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(1921-2000)

August 17, 2005

DELIVERED BY HAND

The Honorable Charles L. A. Terreni
Executive Director
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, SC 29211

Re: Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Farmers Telephone Cooperative, Inc., Home Telephone Co., Inc., PBT Telecom, Inc., and Hargray Telephone Company, Concerning Interconnection and Resale under the Telecommunications Act of 1996
Docket No. 2005-67-C
Our File No. 05-7010

Dear Mr. Terreni:

Enclosed are the original and sixteen copies of the Post-Hearing Brief on behalf of MCImetro Access Transmission Services, LLC, along with a proposed Order. Would you please file the original, returning a clocked copy to me. Thank you for your assistance.

By copy of this letter I am serving all counsel of record.

Very truly yours,

WOODWARD, COTHRAN & HERNDON

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BEFORE THE

SOUTH CAROLINA PUBLIC SERVICE COMMISSION

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

SEPTEMBER 8, 2005

In Re: Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Farmers Telephone Cooperative, Inc., Home Telephone Co., Inc., PBT Telecom, Inc., and Hargray Telephone Company, Concerning Interconnection and Resale under the Telecommunications Act of 1996	)	ORDER ON ARBITRATION

I. INTRODUCTION

This matter comes before the South Carolina Public Service Commission ("Commission") on the Petition of MCImetro Access Transmission Services, LLC ("MCI") for arbitration to establish interconnection agreements with Farmers Telephone Cooperative, Inc., Hargray Telephone Company, Home Telephone Co., Inc., and PBT Telecom, Inc. (collectively, "the RLECs"), pursuant to Section 252(b) of the Telecommunications Act of 1996 ("Act"). In its petition, MCI initially raised twenty-one issues. Several issues were resolved before hearing, which was held on June 13 and 14, 2005. The ten remaining issues, including subparts, are grouped into four subject areas and represent the disputed terms and conditions of the parties' interconnection agreements.

On or about October 8, 2004 MCI made a bona fide request for interconnection o the RLECs pursuant to section 252(a) of the Act. Pursuant to Section 252(b)(1), MCI

could bring a petition for arbitration of outstanding issues during the period from the 135th day to the 160th day after October 8, 2004. MCI timely filed its petition on or about March 17, 2005. The RLECs, having consented to a joint arbitration, filed a return to the petition on April 11, 2005. Pursuant to section 252(b)(4)(C) of the Act, the Commission has nine months to resolve the matters raised in the petition; however, the parties consented to and the Commission granted an extension of that period, to September 8, 2005. Upon the filing of the petition and return, the Commission established a schedule and procedures for arbitration, including the appointing of a pre-hearing officer. The parties filed testimony and a joint issues matrix setting forth the outstanding issues to be arbitrated by the Commission.

MCI presented the pre-filed direct and rebuttal testimony of Greg Darnell, Senior Manager, Regulatory Economics for MCI. The RLECs presented the pre-filed direct and surrebuttal testimony of Douglas D. Meredith, and the pre-filed direct testimony of Valerie Wimer. Both of those individuals are employees of John Staurulakis, Inc., a consultant for the RLECs.

II. LEGAL STANDARDS AND PROCESSES FOR ARBITRATION UNDER THE ACT

The Act provides that parties negotiating an interconnection agreement have the duty to negotiate in good faith. After negotiations have continued for a specified period, section 251(b)(2) of the Act allows either party to petition the Commission for arbitration of unresolved issues. Through the arbitration process, the Commission must now resolve the remaining disputed issues in the manner required by sections 251 and 252 of the Act.

The parties will incorporate the Commission's decision into a final agreement that will then be submitted for approval pursuant to section 252(c) of the Act.

III. FINDINGS OF FACT

1. MCI is a limited liability company organized and formed under the laws of the State of Delaware. MCI is authorized by this Commission to provide local exchange service in South Carolina. MCI is, and at all relevant times has been, a "local exchange carrier" and a "competing local exchange carrier" ("CLEC") under the Act.

2. Each of the RLECs is a corporation organized and formed under the laws of the State of South Carolina. The business address for each ILEC, according to the South Carolina Secretary of State's office, is located as follows: Farmers Telephone Cooperative, Inc.: Registered Agent: J.L. McDaniel, 1101 E. Main Street, Kingstree, South Carolina 29556; Hargray Telephone Company, Inc.: Registered Agent: L.E. Harney, Hardeeville, South Carolina; Home Telephone Company, Inc.: Registered Agent: Robert L. Helmby, 322 Main, Moncks Corner, South Carolina; PBT Telecom, Inc.: Registered Agent: L. Stephen Coffield, 330 E. Black Street, Rock Hill, South Carolina, 29730-9414. Each of the RLECs is authorized to provide local exchange and other services within its franchised areas in South Carolina. Each RLEC is an "incumbent local exchange carrier" ("ILEC") under the terms of the Act.

3. MCI has switches in Atlanta, Georgia and in Charlotte, North Carolina, respectively, which it proposes to use for interconnect with the RLECs.

4. MCI and the RLECs began negotiations for an interconnection agreement with each RLEC, but were unable to finalize all the terms thereof. Thus this Commission was requested to arbitrate the unresolved terms of the interconnection agreements.

IV. CONCLUSIONS OF LAW

A. GENERAL

5. This arbitration is being conducted pursuant to Section 252 of the Act. Pursuant to Section 252(b)(4)(A) of the Act, we limit our consideration to the remaining issues set forth in the petition and the return.

The appropriate legal standard to be applied in this case is as stated in Sections 252(c) and 252(d)(2) of the Act.

B. UNRESOLVED ISSUES

The remaining issues to be resolved by this Commission have been grouped by the parties as follows:

Issues #6, #10(a), #15, #17 involve whether the services provided by MCI are to be limited to those services provided "directly" to MCI's "end user" customers, and whether the traffic to be exchanged under the interconnection agreements is to be limited to traffic to and from the parties' "end user" customers.

Issues #8, #10(B), #13 concern whether MCI may receive compensation pursuant to the FCC's *ISP Remand Order*[1] for calls bound to internet service providers ("ISPs") using "virtual" NXX[2] codes.

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1 *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 F.C.C.R. 9151, CC Docket No. 96-98, Order on Remand and Report and Order, FCC 01-131, 2001 WL 455869 (F.C.C.), 16 F.C.C.R. 9151, 16

Issue #21 asks whether MCI may receive compensation for ISP-bound traffic at the rate of $.0007 per minute.

Issues #3, #14 and #16 concern whether MCI should be required to use Jurisdictional Indicator Parameter ("JIP") as a signaling parameter.

These four groups of issues are discussed below.

I. Serving Customers Directly vs. Indirectly - (Issues 6, 10(a), 15, 17)

Issue #6: Should End User Customer be defined as only the End User directly served by the Parties to the contract? (General Terms & Conditions, Glossary, §2.17).

MCI's Position: No. End User Customers may be directly or indirectly served. The Act expressly permits either direct or indirect service. (See Issue 10(a)).

RLECs' Position: Yes. This agreement is limited in scope to the intraLATA traffic exchanged between customers directly served by one party and the customers directly served by the other party. Other carriers that provide local exchange services to customers and wish to exchange traffic with the RLECs must establish their own interconnection or traffic exchange agreements with the RLECs.

Issue #10(a): Should MCI have to provide service a) only directly to end users, and b) only to End Users physically located in the same LATA to be covered by this agreement? (Interconnection, §1.1)

MCI's Position: No. End User Customers may also be indirectly served by the Parties through resale arrangements. The Act requires both Parties to the contract to allow resale. The same "directly or indirectly" language is used in section 2.22 of ITCs' model contract for defining interexchange customers. The ILECs thus do not attempt to limit

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FCC Rcd. 9151 (rel. April 27, 2001), remanded but not vacated, *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

2 NXX codes are comprised of the fourth through the sixth digits of a ten digit telephone number. These codes are used to identify rate centers. "Virtual" NXX allows a customer to obtain a telephone number in a local calling area in which the customer is not physically located. As far as the person calling the number may be concerned, the call is local; however, the person answering the call is actually located physically somewhere else in the LATA. Virtual NXX is similar to "foreign exchange" ("FX"), although there are some technical differences between them. *In re: 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. 2000-516-C, Order on Arbitration, Order No. 2001-045 (January 16, 2001), pp. 4-5 ("*Adelphia*"). ILECs also use virtual NXX codes. T. 346.

the resale ability of IXCs, and there is no reason why they should try to do so regarding local exchange.

RLECs' 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 and not for service provided by MCI to a third party as a private carrier.

Issue #15: Does the contract need this limit of "directly provided" when other provisions discuss transit traffic, and the issue of providing service directly to end users also is debated elsewhere? (Interconnection, §3.1)

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

RLECs' Position: Yes. As discussed in Issues 6 and 10(a), third party traffic is not part of this agreement between the RLECs and MCI.

Issue #17: Should the Parties be providing service directly to End Users to port numbers? (Local Number Portability, §1.1)

MCI 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 (Adopted: January 28, 2005 Released: February 1, 2005) granting SBC Internet Services, Inc. (SBCIS) a waiver of section 52.15(g)(2)(i) of the Commission'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.

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

Discussion:

MCI seeks to provide telecommunications services to Time Warner Cable Information Systems, Inc. ("TWCIS"), and to pass traffic to the RLECs in standard public-switched telephone network ("PSTN") format that originates with TWCIS. T. 218, 230. Because TWCIS needs to reach premises not served by its network and

provide E911 (i.e., access via the PSTN to public safety answering points) for its customers, MCI requests interconnection. T. 122. In addition to interconnection and E911, MCI would provide TWCIS with circuit switching, transport, number portability and directory assistance.

Although initially contending that they have no obligation to interconnect with MCI if the latter seeks to provide services to a "third party" that is not an "end user," i.e., TWCIS, the RLECs apparently now concede that 47 U.S.C. §251(a) requires them to interconnect with MCI for its provision of services to TWCIS. See T. 223. The RLECs, however, continue to contend that they are not required to *exchange* traffic with MCI, by virtue of 47 U.S.C. §251(b), if MCI is seeking to pass traffic that originates with another carrier, and, in particular, originates as voice-over-internet protocol ("VoIP"). The RLECs, however, nowhere point to any statute, rule or order that specifically and expressly justifies a refusal to interconnect so that MCI may provide these services and exchange such traffic, or that would justify insistence on a requirement under the agreement that MCI's services be limited to those provided "directly" to an "end user," or that the traffic exchanged between the parties should be limited to that provided to "end users" of the parties.

There is no question that TWCIS originates calls in internet protocol ("IP").[3] T. 123-24, 232. The fact, however, that MCI seeks to exchange traffic that originates in IP,

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[3] There also is no question that the FCC has jurisdiction over VoIP. During 2004 the FCC issued three major orders on the classification of IP-enabled services. In the first case, the FCC ruled that Pulver.com's Free World Dialup service, which is a computer-to-computer service, is an "unregulated interstate information service." *In the Matter of Petition o Declaratory Ruling that Pulver.Com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, FCC 04-27, 2004 WL 315259 (F.C.C.), 19 F.C.C.R. 3307, 19 FCC Rcd. 3307, 31 Communications Reg. (P&F) 1341 (rel. February 19, 2004). Next, the FCC denied AT&T's request for a declaratory ruling that access charges do not apply to its "phone-to-phone" IP telephony

or that such calls may be "information service" (and we express no opinion with regard to that subject) furnishes no basis upon which to deny interconnection. 47 C.F.R. §51.100 provides:

> A telecommunication carrier that has interconnected or gained access under sections 251(a)(1), 251(c)(2), or 251(c)(3) of the Act, may offer information services through the same arrangement, so long as it is offering telecommunications services through the same arrangement as well.

The fact that some IP-originated traffic may be provided "through the same arrangement" does not excuse the RLECs from interconnecting for the purposes MCI intends. T. 181-82.

Moreover, section 251(b) of the Act refers to obligations of local exchange carriers, including the exchange of traffic with other local exchange carriers, and, contrary to the RLECs' contentions, does not indicate that the obligation to interconnect does not apply if a contracting carrier seeks to provide services to carrier customers. T.

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service, which employs VoIP transport to connect two users on the circuit-switched PSTN. *In The Matter Of Petition For Declaratory Ruling That AT&T's Phone-To-Phone IP Telephony Services Are Exempt From Access Charges*, WC Docket No. 02-361, Order, FCC 04-97, 2004 WL 856557 (F.C.C.), 19 F.C.C.R. 7457, 19 FCC Rcd. 7457, 32 Communications Reg. (P&F) 340 (rel. April 21, 2004). Subsequently, the FCC preempted the Minnesota Public Utilities Commission and other state commissions from regulating services like Vonage's DigitalVoice Service, which is an IP-PSTN or PSTN-IP service. *In the Matter of Vonage Holdings Corporation Petition for Declaratory Relief Concerning an Order of the Minnesota Public Utilities Commission,* WC Docket 03-211, Memorandum Opinion and Order, FCC 04-267, 2004 WL 2601194 (F.C.C.), 19 F.C.C.R. 22,404, 19 FCC Rcd. 22,404, 34 Communications Reg. (P&F) 442 (rel. November 12, 2004). The FCC, however, referred the question whether such similar IP-enabled services should be classified as unregulated "information services" or regulated "telecommunications," to its IP-Enabled Services proceeding (WC Docket No. 04-36, referred to *supra*). The decision on those issues in that proceeding has not yet issued. Also, the FCC did not state in its *Vonage* decision what this type of traffic is (i.e., "telecommunications services" or "information services"), or that jurisdiction would be determined by the physical location of the customer. The issue whether cable modems are an "interstate information service", or whether cable modem service is a "telecommunications service" or has a "telecommunications component," was recently decided by the U.S. Supreme Court in the *Brand X* case. *National Cable & Telecommunications Assoc. v. Brand X Internet Services, et al*, 545 U.S. ___ , 125 S.Ct. 2688, 05 Daily Journal D.A.R. 7749, 18 Fla. L. Weekly Fed. S 482, 05 Cal. Daily Op. Serv. 5631, 36 Communications Reg. (P&F) 173, 73 USLW 4659 (June 27, 2005). T. 135.

180-82. The *Atlas* decision,[4] which the RLECs cite as authority for their position, is inapposite. See T. 242-43. In that case, a sham entity was created to terminate long distance calls, while charging high access charges. Neither local exchange traffic nor compensation for terminating local traffic was involved. The sham entity had one customer, a "chat room." Nothing in *Atlas* requires a "direct contractual relationship" between the RLECs and TWCIS.

The RLECs cite paragraph 1034 of the Local Competition Order.[5] That order, however, in discussing reciprocal compensation, "in which two carriers collaborate to complete a local call," does not state or imply that two carriers cannot collaborate to complete a local call that originates on a third party's network, or that carriers are limited in what types of customers they serve. The RLECs also cite 47 C.F.R. §51.701(e), which refers to compensation paid by one carrier to another 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." Nothing in the rule, however, limits its application to traffic "directly" generated by the interconnecting carrier's customers. Indeed, the term "telecommunications traffic that originates on the network facilities of the other carrier" does not, as the RLECs imply, exclude an obligation to interconnect for the purpose of exchanging traffic that originates as IP. Moreover, "telecommunications traffic" is not defined by the FCC's regulations.

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4 *In the Matter of Total Telecommunications Services, Inc. and Atlas Telephone Company, Inc., v. AT&T Corp.*, File No. E-97-003, 16 F.C.C.R. 5726, Memorandum Opinion and Order, FCC01-84 (rel. March 13, 2001).

5 *In The Matter Of Implementation Of The Local Competition Provisions In the Telecommunications Act Of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 96-98, 95-185, First Report and Order, FCC 96-325, 1996 WL 452885 (F.C.C.), 11 F.C.C.R. 15,499, 11 FCC Rcd. 15,499, 4 Communications Reg. (P&F) 1, ¶ 154.

"Telecommunications," however, *is* defined, and "means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. §153(43). There will be no change to the "form or content of the information" to be sent by MCI to the RLECs, or when information is received by MCI from the RLECs. T. 183.

Moreover, as the RLECs admit, the Act does not limit the purpose of interconnection to providing services "directly" to "end users." T. 37, 235. The Act does not even employ the term "end users;" instead, the term employed is "users." For example, 47 C.F.R. §52.21(q) applies to the "ability of users of telecommunications services" to port numbers; significantly, the reference in the rule is to "users," not "end users." The term "users" as employed by the Act is broad, and includes "users" like TWCIS, as one sees from the phrase in 47 U.S.C. §153 (46), "or to such classes of users as to be effectively available".

Therefore, although much attention has focused on the nature of the traffic as originated with TWCIS, the question, if interconnection can be lawfully limited in any respect, is what services *MCI* seeks to provide and to exchange with the RLECs. Those services are classic "telecommunications services." 47 U.S.C. §153 (46) states:

> The term "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.

TWCIS, like other users of telecommunications, including business, individual and governmental users, is a member of "the public." Moreover, by making telecommunications available to TWCIS, which will then use those services to provide

services to its end users, MCI is undeniably providing telecommunications "to such classes of users as to be effectively available directly to the public, regardless of the facilities used."

Further, the services to be provided by MCI under the agreement are not limited to those for the benefit of TWCIS. This is not an instance in which MCI seeks interconnection to provide services solely for any customer. MCI's contract with TWCIS is no different from the individually-negotiated contracts that carriers have with other customers. MCI would like to offer its services to others. MCI also seeks to serve end user customers "directly" as well, including its ISP customers. T. 185, 220-21.

Failing, then, to find that the Act *prohibits* interconnection for the purpose of providing services to another carrier, the RLECs attempt to turn the Act on its head, and contend that there is no specific authority therein for MCI *to* interconnect for the purpose of providing services to another carrier. But the fact that MCI seeks to provide services for another carrier, i.e., TWCIS, does not prevent MCI's interconnection with the RLECs. If it did, no carrier could interconnect for the purpose of providing, for example, wholesale services to other carriers, or to provide a transiting function, or to provide exchange access. T. 57-58, 161, 181-82, 219, 227, 241. These are services for which interconnection is permitted under the Act. T. 58.

Such "indirect" service arrangements are not only authorized under the Act, but are necessary for network engineering; otherwise, each local exchange carrier would have to connect with every other local exchange carrier. T. 121, 125. Such a requirement of "direct" interconnection would be not only impracticable, it would significantly drive up the costs of entry, frustrate Congress' intent to reduce entry barriers, and hamper rather

than facilitate local competition. The Act was enacted to "provide for a pro-competitive, de-regulatory national policy framework" by "opening all telecommunications markets to competition." Accordingly, the RLECs' attempt to restrict interconnection traffic to only that from end users of the interconnecting parties is not sustainable under policy or law. T. 186, 219.

In recent cases before the Ohio, New York and Illinois utilities commissions, arguments similar to those of the RLECs have been utterly rejected. Rural ILECs in Ohio unsuccessfully contended that MCI did not meet the requirements of section 153 of the Act because MCI was not offering services "directly" to the public. The Ohio Public Utilities Commission declared:

> 47 U.S.C. [paragraph] 153(a) (1) and (c) (2) require [the ILECs] to interconnect with other 'telecommunications carriers' and that 47 U.S.C [para] 153 defines a 'telecommunications carrier' as 'any provider of telecommunications services.' The Commission also observes, as do [the ILECs], that the 47 U.S.C. [para] 153 definition of 'telecommunications service,' is 'the offering of telecommunications for a fee directly to the public, or to classes of users as to be effectively available to the public, regardless of facilities used.' Applying this definition to MCI and its [bona fide request to interconnect], the Commission notes that MCI will doubtless collect a fee for providing telecommunications via interconnection with [the ILECs]. Further, MCI's arrangement with Time Warner will make the interconnection and services that MCI negotiates with [the ILECs] 'effectively available to the public, regardless of the facilities used.'[6]

Likewise, the New York Public Service Commission rejected the same arguments raised by the RLECs. In that case ILECs argued that section 251(b) of the Act does not require them to interconnect with Sprint, which had entered into a business arrangement with TWCIS to offer voice service in competition with the ILECs. The ILECs similarly attempted to limit the definition of "end user" to only the end users of Sprint. As in the

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[6] Order on Rehearing, *In the Matter of the Application and Petition in Accordance with Section II.A.2.b of the Local Service Guidelines Filed by: The Champaign Telephone Co., Telephone Services Co., The Germantown Independent Telephone CO, and Doylestown Telephone Co.*, ¶15, p. 13 (April 13, 2005).

Ohio decision, the New York commission found that Sprint's agreement to provide TWCIS with interconnection, number portability, order submission, E911 and directory assistance, among other services, meets the definition of "telecommunications services:"

> While Sprint may act as an intermediary in terminating traffic within and across networks, the function that Sprint performs is no different than that performed by other competitive local exchange carriers with networks that are connected to the independents. Sprint meets the definition of "telecommunications carrier" and, therefore, is entitled to interconnect with the independents pursuant to section 251(a). We find unpersuasive the independents' claim that their section 251(b) duties as local exchange carriers are not triggered because Sprint is not an ultimate provider of end user services.[7]

Last month the Illinois Commerce Commission rejected the hearing officer's recommendation upon which RLECs relied in their pre-filed testimony. The Illinois commission's decision[8] concerned Sprint's efforts to interconnect with rural ILECs, to provide services to the affiliate of a cable provider. Sprint's services are similar to those provided by MCI to TWCIS. Arguing that Sprint is not providing telecommunications services and is not a "common carrier,"[9] the ILECs contended that Sprint was a "private carrier" that, under the *Virgin Islands Telephone* case,[10] is not entitled to interconnection.

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7 *Petition of Sprint Communications Company 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, Order Resolving Arbitration Issues, p. 5 (May 18, 2005). T. 184-85.

8 *Cambridge Telephone Company, et al, Petitions for Declaratory Relief and/or Suspension or Modification Relating to Certain Duties under Sections 251(b) and (c) of the Federal Telecommunications Act, pursuant to Section 251(f)(2) of that Act; and for any other necessary or appropriate relief*, 05-0259, etc., Order (July 13, 2005).

9 47 U.S.C. 153 (10) states:

> The term "common carrier" or "carrier" means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

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

The Illinois commission, however, found that Sprint "does indiscriminately offer its services to a class of users so as to be effectively available to the public."[11] The Illinois commission also found that Sprint does not alter the content of voice communications by end users. Significantly, the Illinois commission also rejected the analysis of the Iowa Utilities Board,[12] upon which the RLECs rely. For all these reasons, the proposed language of MCI is adopted by the Commission, and the proposed language of the RLECs is rejected.

Specifically with regard to porting (issue #17), MCI has been able to reach negotiated agreements with many other independent ILECs regarding MCI's proposed number portability language. There is no legitimate reason why MCI's proposed language is not reasonable in this case as well. T. 187. Here, however, the RLECs seek to impose several conditions, none of which is justified by law or policy:

First, the RLECs want to restrict porting to the "same type of" service that the end user (whose number is being ported) previously had; i.e., "telecommunications services." T. 245. The RLECs, however, are not prepared to say that what TWCIS originates is *not* telecommunications services, see T. 260, and Hargray's affiliate's VoIP necessarily must rely on ported numbers, which, presumably, the affiliate obtains from Hargray. T. 73. Not only is the restriction urged by the RLECs not found in the Act; the RLECs contradict themselves by admitting that, for example, wireline to wireless porting is acceptable. T. 245. Moreover, whether or not a TWCIS end user receives

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11 *Cambridge Telephone Company, et al, supra*, at p. 12.

12 *In re Arbitration of Sprint Communications Company, L.P. v. Ace Communications Group, et al.*, Docket no. arb-05-2, Order Granting Motions to Dismiss, (May 26, 2005)

"telecommunications service" from TWCIS is a question within the FCC's jurisdiction. It is not within the Commission's jurisdiction to conclude that TWCIS does not offer telecommunications service. Thus the premise upon which the RLECs base their argument is flawed.

Second, the RLECs want to restrict the use of the ported number to the same location. Ironically, the way Hargray's affiliate provides its VoIP service violates this criterion, since its numbers are not associated with the pre-port location, but may become "mobile." T. 60. Further, although the RLEC's second criterion is not found in the Act, because of the manner in which MCI and TWCIS engage in number portability the same end user will retain the number both before and after the port and he or she will be in the same location before and after the port. See T. 244.

Third, the RLECs question whether MCI or TWCIS would port numbers to other carriers. This statement is irrelevant as well as inaccurate. MCI, as is the case with any interconnecting carrier, is obligated to provide dialing parity and local number portability. The latter applies when, for example, a TWCIS end user's telephone number is ported to the RLECs. The systems used by the industry, including by MCI (for TWCIS), are not dependent on any such release of the number by the current or "losing" provider of service, and MCI (for TWCIS) would not prevent the end user from moving to another provider. T. 188.

Finally, the RLECs also suggest that "the end user must be switching from a telecommunications carrier to another telecommunications carrier." In this regard, and as discussed above, MCI *is* a telecommunications carrier, and the end user is switching

telecommunications service from one telecommunications carrier to another telecommunications carrier (i.e. from the RLEC to MCI).

Therefore, there are no applicable restrictions on MCI that would block it from issuing orders to port numbers under current industry standards. Accordingly, the Commission accepts MCI's proposed language with regard to this group of issues. T. 127-30, 244.

II. ISP-Bound Traffic/Virtual NXX – (Issues 8, 10(b), 13)

Issue #8: Is ISP traffic in the SC or FCC's jurisdiction in terms of determining compensation when FX or virtual NXX service is subscribed to by the ISP? (General Terms & Conditions, Glossary, §§2.25, 2.28, 2.34)

MCI Position: See Issue No. 10 (b). ISP traffic is in the FCC's jurisdiction and subject to reciprocal 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 litigate this issue, as concerns the ITCs, 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.

RLECs' Position: The issue in dispute between the RLECs 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 the RLEC's local calling area. Under the RLECs' 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 #10(b): Should MCI have to provide service (a) only directly to end users and (b) only to End Users physically located in the same LATA to be covered by this agreement? (Interconnection, §1.1)

MCI Position: No. ISP traffic is under the FCC's jurisdiction, and it never said its ISP recip compensation orders do not apply to FX traffic. FX/ISP provider customers do not have to be physically located in the LATA to be treated the same as voice traffic. The FCC has established a compensation regime for ISP traffic that does not require payment of access charges.

RLEC Position: For purposes of this agreement, yes. The physical location of the originating and terminating customer determines the jurisdiction of the call. This principle is consistent with the Commission's previous decisions in the US LEC and Adelphia Arbitration cases.

Issue #13: Should all intraLATA traffic be exchanged on a bill and keep basis or should reciprocal compensation apply when out of balance? (Interconnection, §2.4)

MCI 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 Core ruling allows it to seek reciprocal compensation for ISP traffic in new markets.

RLEC 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, the RLECs proposed that there be no per minute of use billing for the exchange of IntraLATA Traffic under the agreement because MCI is a CLEC and can change business plans at any time in order to serve a certain sub-set of end users customers, and it can use regulatory arbitrage to its financial advantage. RLECs do not have this flexibility to choose certain customers, because they are carriers of last resort and have an obligation to provide basic local exchange service to all end user customers within their respective certificated service areas.

As background, the parties do not disagree over intercarrier compensation with regard to traffic that is not ISP-bound. For purposes of this proceeding MCI has agreed to treat all non-ISP-bound traffic, including all such traffic that is VoIP or otherwise IP-enabled, the same as other non-ISP telecommunications traffic; i.e., for such traffic, intercarrier compensation will be based on the physical location of the end points of the call. As stated in the contract language concerning issue #13, for such traffic deemed "local," "bill and keep" rather than reciprocal compensation shall govern, assuming the

traffic is not "out-of-balance."[13] If such "local" traffic is "out of balance," MCI proposes that reciprocal compensation be paid. For non-ISP-bound calls that, based on the end points of the call, are deemed to be intraLATA "toll" traffic, MCI has agreed to "bill and keep" rather than access charges, if, as proposed by MCI, traffic is not "out of balance." If intraLATA "toll" traffic is "out of balance," MCI would accede to access charges. MCI has also committed to provide required signaling parameters and to utilize separate local and toll trunk groups for the exchange of such traffic, thereby enabling the RLECs to accurately apply access charges to traffic. T. 124-25, 192.

This group of issues concerns ISP-bound traffic. For purposes of this proceeding, MCI will use "virtual NXX"[14] in a limited respect, i.e., only for users to make local calls to ISPs. MCI will not assign virtual NXX codes, as a result of this proceeding, to TWCIS customers. T. 151. MCI plans to interconnect at the RLECs' switches. MCI will then transport the call that originates with an RLECs' end user, to MCI's switch, using MCI's facilities. If the call is destined to be transmitted to an ISP, MCI will then send the call to the ISP's modem banks, using MCI's facilities. By using "virtual" NXX codes, MCI can provide ISPs with a number that is a "local" call to the end user, thus providing an alternative, particularly to those end users still using dial-up Internet service, to the use of

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13 "Out of balance" traffic occurs when one party terminates more than 60% of total "local" traffic exchanged between the parties. See Appendix, issue #13.

14 NXX codes are comprised of the fourth through the sixth digits of a ten digit telephone number. These codes are used to identify rate centers. "Virtual" NXX allows a customer to obtain a telephone number in a local calling area in which the customer is not physically located. As far as the person calling the number may be concerned, the call is local; however, the person answering the call is actually located physically somewhere else in the LATA. Virtual NXX is similar to "foreign exchange" ("FX"), although there are some technical differences between them. *In re: 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. 2000-516-C, Order on Arbitration, Order No. 2001-045 (January 16, 2001), pp. 4-5 ("*Adelphia*"). ILECs also use virtual NXX codes. T. 346.

the RLECs' broadband and dial-up products. T. 159, 161, 276. This alternative is particularly important since CLECs, or their ISPs, cannot collocate their modem banks at the RLECs' central offices, but rather, typically must locate modem banks at locations outside the RLECs' territories. T. 265.

The FCC, in its *ISP Remand Order* assumed jurisdiction to determinate compensation between carriers for calls to ISPs. Specifically, the FCC describes such calls as "interstate access service." In its *ISP Remand Order*, the FCC rejected the analogy, upon which RLECs rely, of ISP-bound traffic to calls to pizza parlors, T. 41, 50, 210, because ISP-bound calls do not terminate locally. The FCC instead found that calls terminate (often numerous times during any given call) at the end points of the calls; i.e., not at an ISP's modem banks, but at servers that are interstate-located and, indeed, internationally-located. Thus the FCC concluded that ISP-bound traffic is "largely interstate." Such traffic is subject to compensation under 47 U.S.C. §251(g), rather than to reciprocal compensation for the termination of local calls under 47 U.S.C. §251(b)(5), and is not at all subject to the access charge regime. T. 282-83, 286-87, 299. The *ISP Remand Order* determined that at the rate would be $.0007 per minute; the *Core* order[15] removed the rate and volume caps for such traffic and made that rate permanent.

The RLECs agree that if the ISP's modem banks are *physically* located within the geographic area for which a call between the starting point of call and the modem would be considered "local," the carrier serving the ISP is entitled to compensation for the transport and termination of the call. Concomitantly, the RLECs also agree that pursuant

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15 *In The Matter Of 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, Order, DA 04-1764, 2004 WL 1403331 (F.C.C.), 19 F.C.C.R. 11,075, 19 FCC Rcd. 11,075 (rel. June 23, 2004) (hereinafter, the "Core" order.

to the *ISP Remand Order* the carrier whose customer originated the call is not entitled to originating access charges.

The dispute concerns what should occur when the modem banks are physically located outside the geographic area for which a call between two end points in that area would be considered "local." Such a call is unquestionably "interstate" under the FCC's analysis. For such calls, there is no difference in the interconnection arrangement, so far as the RLEC's facilities and MCI's interconnection with them are concerned; the point of interconnection (where the responsibility for costs is established) remains at the RLECs' central offices. Thus the RLECs assume no additional costs when the modem banks for MCI's customers are located outside the geographic "local" area. And just as when the modem banks are physically located in the same area as the caller, the customer who calls the ISP considers the call to be "local." In either event the caller is billed for a "local" call. T. 278-81.

In the RLECs' view, therefore, compensation to the carrier serving the ISP would be payable at the $.0007 rate only if the modem is physically located within the geographic scope of the "local" area. Notwithstanding the "interstate" nature of the call, a call to such a modem would not be treated as a long distance call and access charges would not apply. T. 288-89. If the modem, however, happens to be physically located outside the geographic "local" area of the caller, then, even with no change in the interconnection arrangement, the RLECs would deny compensation to the carrier serving the ISP, and instead demand access, at $.01 per minute (for intrastate access) or more (for interstate access). Payment of access to the RLECs effectively ensures their hold over

internet access, since CLECs cannot under those circumstances compete for customers in the RLECs' territories. T. 280, 292-93, 295.

There is nothing, however, in the *ISP Remand Order* that indicates that the FCC considered calls to ISPs whose modem banks are outside the caller's "local" area, and, therefore, outside the scope of the FCC's jurisdiction, not subject to the FCC's compensation regime, or subject to access charges. The references in the *ISP Remand Order* to calls within "a local calling area" do not, ipso facto, demonstrate that the FCC intends to treat calls to ISPs with local NPA-NXX codes differently, depending on where the ISP's modem banks are located. See *ISP Remand Order* at ¶1 ("we reaffirm our previous conclusion that traffic delivered to an ISP is predominantly interstate access traffic subject to section 201 of the [Communications Act of 1934, as amended]"). "Local calling area" is a term used by the FCC to denote calls which, while "local" to the caller because of the NPA-NXX dialed, remain nevertheless "interstate" for purposes of jurisdiction and the FCC's unique compensation regime for ISP-bound traffic. T. 288, 298.

Moreover, it would have been absurd for the FCC to have delimited treatment of ISP-bound traffic to calls to ISP modem banks within the caller's geographically "local" area, when the end points of the call are interstate and international. Yet this is exactly the illogic in which the RLECs engage, in arguing that the FCC did not assume regulation of ISP-bound traffic when the modem is located physically outside the local calling area.[16] T. 41-42, 209-10. There is no meaningful distinction to be drawn based on

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[16] The RLECs contend that a court has "recognized" that the *ISP Remand Order* applies only to calls made to modems physically located in an area served by a local call. As a means to synopsize the ISP Remand Order on appeal, the D.C. Circuit simply referred to the order as compensation "provisions" of the

location of the modem banks, and it would have been absurd for the FCC to have done so, given the goals of encouraging interconnection and the growth of advanced services, as well as the given the "interstate" nature of ISP-bound traffic.[17]

Nor is there any evidence the FCC considered compensation for ISP-bound calls to harm the access charge regime when the CLEC's modems are physically located outside the local calling area. It is particularly troubling that the RLECs make such an argument, when they offer broadband and dial-up internet access, and when use of their affiliates' Vonage-type product cannot possibly result in accurate determination of the end points of the call for inter-carrier compensation. T. 161-62, 209, 212.

In its *Adelphia* decision, the Commission determined the compensation regime applicable to virtual NXX generally. That decision, however, did not specifically concern calls to ISPs, and was issued before the FCC assumed jurisdiction and determined the compensation for such calls in its *ISP Remand Order*. T. 267. Subsequent to the *ISP Remand Order*, the Commission issued its *US LEC* decision.[18] In that order, the Commission acknowledged:

> [T]he D.C. Circuit has remanded the ISP Remand Order, but has expressly refused to vacate the order, as a result, the rules the FCC

FCC applicable "only to calls made to [ISPs] located within the caller's local calling area." *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). There was no question before the court as to the scope of the FCC's intended compensation "provisions" and the court's shorthand characterization was not intended as a ruling on the merits.

17 Cf. *MCImetro Access Transmissions Services. Inc. v. BellSouth Telecommunications, Inc.*, 352 F.3d 872 (4th Cir. 2003) (permitting ILEC to charge CLEC for cost of transporting calls originating on local exchange carrier's network to CLEC's chosen point of interconnection (POI) violates 47 C.F.R. 703(b), promulgated under section 251(b)(5) of Telecommunications Act, which prohibits local exchange carriers from charging for calls originating on their own networks.)

18 *In re: 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 2002-181-C, Order on Arbitration, Order No. 2002-619 (August 30, 2002).

> adopted remain in effect pending further FCC proceedings on remand. The FCC's ISP Remand Order sets forth a specific intercarrier compensation regime that concerns the exchange of ISP-bound traffic between Verizon South and US LEC during the course of this arbitrated agreement. This issue arises to address possible solutions in case there is a subsequent change of law on this point during the term of the interconnection agreement. Federal law does not obligate Verizon South, or entitle this Commission, to impose rules to address potential contingencies with respect to the meaning of federal law. Compensation for ISP-bound traffic, and all reciprocal compensation traffic, should be paid in conformance with federal law which governs the issue.[19]

Thus the Commission has recognized the applicability of the *ISP Remand Order*, and its continued vitality, with regard to ISP-bound traffic. See T. 266-67, 271.

Other state commissions have ruled in favor of CLECs as regards this issue. For example, the Alabama Public Service Commission has determined that ISP-bound virtual NXX calls are predominantly considered "interstate" and thus are subject to FCC jurisdiction.[20] The Alabama commission further concluded that carriers may continue to assign telephone numbers to end users physically located outside the rate center to which the numbers they are assigned are homed. The Alabama commission also noted that ILECs have traditionally treated virtual NXX traffic as local in all respects, including with regard to inter-carrier compensation. Likewise, the Texas Public Utility Commission upheld a finding that

> the compensation mechanism in the *ISP Remand Order* shall apply to all ISP-bound calls. The Arbitrators stated that "all ISP-bound traffic falls under the compensation mechanism outlined in the ISP Remand Order. Consequently, the Arbitrators found that all ISP-bound traffic, whether provisioned via an FX/FX-type arrangement or not, is subject to the

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19 Id. at p. 30.

20 *Declaratory Ruling Concerning the Usage of Local Interconnection Services for the Provision of Virtual NXX Service*, Docket 28906, Declaratory Order, Alabama Public Service Commission (April 29, 2004).

> compensation mechanism contained in the FCC's *ISP Remand Order*.' Consistent with this conclusion, the Commission withdraws its decision applying access charges to traffic bound for ISPs outside the local calling area.[21]

Accordingly, such calls are appropriately within the scope of interconnection agreements and may be transmitted on "local" interconnection trunks, T. 211-12, and the Commission approves MCI's language

III. Reciprocal Compensation Rate - (Issue 21)

Issue 21: What should the reciprocal compensation rate be for out-of-balance Local/EAS or ISP-bound traffic? (Pricing, D)

MCI Position: This is the rate set in the FCC's order on CLEC reciprocal compensation rates.

RLEC Position: As discussed in Issues 8 and 13, 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. This issue has not been discussed in negotiations and is not ripe for arbitration.

MCI proposes the rate of $.0007 per minute for "out of balance" non-ISP-bound "local" traffic and for "out of balance" ISP-bound traffic.[22] The RLECs make two arguments: that 1) MCI did not negotiate the terms of such compensation; and 2) the RLECs are not "opting into" the "interim" compensation scheme established by the FCC in its *ISP Remand Order*. See T. 13, 60.

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21 Order on Reconsideration, in *Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Intercarrier Compensation for "FX-Type" Traffic Against Southwestern Bell Telephone Company*, Docket No. 24015, Texas Public Utility Commission (2004).

22 See footnote 13, *supra*.

With regard to the RLECs' first contention, MCI negotiated on the basis of the applicability of the *ISP Remand Order* to ISP-bound traffic between the parties. See T. 300-01. The RLECs do not dispute that the FCC's order was the subject of negotiations. The $.0007 rate was determined by the FCC in that order. Hence the RLECs' claim is without merit.

Concerning the second argument, $.0007 is no longer an "interim" rate, pursuant to the *Core* decision. T. 158-59, 162. Moreover, the RLECs turn the *ISP Remand Order* on its head: the FCC stated that the rate and volume *caps* on compensation applied by that order would apply only if an ILEC offered to exchange all traffic subject to section 251(b)(5), i.e., for all "local" traffic that is not ISP-bound, at the same rate. An ILEC that does not offer to exchange section 251(b)(5) traffic at these rates *must* exchange ISP-bound traffic at state-approved or state-negotiated reciprocal compensation rates. *ISP Remand Order*, ¶¶8, 89. The FCC's intent was not that ILECs, by refusing to exchange ISP-bound traffic at the FCC's compensation rate – now $.0007 – would be entitled to exchange such traffic at *less than* that rate, or, as ILECs imply, at "bill and keep." Rather, the FCC intended that the ISP-bound rate would be *more than* the FCC's *capped* rates. In paragraph 89 of the *ISP Remand Order* the FCC stated, in relevant part:

> It would be unwise as a policy matter, and patently unfair, to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic, with respect to which they are net payors, while permitting them to exchange traffic at state reciprocal rates, which are much higher than the caps we adopt here, when the traffic imbalance is reversed. Because we are concerned about the superior bargaining power of incumbent LECs, we will not allow them to 'pick and choose' intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier...Thus, if the applicable rate cap is $.0010 [per minute of use], the ILEC must offer to exchange section 251(b)(5) traffic at that same rate. Similarly, if an ILEC wishes to continue to exchange ISP-bound traffic on a bill and keep basis in a state that has

> ordered bill and keep, it must offer to exchange all section 251(b)(5) traffic on a bill and keep basis. For those incumbent LECs that choose not to offer to exchange section 251(b)(5) traffic subject to the same rate caps we adopt for ISP-bound traffic, we order them to exchange ISP-bound traffic at the state-approved or state-arbitrated reciprocal compensation rates reflected in their contracts. This 'mirroring' rule ensures that incumbent LECs will pay the same rates for ISP-bound traffic that they receive for section 251(b)(5) traffic.

Read in its entirety, three conclusions may be drawn from this paragraph: 1) the caps on compensation for ISP-bound traffic were intended to be *floors*, not ceilings, on the compensation due from ILECs in default of negotiations; 2) the RLECs, having contended in their pleadings and testimony that "no reciprocal compensation rate was negotiated," T. 64, may not now contend that the rate for such traffic should be simply "bill and keep;" and 3) by having chosen not to offer to exchange section 251(b)(5) traffic at the FCC's capped rates, the RLECs must now exchange traffic at reciprocal compensation rates. Under the circumstances, MCI's proposal of $.0007 – which is *below that* of the approved BellSouth reciprocal compensation rate in this State of $.0012655– is reasonable and is approved by the Commission.

IV. Calling Party Identification (CPN/JIP) - (Issues 3, 14, 16)

Issue #3: Should companies be required to provide JIP (Jurisdiction Information Parameter) information? (General Terms & Conditions, §9.5)

MCI Position: No. This is not a mandatory field. No other ILEC has asked that MCI provide this information, let alone on 90% of calls. 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. MCI does not oppose putting "OR" as a condition of providing this or CPN on calls. But there is only a legal mandate to provide CPN currently.

RLEC Position: Yes. RLECs should have the ability to determine the proper jurisdiction of the calls delivered to their switches. Jurisdiction Information Parameter (JIP) is one of the pieces of information that is available and technically feasible which

supports the RLECs ability to establish the proper jurisdiction of calls terminating to their networks. The NIIF strongly recommends that JIP be populated for both wireline and wireless carriers where technologically possible.

Issue #14: Should Parties be required to provide (a) CPN and JIP and (b) and pay access charges on all unidentified traffic? (Interconnection, §2.7.7)

MCI Position: MCI (a) is willing to provide CPN <u>or</u> JIP, but not both as the latter is an optional SS7 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.

RLEC 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 #16: Should Parties have to provide the specified signaling parameters on all calls? (Interconnection, §3.6)

MCI 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 90% CPN being provided.

RLEC Position: Yes. All signaling parameters are to be included in the signaling information whatever the source.

This group of issues concerns the information that is exchanged between carriers for call set-up, routing, and rating of calls. Calling Party Number ("CPN") is an established signaling parameter that assists carriers in determining the locations of the user making the call. CPN is the industry standard for transmitting messaging for the jurisdictional origin of a call. "Back office" systems for billing, rating and auditing are designed based on CPN. CPN is also required under law. See 47 C.F.R. part 64. Accordingly, MCI's switches pass CPN to other carriers in accordance with industry standards and the law. T. 145-46, 150, 204, 333.

The RLECs propose that the parties be required to exchange the Jurisdictional Indicator Parameter ("JIP") as well as the CPN. JIP is a six-digit (NPA-NXX) field in the SS7 message. T. 144. The RLECs, however, concede that JIP is a signaling parameter new to the industry and that it is not a mandatory parameter. See T. 79, 88, 144, 330-31, 333. ("The NIIF [Network Interconnection Interoperability Forum] does not recommend proposing that the JIP parameter be mandatory." T. 86.) The parties also agree that the Alliance for Telecommunications Industry Solutions ("ATIS") a voluntary forum, is still working on rules for carriers to implement JIP, particularly for VoIP and wireless traffic. T. 85, 331. Populating the JIP field, then, within the SS7 message is optional.

Other carriers, particularly those within the region, including BellSouth, have not required JIP. See T. 87. The interconnection agreements entered into between affiliates and BellSouth do not require JIP. Moreover, the RLECs' affiliates' interconnection agreements with BellSouth contain provisions that require NPA-NXX codes to be utilized in such a way so that local traffic can be distinguished from IntraLATA toll traffic, "regardless of the transport protocol method" used.[23] T. 145, 200, 202-03, 332.

CPN cannot be selectively manipulated or deleted en route. T. 148. MCI will not misrepresent CPN. T. 148, 204. Except for ISP-bound calls, the CPN the parties receive as local/EAS calls should have addresses associated with them in the 911 databases. The ISPs served by MCI will be easily identifiable; i.e., the calls are one-way, to MCI's ISP customers, and to a limited number of NPA-NXX codes. T. 204. Unlike Hargray's

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[23] See Hargray's affiliate's interconnection agreement at Attachment 3, section 6.2 and 3.2; Home's affiliate's interconnection agreement with BellSouth, attachment 3, section 8.1 and 5.2; and PBT's agreement with BellSouth, attachment 3, section 6.2. This language is what MCI has agreed to do in this proceeding for non-ISP traffic.

affiliate's service, TWCIS' service is stationary, with numbers assigned only by the location of the end user. For another carrier to opt-into those parts of the interconnection agreement that discuss identification of the jurisdiction of the call, the carrier has to opt-into the entire agreement, which includes audit rights. T. 149, 151. Thus JIP is not only not required; it is unneeded in the present context.

A major reason for the development of JIP relates to the growth of the wireless industry. For example, if someone from New York uses a cell phone in a Florida hotel, the cell phone number will indicate what carrier is being used to originate the call, and the extra six digits in JIP could indicate the physical cell site location that originated the call. In the wireless context, this additional information could determine the routing of the call, and facilitate access to toll-free calls, which sometimes are blocked at present. These concerns are not present with stationary, wireline service. Although in contexts other than wireless the industry has been concerned about "phantom traffic," which is defined as calls that lack sufficient information to determine the jurisdiction (i.e., interstate or intrastate) of the traffic for billing purposes, this is an open issue in the FCC's intercarrier compensation proceeding and as such is another reason the Commission does not adopt the RLECs' proposal. T. 146, 204.

MCI's class 5 switches – i.e., those used for local service – are in Atlanta and Charlotte. Each RLEC will be assigned to one or the other switch. T. 143. This type of arrangement is not unusual for CLECs, which use a limited number of switches to cover multiple ILEC serving areas, crossing state and LATA boundaries. T. 143-44. Given this reality, some examples may serve to illustrate the difficulty in implementing the RLECs' proposal: An call originated in Columbia, South Carolina would go to MCI's

switch (either in Atlanta or Charlotte). Assume that the call is to be delivered to an end user in Columbia. The use of JIP would indicate this is a toll call from Atlanta/Charlotte. The call, however, should be rated and billed to the originating end user as a local call. T. 147. This situation is similar to the scenario RLECs describe, T. 83, in that the JIP of the switch would not "accurately represent" the location of the caller. Using a different example, assume the originating end user is in Columbia, the switch is in Charlotte, and the terminating end user is in Charlotte. This call should be rated as a toll call, but it will be characterized as local call based on the JIP to the terminating end user. T. 148. Indeed, as the RLECs admit, when the Hargray affiliate's VoIP-product is used to originate a call from outside the LATA to which the NXX code for the product has been assigned, the JIP that "is going to show up is from the Hargray switch in Pritchardville," T. 348, thus ensuring that the JIP will not properly identify the call consistently with what the RLECs demand in this proceeding. Thus it is evident that JIP is not a panacea for the jurisdictional rating of traffic.[24]

MCI will pass JIP, but it will be only the JIP of the MCI switch. This limited use of JIP cannot be used to accurately rate traffic. MCI will not and cannot pass a unique JIP for every LATA served by its switch as the RLECs request. T. 90, 147, 149-50 200-02. Further, a unique JIP for every LATA is not required. Indeed, a requirement that CLECs provide a unique JIP for every local calling area served by a CLEC switch would require the scope of the CLEC switch to be limited because separate partitions would have to be created for each JIP and separate "look-up" tables would have to be managed

[24] Thus if a call is generated from a wireline phone and terminates with a wireless phone, it is difficult to know in what location the call termination has occurred, because that JIP field has not yet been addressed. It is difficult for the terminating carrier to determine in what city the caller was located. This could affect, for example, the rates charged. T. 146-47.

and created for each RLEC local calling area. This would create significant additional equipment, software and administrative cost and would create network inefficiency. The economies of scale available to CLECs for switching would be drastically reduced. Moreover, a requirement that CLECs provide RLECs with a unique JIP for every local calling area served by the CLEC switch would cause CLECs to limit the calling area scope of their class 5 switches and to exit certain markets, and would undermine the FCC's recent *TRRO* decision[25] that CLECs are not impaired without access to ILEC unbundled switching. T. 150, 201, 314-15.

Issue #14 concerns traffic that lacks CPN or JIP (as proposed by MCI) or that lacks CPN and JIP (as proposed by the RLECs). MCI proposes that unidentified traffic be treated as having the same jurisdictional ratio as the ratio of the identified traffic. The RLECs agree with this premise, *except* that if the unidentified traffic exceeds 10% of the total traffic, then the RLECs demand that *all* the unidentified traffic shall be billed at the RLECs' access charge rates. T. 93, 334. The RLECs' proposal is unnecessary. Concerns over fraud should be dealt with by the parties through audit provisions and cooperative efforts pursuant to language to which they have already agreed. T. 152.

Issue #16 raises the question whether the parties always must pass the signaling parameters that are the subject of this dispute (CPN and/or JIP) to the other interconnecting carrier, or whether these parameters will be passed along as they are received. MCI's language is to be preferred, because no party can guarantee that CPN will exist on all calls. MCI, no differently than other carriers, will have as much control

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[25] See *In the Matter of Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, FCC 04-290, (rel. February 4, 2005), ¶¶207, 209, 222-23.

over traffic to and from TWCIS as the RLECs themselves have over traffic to and from their customers. T. 125, 152-53. For these reasons MCI's language for this group of issues is adopted by the Commission.

CONCLUSION

The parties are directed to implement the Commission's resolution of the issues addressed in the Order by incorporating the language approved by the Commission.

The parties are directed to, and shall, file the conforming agreement with the Commission within sixty (60) days of receipt of this Order.

The Commission retains jurisdiction of this arbitration until the parties have submitted an interconnection agreement for approval by the Commission in accordance with Section 252(e) of the Act.

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

BY ORDER OF THE COMMISSION.

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Attest:

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