switch in its network and other carriers have NPA-NXXs with a homing arrangement to Horry's tandem. When MCI originates local traffic that terminates to a CLEC or another carrier that has an NPA-NXX with a homing arrangement to Horry's tandem in the LERG, a transit function is required. If MCI originates such traffic, the agreement states that MCI will pay the transit rate to Horry. The transit language does not place any obligations on third-party carriers. In addition, the language specifically states that payment of reciprocal compensation on such traffic is not part of this agreement but instead must be negotiated between MCI and the third party. Providing for transit in the Agreement is consistent with Horry's position that the carriers may have indirect "physical" interconnection facilities but must also have [*15] direct contractual arrangements for the transport and termination of traffic.

Applicable statutory and case law support Horry's position that MCI is not entitled to interconnection for the purpose of acting as an intermediary for a third party that will, in turn, provide services to end users. "Telecommunications carrier" is defined in the federal Act as a provider of telecommunications service. n10 "Telecommunications service" means "the offering of telecommunications for a fee *directly to the public*, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." n11 Applying these definitions to the situation here, to the extent MCI seeks to provide service to Time Warner Cable Information Services, LLC ("TWCIS"), or indirectly to TWCIS' end user customers, such service does not meet the definition of "telecommunications service" under the Act and, therefore, MCI is not a "telecommunications carrier" with respect to those services. Thus, MCI is not entitled to seek interconnection with Horry with respect to the service MCI proposed to provide indirectly to TWCIS' end user customers.

n10 Section 153(44) of the Act.

[*16]

n11 Section 153(46) of the Act.

This reasoning is consistent with the United States Court of Appeals for the District of Columbia Circuit's interpretation of the Act. The Court has held that, when a carrier is not offering service "directly to the public, or to such classes of users to be effectively available directly to the public," that carrier is not a telecommunications carrier providing telecommunications service under the Act with respect to that service. n12 Under this precedent, Horry has properly required that the Interconnection Agreement between Horry and MCI be limited to the exchange of traffic generated by the end user customers directly served by the parties.

n12 *Virgin Islands Telephone Corp. v. FCC, 198 F.3d 921 (D.C. Cir. 1999).*

MCI points to an Ohio Public Utilities Commission decision to support its argument. n13 However, the Ohio Commission failed to even mention the D.C. Circuit [*17] Court's *Virgin Islands* decision and the related FCC rulings.

n13 *See* In re the Application and Petition in Accordance with Section II.A.2.b of the Local Service Guidelines filed by The Champaign Telephone Company, et al., Case No. 04-1494-TP-UNC, Finding and Order (issued January 26, 2005), Order on Rehearing (issued April 13, 2005).

It should be noted that MCI furnished a letter, dated December 21, 2005, which apprised this Commission of a recent decision issued by the Iowa Utilities Board ("the Iowa Board") in which the Iowa Board overturned its initial ruling and held that Sprint is a telecommunications carrier in the State of Iowa and is, therefore, entitled to seek interconnection with rural local exchange carriers to provide intermediary services to VoIP service providers seeking to exchange traffic with such carriers. Based upon the Iowa Board's reconsideration of its earlier order, MCI requests that this Commission adopt MCI's proposed contract language. Although this Commission cited the earlier ruling [*18] in our Order in Docket No. 2005-67-C, this was only one factor listed. When examined as a whole, it is clear that our prior Order was based on Section 251 of the Telecommunications Act of 1996 and our interpretation as to its intent. Therefore, we believe that our prior Order was correct. Further, we do not believe that this reversal of a decision by another state is controlling in the present case. As noted herein, we believe that proper interpretation and reasoning and the examination of other precedent compels the conclusion reached herein. Other state decisions addressing similar issues are not controlling. n14

n14 *See, e.g.*, Order, *Cambridge Telephone Company, et. al, in Petitions for Declaratory Relief and/or Suspensions for Modification Relating to Certain Duties Under § § 251 (b) and (c) of the Federal Telecommunications Act*, No. 05-0259-0265, -0270, -0275, -0277, and -0298, Illinois Commerce Commission (July 13, 2005) (*Illinois Commerce Commission order*) (petition for reconsideration pending); Order Resolving Arbitration Issues, *Petition of Spring Communications, L.P., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Independent Companies*, Case 05-C-0170, State of New York Public Service Commission (May 24, 2005).

[*19]

It is important to note that, unlike rural local exchange carriers in some other states, Horry is not arguing that it should not be required to interconnect with MCI *at all*; it merely seeks to limit the Interconnection Agreement so that it applies to interconnection and the exchange of traffic between end user customers served directly by the parties, as intended by the Act.

MCI claims that Horry's proposal would prevent MCI from reselling its service. Horry asserts that this is not true, and that MCI's proposed arrangement with TWCIS does not constitute resale. In a resale situation, MCI would be the underlying facilities-based provider and the reseller would simply provide the complete service to the customer under a different name. MCI would still control the traffic, and would provide the switch and the loop to the customer premises. This is permitted under the Agreement. What MCI seeks to do with TWCIS, on the other hand, is different because TWCIS itself is the facilities-based carrier n15 and MCI would have no control over the service or the end user.

n15 *See, e.g.*, TWCIS S.C. Tariff No. 1, on file with the Commission, at p. 9 ("The Company's IP Voice Service is offered solely to residential customers who are subscribers to Time Warner Cable's cable modem and/or cable television service.")

[*20]

At the hearing on this matter, MCI asserted that Horry, through an affiliate, provides VoIP service to customers and, therefore, Horry is providing what it says MCI should not be permitted to provide. n16 This is not true. As Horry's witness testified at the hearing, Horry does not provide VoIP service to customers, either itself or through an affiliated entity. n17 Second, while Horry may have a small percentage ownership in Spirit Telecom ("Spirit"), the evidence of record does not support MCI's claim that Spirit is an affiliate of Horry. n18

n16 *See* TR. at p. 78,11. 13-17.
n17 TR. at p. 163,1.7.
n18 *See S.C. Code Ann. § 35-2-201* (affiliate defined as "a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a specified person."); *see also* TR. at 17-18 (counsel for Horry notes that, while Horry has a small ownership in Spirit, Horry does not control, is not controlled by, and is not under common control with Spirit).

[*21]

MCI also appeared to be attempting to make an argument that Horry allows other carriers to connect indirectly with Horry through a BellSouth tandem switch. n19 However, the record shows to the contrary. When questioned as to whether there could be indirect interconnection between an independent like Horry and a CLEC, with a third-party carrier performing a transit function, Mr. Meredith testified that he believed that Horry has its own tandem switch and, therefore, "this particular scenario does not apply in the current case." n20

n19 *See* TR. at p. 255,1. 7 through p. 256, 1. 21.
n20 TR. at p. 256,11. 13-21.

MCI also raised an issue regarding E-911 at the hearing. According to MCI's counsel in his opening statement, VoIP providers like TWCIS have been ordered by the FCC to provide E-911 by the end of November, and TWCIS seeks to do that by interconnecting to the Public Safety Answering Point ("PSAP") through MCI. n21 Horry witness Douglas Meredith agreed that one of the ways a VoIP provider can satisfy an [*22] E-911 requirement is to connect through an incumbent LEC. n22 However, in this case, the incumbent LEC 911 service provider that is connected to the PSAP is the Regional Bell Operating Company and not Horry. In other words, connection to the PSAP is not relevant because *MCI has already conceded that it will not seek connection to the PSAP through Horry*, either directly or indirectly. The Ancillary Services Attachment to the proposed interconnection agreement contains clear and undisputed language on this point as follows:

n21 *See* TR. at p. 6, 11. 6-12.
n22 TR. at p. 248, 11. 10-14.

1. 911/E-911 Arrangements

1.1 ILEC utilizes [RBOC] for the provision of 911/E911 services. The CLEC is responsible for connecting to [RBOC] and populating [RBOC]'s database. All relations between [RBOC] and CLEC are totally separate from this Agreement and ILEC makes no representations on behalf of [RBOC].

MCI's argument that E-911 and associated public interest issues are somehow implicated in this proceeding is [*23] simply not true. MCI has already agreed that it will seek connection to the PSAP through an incumbent LEC other than Horry.

For the reasons stated above, we find that the agreement between Horry and MCI is properly limited to include traffic of end user customers directly served by the respective parties. We, therefore, adopt the following language proposed by Horry:

General Terms and Conditions; Glossary; § 2.17 -- Definition of "End User":

> A retail business or residential end user subscriber to Telephone Exchange Service provided directly by either of the Parties.

Interconnection Attachment, § 1.1:

> This Interconnection Attachment sets forth specific terms and conditions for network interconnection arrangements between ILEC and CLEC for the purpose of the exchange of IntraLATA Traffic that is originated by an End User Customer of one Party and is terminated to an End User Customer of the other Party, where each Party directly provides Telephone Exchange Service to its End User Customers physically located in the LATA. This Attachment describes the physical architecture for the interconnection of the Parties facilities and equipment for the transmission and routing [*24] of Telephone Exchange Service traffic between the respective End User Customers of the Parties pursuant to the Act.

Interconnection Attachment, § 3.1:

> Dedicated facilities between the Parties' networks shall be provisioned as two-way interconnection trunks, and shall only carry IntraLATA traffic originated or terminated directly between each Parties End User Customers. The direct interconnection trunks shall meet the Telcordia BOC Notes on LEC Networks Practice No. SR-TSV-002275.

ISSUE 9: Should the Parties be providing service directly to End Users to port numbers?

MCI's Position:

No. This is not required for any industry definition of LNP. MCI is certified to do LNP for the End Users that indirectly or directly are on its network. Concerns that some resellers may not be telecommunications carriers or must provide the same type telecommunications services provided prior to the port is an illegal limit on what entities MCI can provide wholesale telecommunications services. The FCC has even allowed IP-Enabled (VoIP) service providers to obtain numbers directly without state certification. See the FCC's CC Docket 99-200 order released February 1, 2005, granting [*25] SBC Internet Services, Inc. a waiver of section 52.15(g)(2)(i) of the FCC's rules. And MCI knows no law requiring that the same type of Telecommunications Service provided prior to the port has to be provided. That is antithetical to the goals of competition.

Horry's Position:

Yes. The current FCC rules require only service provider portability. Horry's language proposed in the agreement is consistent with Horry's obligations and the FCC's rules regarding number portability.

Discussion:

This issue deals with Local Number Portability ("LNP") and whether MCI is permitted to obtain LNP when it does not intend to directly serve the end user customers to whom the numbers will be ported. Current Federal Communications Commission ("FCC") rules on LNP require only service provider portability.

The definition of service provider portability states:

> Service provider portability means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. n23

Service provider portability is the only type [*26] of portability required. n24 There are no rules or standards today providing for or governing porting of numbers to non-telecommunications carriers.

n23 *47 C.F.R. § 52.21(q).*
n24 *See* Third Report and Order, *Telephone Number Portability, 13 F.C.C.R, 11701 (1998),* at P 3 ("In light of the statutory definition, Section 251(b)(2) requires service portability, but not location or service portability.").

The definition of service provider portability is clear that the port must be between *two telecommunications carriers.* n25 This would also require end users to have *telecommunications service* before and after the port. n26 The definition does not provide for porting to a customer who switches to a non-telecommunications service. It also does not provide for porting between a telecommunications service provider and a non-telecommunications service provider. There are no rules requiring these types of ports. There are also no standards [*27] in the Alliance for Telecommunications Industry Solutions ("ATIS") standards body to address how these ports would actually take place, the billing associated with the resulting calls, and how traffic would be exchanged.

n25 *See 47 C.F.R. § 52.21 (q).*
n26 *Id.*

MCI expects that the arrangement it reaches with Horry will enable MCI to port numbers from Horry so that MCI can, in turn, provide those numbers *to TWCIS* for use by TWCIS' VoIP end user customers. n27 In this indirect relationship, there is no assurance that the end-user customer that requested the port will actually retain the number, since MCI has no relationship with the end-user customer. This does not meet the definition of service provider portability, and Horry is under no obligation to allow this type of porting. Therefore, Horry has proposed language that would allow MCI to properly port Horry's numbers to MCI's end user telecommunications service customers, but would not allow for other types of [*28] porting that Horry is not obligated to provide.

n27 *See* e.g. TWCIS' Petition to Intervene in this Docket dated June 28, 2005.

The MCI/TWCIS proposed porting arrangement does not meet the definition of service provider portability for several reasons. First, TWCIS has included a "regulatory disclaimer" in its state filing stating that TWCIS does not concede that its VoIP services constitute telecommunications services, local exchange services, common carrier offerings, or services that are otherwise subject to federal or state regulation. n28 Horry is not required to provide LNP to a non-telecommunications service provider, and Horry should not be required to provide indirectly (through MCI as an intermediary) what it would not be required to provide directly. Although MCI may be a telecommunications service provider for some purposes, in this situation no telecommunications service is being provided to the end user. The end user in this situation is a VoIP customer of TWCIS, not a telecommunications service customer [*29] of MCI. Thus, the two basic qualifications for service provider portability are not met. The end user does not have telecommunications service after the port and the service provider is not currently classified as a telecommunications service provider.

n28 *See* Testimony of Julie Y. Patterson in Commission Docket No. 2004-280-C at p. 6,11. 4-8.

MCI suggests that the FCC has concluded that VoIP providers are entitled to LNP. n29 However, the order cited by MCI does not deal with LNP at all and is not an order of general applicability. n30 The FCC's order granted SBC Internet Services, Inc. ("SBCIS") a waiver under specific circumstances to allow that company to obtain telephone numbers directly from the numbering administrator to expand SBCIS's VoIP trial. n31 The Order does not address LNP, and, therefore does not take a position on porting numbers to VoIP providers, either directly or indirectly.

n29 *See* e.g. TR. at p. 85, 11. 6-8.
[*30]

n30 *See* Order, *In the Matter of Administration of the North American Numbering Plan*, CC Docket No. 99-200, rel. Feb. 1, 2005 ("SBCIS Order").
n31 *Id.*

For the reasons stated above, we adopt the following language proposed by Horry because it comports with Horry's obligations with respect to LNP, but does not require Horry to provide LNP in a manner that exceeds those obligations to the detriment of Horry, its customers, and the general public:

LNP Attachment, § 1.1:

> The Parties will offer service provider local number portability (LNP) in accordance with the FCC rules and regulations. Service provider portability is the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. Under this arrangement, the new Telecommunications Service provider must directly provide Telephone Exchange Service or resell an end user local exchange service through a third party Telecommunications Service provider [*31] to the End User Customer porting the telephone number. The dial tone must be derived from a switching facility that denotes the switch is ready to receive dialed digits. In order for a port request to be valid, the End User Customer must retain their original number and be served directly by the same type of Telecommunications Service subscribed to prior to the port.

TOPIC 2: ISP-BOUND TRAFFIC AND VIRTUAL NXX (Issues 3, 4(b) and 5)

We will discuss Issues 3, 4(b) and 5 together.

ISSUE 3: Is ISP traffic in the Commission's or FCC's jurisdiction in terms of determining compensation when FX or virtual NXX service is subscribed to by the ISP?

MCI's Position:

See Issue No. 4(b). ISP traffic is in the FCC's jurisdiction and subject to compensation treatment pursuant to its ISP Remand Order as amended by the CoreCom decision. The Texas PUC recently clarified that its order applying access charges to CLEC FX traffic only applied to non-ISP traffic and that the FCC's ISP Remand order applies to ISP traffic. While MCI believes that it is discriminatory to allow ILECs to rate their FX and virtual NXX traffic as local when CLECs are not allowed to do the same, it will not [*32] litigate this issue, as concerns Horry, for non-ISP traffic in light of the Commission's previous decisions. However, MCI reserves the right to have its FX and virtual NXX services rated as local if the FCC preempts the subset of states that have inconsistent rulings on the rating of CLEC FX or virtual NXX services.

Horry's Position:

The issue in dispute between Horry and MCI is not, as MCI suggests, whether ISP-Bound traffic is in the jurisdiction of the South Carolina Commission or the FCC. The issue is what constitutes ISP-bound traffic, especially when the CLEC assigns a virtual NXX as a dial-up ISP number and the ISP is not physically located in Horry's local calling area. Under Horry's proposed language all types of interexchange calls, including dial-up ISP calls using a virtual NXX, are to be treated consistent with the Commission's and the FCC's existing rules which exclude all such calls from reciprocal compensation and ISP intercarrier compensation.

ISSUE 4(b); Should MCI have to provide service only to End Users physically located in the same LATA to be covered by this agreement?

MCI's Position:

No. As stated above, ISP traffic is under the FCC's [*33] jurisdiction, and it never said its ISP reciprocal compensation orders do not apply to Virtual NXX traffic. FX/ISP provider customers do not have to be physically located in the LATA to be subject to the ISP Remand Order. The FCC has established a compensation regime for ISP traffic that does not require payment of access charges.

Horry's Position:

For purposes of this agreement, yes. The physical location of the originating and terminating customer determines the jurisdiction of the call.

ISSUE 5: Should all intraLATA traffic be exchanged on a bill and keep basis or should reciprocal compensation apply when out of balance?

MCI's Position:

MCI believes reciprocal compensation rates should apply for ISP and non-ISP Local/EAS traffic if out of balance (60/40). MCI believes the recent CoreCom ruling allows it to seek reciprocal compensation for ISP traffic in new markets.

Horry's Position:

Compensation for IntraLATA Traffic should be in the form of the mutual exchange of services provided by the other Party with no per minute of use billing related to the exchange of such IntraLATA Traffic. From the beginning of negotiations, Horry proposed that there be no [*34] per minute of use billing for the exchange of IntraLATA Traffic under the agreement because sub-traffic is believed to be roughly balanced. Because MCI is a CLEC and can change business plans at any time in order to serve a certain sub-set of end user customers, and it can use regulatory arbitrage to its financial advantage. Horry does not have this flexibility to choose certain customers, because it is a carrier of last resort and has an obligation to provide basic local exchange service to all end user customers within its certificated service area.

Discussion:

The main issue in dispute between Horry and MCI with respect to this topic is not whether ISP-Bound traffic is in the jurisdiction of the South Carolina Commission or the FCC, as MCI suggests. The issue is whether the traffic destined for an ISP to which a Virtual NXX has been assigned (*i.e.*, the ISP is not physically located in Horry's local calling area but MCI has assigned a local number to the ISP) should be treated the same as local ISP traffic or non-local ISP traffic. Horry asserts that all types of interexchange calls, including dial-up ISP calls using a Virtual NXX, should be treated in a manner consistent [*35] with the Commission's and the FCC's existing rules, which exclude all such calls from reciprocal compensation and ISP intercarrier compensation.

The Commission's and the FCC's current intercarrier compensation rules for wireline calls clearly exclude interexchange calls from both reciprocal compensation and ISP intercarrier compensation. These calls are subject to access charges. This is also the case for virtual NXX calls, which are no different from standard dialed long distance toll or 1-800 calls. All of these types of calls are interexchange calls that do not fall within the reciprocal compensation rules. In other words, if a Horry customer calls someone in California, it is a long distance call, regardless of whether the Horry

customer is calling a friend or calling AOL in California. That traffic is considered interexchange and is not the type of ISP-bound traffic that has been the subject of recent FCC orders in ISP reciprocal compensation.

The question that has been addressed by the FCC is how to treat ISP-bound traffic in a situation where the ISP is physically located within the same local calling area that is served by a LEC. n32 The FCC found that such traffic is "information [*36] access" and, therefore, not within the scope of Section 251(b)(5); *i.e.*, it is not subject to the FCC's reciprocal compensation rules. n33

n32 Order on Remand and Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, 16 FCC Rcd 9151 (2001)* ("*ISP Remand Order*"), at P 13.
n33 *ISP Remand Order* at P 44.

It is clear from the FCC orders and rules that (1) traffic destined for customers (including ISPs) outside the local exchange area is interexchange traffic and is to be treated as such; and (2) traffic destined for ISPs inside the local exchange area is subject to compensation under the FCC's interim ISP-bound traffic compensation regime. n34 To confuse matters, some carriers have a practice of assigning local numbers to customers when the customer is not physically located in the local area. This practice is known as assigning a "Virtual NXX." A Virtual NXX is an exchange [*37] code assigned to end users physically located in exchanges other than the one to which the code was assigned. The issue that has arisen in this arbitration is how such Virtual NXX traffic should be treated when it is destined for an ISP that is physically located outside the local exchange area but has been assigned a local number. Horry believes the answer is clear that Virtual NXX traffic should be treated the same regardless of whether it is destined for an ISP or some other type of business.

n34 *See ISP Remand Order, see also* Order; *Petition of Core Communications, Inc. for Forbearance Under 47 U.S.C. § 160(c)from Application of the "ISP Remand Order"*, WC Docket No. 03-171 (rel. Oct. 18, 2004). While the D.C. Circuit Court of Appeals remanded the *ISP Remand Order* on the grounds that the FCC had failed to provide an adequate legal basis for the rules it had adopted, the Court did not vacate the order and observed that there may be other legal bases for adopting the rules. *See WorldCom, Inc. v. FCC, 288 F.3d 429 (D.C. Cir. 2002).* The FCC's interim rules remain in effect pending review on remand.

[*38]

There is clear precedent in the Commission's prior orders with respect to the practice of assigning Virtual NXX's, both with respect to ISPs and to other customers. n35 This Commission has also ruled in two separate prior orders that the physical location of the customer determines the proper jurisdiction of calls. In the *Adelphia Arbitration Order*, n36 the Commission concluded that reciprocal compensation should be based on the physical location of the calling and called parties, not the NXX codes of those parties. In the *US LEC Arbitration Order*, n37 the Commission held that:

> This Commission has already addressed this issue in a prior arbitration and that decision supports Verizon's position in that this Commission held that "reciprocal compensation is not due to calls placed to virtual NXX' numbers as the calls do not terminate within the same local calling area in which the call originated." *The Commission squarely held that compensation for traffic depends on the end points of the call -- that is, where it physically originates and terminates.* In rejecting the claim that "the local nature of a call is determined based upon the NXX of the originated and terminating [*39] number," the Commission noted that, "while the NXX code of the terminating point is associated with the same local service area as the originating point, the actual or physical termination point of a typical call to a virtual NXX' number is not in the same local service area as the originating point of the call." (emphasis added) n38

n35 *See* Order No. 2005-544, which ruled on the same issue presented here.
n36 *Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252 (b) of the Communications Act of 1934, As Amended by the Telecommunications Act of 1996*, Docket No. 200-516-C, Order on Arbitration (January 16, 2001) ("*Adelphia Arbitration Order*").
n37 *Petition Of US LEC Of South Carolina, Inc. For Arbitration With Verizon South, Inc., Pursuant To 47 U.S.C. 252(b) Of The Communications Act Of 1934, As Amended By The Telecommunications Act Of 1996*, Docket No. 2002-181-C, Order No. 2002-619 (August 30, 2002) ("*US LEC Arbitration Order*").
[*40]

n38 *Id.* at 22 (emphasis added).

MCI argues that the *Adelphia* and *US LEC* Orders "should no longer be controlling, at least with regard to ISP-bound traffic." n39 We see no reason to deviate from our prior rulings. Virtual NXX for dial-up calls to ISPs is not "ISP-bound Traffic," as MCI argues, but is interexchange traffic that is subject to the appropriate access charges. As we have found in prior orders, the physical location of the calling and called parties determines the proper treatment of the call. In the above example, if the customer is calling AOL in California, it is a long distance call. The fact that a CLEC attempts to have those calls rated as local calls by assigning a local number to that customer (Virtual NXX) does not make them local calls, because the calls are still terminating in California.

n39 MCI Petition at p. 11.

Nothing in the FCC's rules or orders indicates anything to the contrary. The ISP [*41] intercarrier compensation regime established in the FCC's *ISP Remand Order* n40 does not apply to Virtual NXX or other interexchange calls delivered to ISPs, as MCI contends. The United States Court of Appeals for the District of Columbia Circuit, in reviewing the FCC's order, clearly recognized that the "interim [compensation] provisions devised by the [FCC]" apply only to "calls made to [ISPs] *located within the caller's local calling area*." n41 In other words, the ISP intercarrier compensation regime applies only to calls that would have been subject to reciprocal compensation if made to an end-user customer, rather than an ISP.

n40 Order on Remand and Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; *Intercarrier Compensation for ISP-Bound Traffic, 16 FCC Rcd 9151 (2001)* ("*ISP Remand Order*").
n41 *WorldCom, Inc. v. FCC, 288 F.3d 429, 430 (D.C. Circuit 2002).*

The D.C. Circuit Court's [*42] understanding of the scope of the intercarrier compensation obligation established in the *ISP Remand Order* is correct. The question before the FCC with respect to ISP-bound traffic has always been whether calls to an ISP physically located in the same local calling area as the calling party are to be treated the same as calls to a local business. Thus, in the *ISP Declaratory Ruling* n42 the FCC rejected CLECs' arguments that a call to an ISP "terminates at the ISP's local server" and "ends at the ISP's local premises." And, in the *ISP Remand Order*, the FCC recognized that it was addressing the compensation due for "the delivery of calls from one LEC's end-user customer to an ISP in the same local calling area that is served by a competing LEC." n43

n42 Declaratory Ruling and Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; *Intercarrier Compensation for ISP-Bound Traffic, 14 FCC Rcd 3689 (1999)* ("*ISP Declaratory Ruling*"), at PP 12-15.
n43 *ISP Remand Order* at PP 10, 13.

[*43]

Issue 4(b) involves whether or not the jurisdiction of the call should be determined based on the physical locations of the originating and terminating customers. This is the long-established and settled rule for determining the proper treatment and rating of calls. Both the FCC and this Commission have determined that the call jurisdiction is based on the physical location of the end user customers. The FCC has determined that the end-user customers involved in a telecommunications transmission must be physically located within the "local area" in order for the FCC to conclude that such traffic is "local." n44

n44 *See* Order *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 F.C.C.R. 15499 (1996)* at P 1043.

As discussed above, we have previously ruled in two separate orders that the physical location of the customer determines the proper jurisdiction of calls, In the *Adelphia Arbitration Order* and again in the *US LEC Arbitration* [*44] *Order*, we concluded that reciprocal compensation should be based on the physical location of the calling and called parties, not the NXX codes of those parties. Furthermore, in the *US LEC Arbitration Order*, we specifically recognized and discussed the application of this rule to Virtual NXX traffic destined for ISPs outside the local calling area. n45 Finally, we recently reaffirmed those orders in Order No. 2005-544 in Docket No. 2005-67-C in which we addressed the exact same issue raised here. We see no reason to modify or deviate from our prior precedent.

n45 *See US LEC Arbitration Order* at pp. 25-27.

Issue 5 relates to whether there should be reciprocal compensation paid for out-of-balance traffic. Horry has proposed that there should not be a per-minute compensation rate for the exchange of IntraLATA Traffic, but that compensation for IntraLATA Traffic should be in the form of the mutual exchange of services provided by the other Party. This is because the traffic should be roughly balanced if the parties [*45] are treating the traffic in an appropriate manner, as described above. However, it is obvious from MCI's position with respect to ISP-bound Virtual NXX traffic that it intends to provide dial-up service to ISPs and believes that such dial-up traffic using Virtual NXX should be subject to reciprocal compensation. As stated above, such Virtual NXX traffic is not "ISP-bound Traffic" under the FCC's *ISP Remand Order* and therefore is not subject to reciprocal compensation. The only traffic that would be subject to reciprocal compensation is the remaining IntraLATA Traffic which, in the absence of regulatory arbitrage, should be roughly balanced.

Moreover, MCI is a CLEC and can change its business plan at any time to serve a certain sub-set of end users to enhance its payments from interconnecting carriers. MCI can target a type of customer like an ISP, thereby potentially generating out-of-balance traffic. Horry does not have the flexibility to choose certain types of customers, as Horry must serve any end user customer within its respective service area who requests service.

For the reasons stated above, we adopt Horry's proposed language relating to ISP-Bound Traffic and Virtual [*46] NXX issues, as follows:

GT&C, Glossary § § 2.25, 2.28. 2.34:

INTRALATA TRAFFIC Telecommunications traffic that originates and terminates in the same LATA, including but not limited to IntraLATA toll, ISP bound and Local/EAS.

ISP-BOUND TRAFFIC

ISP-Bound Traffic means traffic that originates from or is directed, either directly or indirectly, to or through an information service provider or Internet service provider (ISP) who is physically located in an exchange within the Local/EAS area of the originating End User Customer. Traffic originated from, directed to or through an ISP physically located outside the originating End User Customer's Local/EAS area will be considered switched toll traffic and subject to access charges.

LOCAL/EAS TRAFFIC

Any call that originates from an End User Customer physically located in one exchange and terminates to an End User Customer physically located in either the same exchange or other mandatory local calling area associated with the originating End User Customer's exchange as defined and specified in ILEC's tariff.

Interconnection Attachment, § 1.1:

This Interconnection Attachment sets forth specific terms and conditions [*47] for network interconnection arrangements between ILEC and CLEC for the purpose of the exchange of IntraLATA Traffic that is originated by an End User Customer of one Party and is terminated to an End User Customer of the other Party, where each Party directly provides Telephone Exchange Service to its End User Customers physically located in the LATA. This Attachment describes the physical architecture for the interconnection of the Parties facilities and equipment for the transmission and routing of Telephone Exchange Service traffic between the respective End User Customers of the Parties pursuant to the Act.

Interconnection Attachment, § 2.4:

The Parties agree to only route intraLATA Traffic over the dedicated facilities between their networks. InterLATA Traffic shall be routed in accordance with Telcordia Traffic Routing Administration instructions and is not a provision of this Agreement. Both Parties agree that compensation for IntraLATA Traffic shall be in the form of the mutual exchange of services provided by the other Party with no additional billing related to exchange of such traffic issued by either Party except as otherwise provided in this Agreement.

TOPIC [*48] **3: RECIPROCAL COMPENSATION RATE (Issue 21)**

ISSUE 10: What should the reciprocal compensation rate be for out-of-balance Local/EAS or ISP-bound traffic?

MCI's Position:

MCI has proposed the rate set forth in the FCC's ISP Remand Order.

Horry's Position:

As discussed in Issues 3 and 5, there is not a need for a reciprocal compensation rate. In fact, during the entire course of negotiations the Parties never discussed what would be the appropriate reciprocal compensation rate. All of the discussion surrounded if there should even be reciprocal compensation.

Discussion:

The issue of an appropriate reciprocal compensation rate is not ripe for arbitration because it was not brought up during the negotiations. n46 Negotiation is required before an issue can be submitted for arbitration. n47 This issue is, therefore, not properly before us at this time, and we decline to address it.

n46 *See* TR. at p. 203, 11. 1-8.
n47 *See* Section 252 (a)(2) ("Any party negotiating an agreement under this section may, at any point in the negotiations, ask a State commission to participate in the negotiation and to mediate any differences *arising in the course of the negotiations*"); Section 252(b)(1) (any "*party to the negotiation*" may, during the specified time frame, petition a State commission to "arbitrate any *open* issues.") (emphasis added).

[*49]

TOPIC 4: CALLING PARTY IDENTIFICATION (CPN AND JIP) (Issues 1, 6 and 8)

Issues 1, 6 and 8 will be discussed together.

ISSUE 1: Should companies be required to provide JIP (Jurisdictional Indicator Parameter) information?

MCI's Position:

No. This is not a mandatory field. The National Information Industry Forum is still working on rules for carriers choosing to populate this field for VoIP traffic and wireless carriers. The revised instructions for landline carriers was only released in December. There is only a recognized industry standard to provide CPN currently.

Horry's Position:

Yes. Horry should have the ability to determine the proper jurisdiction of the calls delivered to their switches. Jurisdictional Indicator Parameter (JIP) is one of the pieces of information that is available and technically feasible which supports Horry's ability to establish the proper jurisdiction of calls terminating to its networks.

ISSUE 6: Should Parties be required to provide (a) CPN and JIP and (b) and pay access charges on all unidentified traffic?

MCI's Position:

MCI (a) is willing to provide CPN or JIP, but not both as the latter is an optional SS7 [*50] parameter. (No other ILEC has proposed that MCI must provide JIP) and (b) believes that all unidentified traffic should be priced at same ratio as identified traffic. A price penalty should not be applied for something MCI does not control. MCI is open to audits and studies by either Party if one or the other thinks the 10% or more of traffic missing CPN information is an effort to avoid access charges.

Horry's Position:

Yes. In order to properly identify the jurisdiction of the traffic exchanged between the parties, the parties should be required to provide CPN and JIP. The parties should have an incentive to properly identify the jurisdiction of the traffic exchanged between them.

ISSUE 8: Should Parties have to provide the specified signaling parameters on all calls?

MCI's Position:

No. Percentages for CPN have been set above and JIP is not mandatory. MCI will agree not to alter parameters received from others, but it cannot commit to more than 90% CPN being provided.

Horry's Position:

Yes. All signaling parameters are to be included in the signaling information, whatever the source.

Discussion:

There are three inter-related issues regarding calling [*51] party identification. The first issue is whether the parties should be required to provide a "Jurisdictional Indicator Parameter" or JIP in their call signaling information. From Horry's standpoint, JIP is a critical piece of information that helps Horry determine the physical location of the calling party and, therefore, the jurisdiction of a call that is sent to Horry for termination. n48 Horry is willing and able to provide JIP on all calls sent to MCI and believe there is no reason MCI cannot do the same. n49

n48 *See* TR. at p. 173, 1.1 through p. 174, 1.3.
n49 TR at p. 206, 11. 11-21; TR. at p. 100, 11. 7-15; TR. at p. 181, 11. 9-16.

The jurisdiction of the call is important because that is what determines the appropriate intercarrier compensation exchanged between the Parties for the exchanged traffic. Local calls, intrastate interLATA, and interstate calls are all treated differently for compensation purposes. Local calls are subject to reciprocal compensation, bill and keep, or an agreement to mutually [*52] perform termination services. Intrastate interLATA calls are subject to the appropriate South Carolina intrastate switched access rates, which are approximately $ 0.01 per minute of use. n50 Interstate calls are subject to the appropriate interstate switched access charges, which range from approximately $ 0.015 to $ 0.025 per minute of use. n51

n50 TR at p. 170, 11.4-5.
n51 Id.

Some traffic that is intrastate or interstate toll is entering networks disguised as local traffic in order for carriers to avoid the payment of access charges. n52 Based on investigations by several industry groups, including a special Phantom Traffic Conference held by the National Exchange Carriers Association in April 2004, the traffic can be improperly identified using several methods.

n52 *See* TR at p. 170,11.6-9.

One method for misrepresenting the traffic is [*53] to substitute a local calling party number ("CPN") for the actual CPN of the call. Because carriers have the ability to substitute CPN, other methods in addition to the CPN are required to properly identify the true jurisdiction of the call. n53

n53 TR at p. 172, 11. 3-10 and 11. 22-23; TR. at p. 173, 11. 3-6.

Toll calls are also incorrectly identified by CPN when telephone numbers are assigned to customers that are not physically located in the rate center where the number is assigned. In the case of a Virtual NXX, telephone numbers are obtained in one rate center and assigned to customers in another rate center or even another state. When a South Carolina telephone 843-666 number is assigned to a customer physically located in San Francisco, the CPN will accurately show 843-666-2222, but the call is in fact an interstate call. Additional information is required to determine if that call is local or toll. n54

n54 TR at p. 172.

[*54]

The JIP is a six (6) digit NPA-NXX field in the SS7 message that identifies the rate center or switch from which the call was originated. In the example of the customer located in San Francisco calling to South Carolina, the CPN would show the 843-666-2222 but the JIP would be populated with a San Francisco NPA-NXX, for example 415-454. Horry uses both the CPN and the JIP to determine the jurisdiction of the call, because Horry cannot accurately determine the jurisdiction of the call using only one of these parameters standing alone.

The JIP still helps identify the jurisdiction of the call even in instances where the switch covers a large geographic area. At minimum, the JIP helps identify calls that are originated outside the regional switch. Therefore the call originated in San Francisco would be identified as a toll call.

The Alliance for Telecommunications Industry Solution's ("ATIS") Ordering and Billing Forum ("OBF") n55 has addressed JIP over the last several years. In December of 2004, ATIS adopted seven rules for populating JIP. Although ATIS did not make JIP a mandatory field, it strongly recommended the use of JIP by companies to assist with identifying the true jurisdiction [*55] of calls. Two of the seven rules address the issue of inclusion of JIP:

n55 ATIS is a United States based body that is committed to rapidly developing and promoting technical and operations standards for the communications and related information technologies industry worldwide using a pragmatic, flexible and open approach. Over 1,100 industry professionals from more than 350 communications companies actively participate in ATIS' 22 industry committees and incubator solutions programs. These committees include National Interconnection Inter-operability Forum (NIIF), Industry Number Committee (INC) which oversees North American Number Committee (NANC), and the Ordering and Billing Forum (OBF). ATIS develops standards and solutions addressing a wide range of industry issues in a manner that allocates and coordinates industry resources and produces the greatest return for communications companies. ATIS creates solutions that support the rollout of new products and services into the communications marketplace. Its standardization activities for wireless and wireline networks include interconnection standards, number portability, improved data transmission, Internet telephony, toll-free access, telecom fraud, and order and billing issues, among others. ATIS is accredited by the American National Standards Institute (ANSI).

[*56]

Rule 1. JIP should be populated in the Initial Address Messages (IAMs) of all wireline and wireless originating calls where technically feasible.

Rule 3. The Network Interconnection Interoperability Forum (NIIF) does not recommend proposing that the JIP parameter be mandatory since calls missing any mandatory parameter will be aborted. However the NIIF strongly recommends that the JIP be populated on all calls where technologically possible.

The NIIF rules also address the situation noted by MCI where a switch serves a regional area:

Rule 4. Where technically feasible if the origination switch or mobile switching center ("MSC") serves multiple states/LATAs, then the switch should support multiple JIPs such that the JIP used for a given call can be populated with an NPA-NXX that is specific to both the switch as well as the state and LATA of the caller.

If the JIP cannot be populated at the state and LATA level, the JIP should be populated with NPA-NXX specific to the originated switch or MSC where it is technically feasible.

We note that Rule 3 states that NIIF does not recommend proposing that the JIP parameter be mandatory. Second, Rule 4 discusses the use of JIP "where [*57] it is technically feasible."

MCI states that its Class 5 switches, i.e. those used for local service, are in North Carolina or Georgia. n56 Such an arrangement is not unusual for CLECs, which use a limited number of switches to cover multiple ILEC serving areas,

crossing state and LATA boundaries. Under this arrangement, a call originating in Columbia and ending in Columbia would produce a JIP that would indicate the call is a toll call from North Carolina/Georgia. Obviously, the call should be rated and billed to the originating end user as a local call.

n56 TR. at p. 42, 11. 3-4.

MCI states that it will pass JIP, but it will only be the JIP of the MCI switch, which will limit the use of JIP to accurately rate traffic. n57 MCI states that it will not and cannot pass a unique JIP for every LATA served by its switch as the RLECs request. Further, MCI notes that a unique JIP for every LATA is difficult to achieve. n58 According to MCI, this would create significant additional equipment, software and administrative cost [*58] and would create network inefficiency, reducing the economies of scale available to CLECs for switching. n59

n57 TR. at p. 45, 11. 20-21.
n58 TR. at p. 48, 1. 16-p. 49, 1.4.
n59 Id.

On the other hand, MCI has a DMS switch, and the DMS switch is capable of supporting multiple JIPs. At a minimum the JIP parameter is included with the LNP software if it was not already part of the switch. We find that there is a need for jurisdictional information in addition to the CPN in order to enable the Parties to properly identify the jurisdiction of the call. However, based on MCI's assertions, we also find that providing JIP information may not be technically feasible or economical. We, therefore, hold that the Parties should be required to provide both CPN and JIP where it is technologically and economically feasible, as defined by not being a barrier to entry.

Issue 6 relates to the question of traffic that lacks CPN or JIP (as proposed by MCI) or that lacks CPN and JIP (as proposed by Horry). MCI proposes that [*59] unidentified traffic be treated as having the same jurisdictional ratio as the ratio of the identified traffic. The MCI proposal is reasonable, and we adopt MCI's proposal. Concerns over fraud may be dealt with by the parties through audit provisions and cooperative efforts pursuant to language to which the parties have already agreed.

Issue 8 also relates to whether or not the parties should be required to provide JIP, but involves another issue as well. MCI has proposed language that will enable it to "pass along as received" signaling information it receives from other carriers. According to MCI, its proposed language is to be preferred, because no party can guarantee that CPN will exist on all calls. MCI states that it, no differently than other carriers, will have as much control over traffic to and from TWCIS as Horry itself has over traffic to and from its customers.

Again, we would state that the Companies should be required to provide JIP where it is technologically and economically feasible as defined by not being a barrier to entry.

We therefore adopt the following language on these issues:

GT&C, § 9.5:

> The Parties shall each perform traffic recording and identification [*60] functions necessary to provide the services contemplated hereunder. Each Party shall calculate terminating duration of minutes used based on standard automatic message accounting records made within each Party's network. The records shall contain the information to properly assess the jurisdiction of the call including ANI or service provider information necessary to identify the originating company, including the JIP and originating signaling information, the provision of the JIP being where it is technologically and economically feasible as defined by not being a barrier to entry. The Parties shall each use commercially reasonable efforts, to provide these records monthly, but in no event later than thirty (30) days after generation of the usage data.

Interconnection Attachment, § 2.7.7:

> The Parties will prorate unidentified traffic by jurisdiction according to the identified traffic. The Parties will coordinate and exchange data as necessary to determine the cause of the CPN or JIP failure (where the provision of JIP was attempted) and to assist its correction.

Interconnection Attachment, § 3.6:

> Signaling Parameters: ILEC and CLEC are required to provide each [*61] other with the proper signaling information (e.g. originating accurate Calling Party Number, JIP [where technologically and economically feasible as defined by not being a barrier to entry)] and destination called party number, etc.) pursuant to *47 C.F.R. § 64.1601*, to enable each Party to issue bills in an accurate and timely fashion. All Common Channel Signaling (CCS) signaling parameters will be provided including CPN, JIP (where technologically and economically feasible as defined by not being a barrier to entry), Calling party category, Charge Number, etc. All privacy indicators will be honored.

IV. CONCLUSION.

The Parties are directed to implement the Commission's resolution of the issues addressed in this Order by modifying the language of the Interconnection Agreement to the extent necessary to comply with the rulings and framework established herein. The Parties shall file an Agreement with the Commission within sixty (60) days after receipt of this Order. If the Parties are unable, after good faith efforts, to mutually agree upon language with respect to any of the issues addressed in this Order, at the end of the sixty (60) [*62] days, the respective Parties shall file proposed language representing the most recent proposal to the other Party on that issue, and the Commission shall adopt the language that best comports with the Commission's findings in this proceeding.

This Order is enforceable against MCI and Horry. Horry affiliates which are not incumbent local exchange carriers are not bound by this Order. Similarly, MCI affiliates are not bound by this Order. This Commission cannot enforce contractual terms upon a Horry or MCI affiliate which is not bound by the Act.

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

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

Randy Mitchell, Chairman