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December 10, 1996

Ms. Blanca S. Bayó
Director, Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket 960617-TI

Dear Ms. Bayó:

I am enclosing for filing in the above-referenced docket are the original and 15 copies of the following documents:

1. MCI's Petition on Proposed Agency Action; and

2. Response of MCI to Order to Show Cause.

By copy of this letter, copies have been provided to parties on the attached Certificate of Service.

Very truly yours,

Richard D. Melson

ACK
AFA
APP
CAF
CMU Noses
CTR
EAG
LEG
LIN
OPC
RCH
SEC
WAS
OTH

RDM/cc
Enclosures
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Response to Order
DOCUMENT NUMBER-DATE
13158 DEC 10 96
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13157 DEC 10 96
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of Show Cause Proceedings for Violation of Rules 25-24.620, 25-24.630, 25-24.471, 25-24.515, and 25-24.516, Florida Administrative Code	Docket No. 960617-TI Filed: December 10, 1996

RESPONSE OF MCI TELECOMMUNICATIONS CORPORATION TO ORDER TO SHOW CAUSE

On November 20, 1996, the Commission issued Order No. PSC-96-1395-FOF-TI ("Show Cause Order") requiring MCI Telecommunications Corporation (MCI) to show cause:

> (W)hy its certificate not be cancelled or why fines allowed by Section 364.285, Florida Statutes, should not be imposed for violation of Rule 25-24-630, Florida Administrative Code.
>
> Show Cause Order at page 8.

MCI's response to the Show Cause Order and its request for relief are provided below.

RESPONSE

I. General Response

MCI adamantly denies the heart of the Commission's allegations, i.e., that it has knowingly and willfully violated, or that it has refused to comply with, any applicable rule or order. To the contrary, MCI's record is that of a company that has demonstrated good faith compliance at every turn.

The Commission's attempt to penalize MCI arises out of MCI's good faith belief that it filed a proper tariff for surcharges on

collect calls made at Florida correctional facilities. Although MCI has attempted throughout this process to settle this dispute with the Commission, it is confident that a fair hearing based on the facts and legally applicable standards will establish that MCI's conduct was proper and does not warrant the strict penalty of a fine.

A fair review of the facts will establish that there is no basis under Section 364.285 to impose penalties upon MCI. As the Commission is aware, that section gives to the Commission power,

> . . .to impose (penalties) upon any entity subject to its jurisdiction under this chapter which is found to have refused to comply with or to have willfully violated any lawful rule or order of the commission or any provision of this chapter. . .
>
> (emphasis added)

Although as a matter of convenience the Commission may prefer to treat Section 364.285 as a strict liability statute, it is not. Rather, it establishes the legislative intent that there be evidence of knowing non-compliance before the Commission imposes penalties. This is an appropriate standard, as the strong penalties of a fine or revocation of a company's certificate should only be imposed upon egregious, intentional wrongdoers.

II. Specific response to the allegation that MCI violated the Commission's rules and orders on operator services

In the Show Cause Order, the Commission alleges that the surcharge MCI collected exceeds the intrastate rates for operator-assisted calls of AT&T of the Southern States ("AT&T"),

thereby exceeding the rate cap required by the Commission's rule 25-24.630, Florida Administrative Code, and established by the Commission's Order No. 22243, in Docket No. 871394 and Order No. 24101 in Docket Nos. 860723 and 891168-TC.

This matter arises out of MCI's contract with the Florida Department of Corrections ("DOCs") to provide telecommunications services at the State of Florida's correctional facilities. The contract between MCI and DOCs is a six page document which incorporates by reference the original Invitation to Bid ("ITB") and the MCI response to the ITB ("Response"). The contract is silent on the issue of the rate/surcharge which may be billed for calls. The ITB provides in Section 4.2 (Allowable Rates) that:

> At all times the rates charged by the contractor to the called party shall not exceed the dominant carrier (AT&T) rates for the same call - distance, length of call, time of day, and day of week. These maximum allowable rates shall reflect the AT&T interLATA and interstate rates in effect at the time of the call. It shall be the responsibility of the contractor to remain current on allowable rates; the Department will not provide rates to the contractor. There shall be no add-ons, such as service charges or surcharges, which are not in the approved AT&T tariff.

MCI's Response clarified which AT&T tariff provided the cap for intrastate calls, noting that AT&T's prison collect service tariffs should be the reference point:

> MCI understands and will comply. If the dominant carrier has filed in its interstate tariff charges for prison collect services or charges, and has not filed corresponding tariffs for services or charges in the intrastate tariff, MCI's rates for Department of Corrections services shall not exceed the dominant carrier's interstate tariff rates for similar services.

Thus, since AT&T does not have a prison collect tariff at the intrastate level, it was MCI's belief that it could apply rates and charges up to those in the AT&T interstate prison collect tariff, including up to a $ 3.00 surcharge, since that is contained in the AT&T tariff.

In order to implement the terms of the contract with DOCs, on January 29, 1996, MCI filed at the Commission proposed revisions to its intrastate tariff which reflected a $ 3.00 surcharge for intrastate calls from prison facilities, to be effective on thirty days notice. This was a $2.00 increase to the then-existing surcharge of $1.00. This tariff was approved and became effective February 29, 1996. MCI thereafter billed customers receiving collect calls from Florida correctional facilities the tariffed rate of the $ 3.00 surcharge per call.

In filing this tariff, MCI believed that it complied with the Commission's Rule 25-24.630(1)(a) and Rule 25-24.516 in that the rates it charged for intrastate collect calls from Florida prison facilities were approved by the Commission effective February 29, 1996, thereby meeting the rule requirement that the end-user be charged and billed "no more than the Commission-approved rate for intrastate calls."

On May 1, 1996, the Commission Staff advised MCI that it believed MCI's surcharge to be in violation of the Commission's Rule 25-24.630(1)(a) and previous Commission orders. In its response, MCI defended the surcharge. Discussions with Commission Staff led MCI to propose to settle this matter.

Indicative of its good faith, on July 10, 1996, MCI filed a tariff with an effective date of July 11, 1996 in order to lower the $ 3.00 surcharge to $ 1.75, which is the applicable AT&T rate. This had the effect of fixing the period in dispute to a finite period of time, for since that date, customers have been billed a surcharge of $ 1. 75 per call.

MCI has worked diligently to fashion a settlement of this matter. Two settlement proposals were filed with the Commission and a third settlement was proposed at the Commission's Agenda Conference on October 29, 1996. MCI offered to refund the difference between its $ 3.00 surcharge and the AT&T rate. The sticking point has been how to refund the money. Thus, once this matter was brought to MCI's attention and circumstances persuaded MCI to revise its tariff, MCI has tried to resolve this matter to the satisfaction of the Commission and DOCS, without engaging in potentially protracted litigation.

MCI did not "refuse to comply" with a Commission rule or order; when an issue regarding the proper interpretation of the Commission's rules was brought to its attention, MCI worked with Staff to resolve this matter and revised its tariff to the rate Staff indicated was appropriate. Further, MCI has not "willfully violated" the Commission's rules or orders, for it believed in good faith that it had filed the correct tariff. In these circumstances, MCI's conduct does not rise to the egregious behavior that warrants the strict penalties of Section 364.285.

Further, to the extent that the Commission interprets the language "Commission-approved rate" in Rule 25-24.630(1)(a) to incorporate by reference rates contained in prior Commission orders which are not specifically identified in the rule, MCI believes that the rule is impermissibly vague, and is insufficient to put MCI on notice of its obligation under the rule. Even if the incorporation by reference were clear, to the extent that the Commission interprets Rule 25-24.630(1)(a) to incorporate rate caps which may change from time to time as there are changes in AT&T's tariffed rates, MCI believes that the rule violates Section 120.54(1)(i), Florida Statutes (Supp. 1996) [formerly Section 120.54(8)] which provides that "a rule may incorporate material by reference but only as the material exists on the date the rule is adopted."

MCI believes that this response raises disputed issues of fact, policy and law.

III. Conclusion

MCI emphasizes that it has never willfully or knowingly violated applicable regulations or refused to comply with them. MCI is committed to operating its telephone system in full compliance with the law, Commission policy, and the public interest. MCI acknowledges its responsibility to ensure that its tariff filings comply with Commission rules and policy and commits to ensuring this responsibility in the future.

REQUEST FOR HEARING

MCI requests a formal hearing on the issues of fact, policy and law raised by the Show Cause Order and this response.

RESPECTFULLY SUBMITTED this 12th day of December, 1996.

HOPPING GREEN SAMS & SMITH, P.A.

By: _____

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and

_____

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Counsel for MCI Telecommunications Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by hand delivery this 10th day of December, 1996.

Martha Carter Brown
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Attorney

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