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FLORIDA PUBLIC SERVICE COMMISSION  
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Tallahassee, Florida 32399-0850

MEMORANDUM

APRIL 30, 1998

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (BROWN) *MB*  
DIVISION OF COMMUNICATIONS (ISLER) *PJ* *AD*

RE: DOCKET NO. 960617-TI - MCI TELECOMMUNICATIONS CORPORATION  
- INITIATION OF SHOW CAUSE PROCEEDINGS FOR VIOLATION OF  
RULE 25-24.630, FLORIDA ADMINISTRATIVE CODE

AGENDA: MAY 12, 1998 - REGULAR AGENDA - INTERESTED PERSONS MAY  
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\960617TI.RCM

CASE BACKGROUND

MCI Telecommunications Corporation (MCI or the company) is one of the current Department of Corrections' (DOC) contract carriers for collect calls from penal institutions. On February 29, 1996, MCI began billing a \$3.00 surcharge for intrastate collect calls from prison facilities. This was a \$2.00 per call overcharge on calls made between February 29 and March 15, 1996, and a \$1.25 per call overcharge on calls made between March 16 and July 10, 1996. Intrastate operator assisted calls are capped at AT&T's time of day rates. The difference in the per call overcharge is due to the fact that AT&T increased its surcharge from \$1.00 to \$1.75 on March 16, 1996. The overcharging is a violation of Rule 25-24.630, Florida Administrative Code, Rate and Billing Requirements.

Order No. PSC-96-1395-FOF-TI, issued November 20, 1996, ordered MCI to implement direct refunds, with interest, to those customers who were overcharged between February and July 1996, and to show cause why it should not be fined or have its certificate revoked for failure to comply with Commission Rule 25-24.630, Florida Administrative Code, Rate and Billing Requirements.

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Order No. PSC-97-0088-AS-TI, issued January 27, 1997, accepted MCI's proposed settlement in lieu of proceeding with the show cause.

MCI paid the \$10,000 settlement on January 30, 1997. Pursuant to Rule 25-4.114, Florida Administrative Code, Refunds, MCI filed its final report on the status of the refunds on June 13, 1997.

Order No. PSC-97-1050-FOF-TI, issued September 5, 1997, required MCI to make additional efforts to locate customers due a refund and consult with the public interest groups, who made presentations at the August 5, 1997, Agenda Conference, and return with suggestions for disposition of the unrefundable monies.

MCI filed its report on January 20, 1998 and supplemental report on January 23, 1998. An amount of \$189,482.49 remains unrefundable. This recommendation deals with the remaining unrefundable amount.

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### DISCUSSION OF ISSUES

ISSUE 1: Should the Commission accept MCI's suggestion that the unrefundable monies in the amount of \$189,482.49 be placed in a trust fund created by and administered by the Inmate Advocacy Groups?

RECOMMENDATION: No. Staff recommends the following:

1) MCI be required to provide prospective rate reductions of the surcharge on intrastate calls from the approximately 40 inmate facilities it currently serves.

2) MCI be required to file a report with the Commission within 30 days from the issuance of the Commission Order describing the reduction amount per call, the estimated number of intrastate calls it currently handles per month, and estimating the length of time it believes it will take to use the unrefundable amount of \$189,482.49.

3) MCI should be required to file a report with the Commission by the last working day of each month until all monies have been refunded, and provide the Commission with a final status report. (Isler)

STAFF ANALYSIS: Order No. PSC-97-1050-FOF-TI, issued September 5, 1997, required MCI to meet with the Inmate Advocacy Groups and provide the Commission with its suggestion of how to dispose of any monies that could not be directly refunded to consumers. In its January 20, 1998, report to the Commission, MCI suggested that after meeting with the Inmate Advocacy Groups, the unrefundable monies be placed in a "trust fund or similar fund created by and administered by the Advocacy Groups for the benefit of Florida inmates and their families." The report went on to state:

MCI recommends that the Advocacy Groups submit, for Commission approval, a description of the uses to which the funds shall be placed and a list of criteria to be used by the fund in determining when and how monies should be disbursed. Upon creation of such a fund and upon approval of its uses by the Commission, MCI shall issue a check payable to the fund for all remaining unrefundable monies.

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It is Legal staff's opinion that the Commission does not have the authority to establish trust funds. Attachment A is staff's letter dated October 27, 1997, to Mr. Thomas K. Bond, MCI's counsel, which explains the legal rationale. The authority to establish trust funds is a power constitutionally reserved to the Florida Legislature. If the legislature specifically directs it, the Commission can administer the trust fund, but it is not within the Commission's authority to establish a trust fund itself. Therefore, staff does not believe that the creation of a trust fund is a viable option.

Staff believes that a more equitable solution is a prospective rate reduction for those funds which cannot be directly refunded. MCI currently has approximately 40 inmate facilities in which it provides telecommunications services. While MCI cannot provide direct refunds to those customers who were specifically overcharged, it can provide a reduction to the surcharge for the same class of customers for intrastate calls made from inmate facilities.

In a January 18, 1998, news release, the Families with Loved Ones In Prison, Inc., stated that it and other interested advocacy groups for families of prisoners met with and agreed with MCI concerning the creation of a trust fund. However, the news release went on to state, in pertinent part:

If for any reason, the Commission cannot comply with said agreement, the alternative might be to order MCI to eliminate surcharges or issue coupons for telephone credit to those families currently being serviced by MCI for collect calls from prisons.

Therefore, staff recommends that MCI be required to provide prospective rate reductions of the surcharge on intrastate calls from the approximately 40 inmate facilities it currently serves. In addition, staff recommends that MCI be required to file a report with the Commission within 30 days from the issuance of the Commission Order describing the reduction amount per call, the estimated number of intrastate calls it currently handles per month, and estimating the length of time it believes it will take to use the unrefundable amount of \$189,482.49. Also, staff recommends that based upon MCI's estimation, MCI should be required to file a report with the Commission by the last working day of each month until all monies have been refunded, and provide the Commission with a final status report.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. This docket should be closed when staff has verified that the prospective refunds have been completed and submitted its final report to the Commission. (Brown)

STAFF ANALYSIS: When staff has verified that MCI Telecommunications Corporation has completed the prospective refunds and submitted its final report to the Commission, this docket should be closed.

Commissioners:  
JULIA L. JOHNSON, CHAIRMAN  
J. TERRY DEASON  
SUSAN F. CLARK  
DIANE K. KIESLING  
JOE GARCIA



DIVISION OF LEGAL SERVICES  
NOREEN S. DAVIS  
DIRECTOR  
(850) 413-6199

## Public Service Commission

October 27, 1997

Thomas K. Bond, Esquire  
MCI Telecommunications Corporation  
Law & Public Policy  
780 Johnson Ferry Road  
Suite 700  
Atlanta, GA 30342

**Re: Initiation of Show Cause Proceedings Against MCI Telecommunications Corporation  
for Violation of Rule 25-24.630, F.A.C., Docket No. 960617.**

Dear Tom:

I am writing in answer to your August 13, 1997, letter, in which you asked me to explain my concerns regarding certain suggestions of ways MCI could dispose of monies it is unable to refund directly to customers overcharged for collect calls from prisoners. In your letter you state that you have considered several possibilities in your discussions with interested parties, including setting up a trust fund for inmates or their families, or donating the money to a private, non-profit group. You also mentioned in our telephone conversation last Thursday that you have considered the possibility of a credit to the bills of current customers who receive collect calls from prisoners, and the possibility of depositing the unrefundable money in the State of Florida General Revenue Fund.

While I believe that the Commission does have the authority to approve a disposition of the funds by credits to current customers' bills or depositing the funds in the General Revenue fund, I do not believe that the Commission could or should approve the establishment of a trust fund with the unrefundable monies, or a donation to a private, non-profit group. This is my own opinion and the opinion of the Commission legal staff. It is not necessarily the opinion of the Commission itself, and is not binding on the Commission in any way.

First of all, it is my opinion that the Commission does have authority to dispose of any amounts that MCI is unable to refund directly to those who were overcharged, since it had the authority to order the refund to start with. Therefore, if the Commission ordered otherwise, the money would not necessarily have to be deposited with the Comptroller for disposition in accordance with the abandoned property sections of Chapter 717, Florida Statutes. See Section 717.109, Florida Statutes and the attached 1992 Memorandum from the Commission's Division of Legal Services to that effect.

It is also my opinion, however, that the Commission cannot order the disposition of the unrefundable amounts in a way that exceeds or contravenes the Commission's overall statutory authority and regulatory policies. I do not believe the Commission would exceed its authority if it ordered a credit to existing

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customers of the class overcharged, or if it ordered the monies deposited in the General Revenue Fund; but I believe that the Commission could not establish a trust fund for prisoners with the unrefundable amounts. The Commission does not have the authority to establish trust funds. The Commission can administer trust funds, if the legislature specifically directs it to do that, but the power to establish the fund in the first instance is a power constitutionally reserved to the legislature, not to an administrative agency.

Similarly with regard to donating the funds, the Commission itself has said that it will not include charitable contributions by utilities as appropriate operating expenses of the utility for ratemaking purposes, and thus recoverable in the rates charged to customers. The Commission said, and was affirmed on appeal, that it considers such contributions "involuntary contributions by ratepayers" See Southern Bell Telephone and Telegraph Company v. Florida Public Service Commission, 443 So.2d 92, 95 (Fla. 1983) The circumstances are of course somewhat different here, but to my mind the principle is the same. The Commission's regulatory policy is not to permit charitable contributions to be made with customers' money, and thus approval of such a suggestion in this instance would contravene that policy. Further, Commission approval of a proposal to donate the unrefundable amounts to private charities raises practical concerns regarding oversight of the efficient and appropriate use of the donations, and accountability.

These are the main concerns I have with some of the suggestions for disposition of the unrefundable money. I know that the Commission has indicated to you that it wants MCI and the interested groups who participated at Agenda to develop a suggestion for disposition of the funds together. It is my opinion, however, that the Commission could only approve a suggestion that was consistent with the law and Commission policy. As I said before, my opinions on this matter do not bind the Commission, but perhaps they will help MCI and the interested parties craft a suggested disposition of the unrefundable amounts that will be amenable to all.

It is my understanding from conversations with staff and from our talk last Thursday that you and staff have worked out the timing details of the interest calculations associated with the refunds, and therefore it will not be necessary to return to the Commission to amend Order No. PSC-97-1-50-FOF-TI, as Rick Moses suggested in his recent letter to you.

If you or any of the groups you are working with have any further questions about all of this, let me know.

Yours truly,

Martha Carter Brown

Martha C. Brown  
Chief, Bureau of Communications

MCB:smj

Enclosure

mciltr.mcb

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MEMORANDUM

FEBRUARY 20, 1992

TO: CHAIRMAN THOMAS M. BEARD  
COMMISSIONER SUSAN F. CLARK  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER BETTY EASLEY  
COMMISSIONER LUIS J. LAUREDO

FROM: DIVISION OF LEGAL SERVICES (DAVIS, SUMMERLIN, FEIL)

RE: UNCLAIMED REFUNDS (OPINION, NO. 92-010)

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At the February 18, 1992, Agenda Conference, Commissioner Clark asked whether or not the Commission had the authority to dispose of unclaimed utility refunds. She asked whether the Comptroller's office had the right to claim such refunds or whether such refunds escheated to the state.

The Legal staff has researched the subject and concludes that when the Commission has authority over the refund involved, it has authority to dispose of any unclaimed refunds. Although the industry statutes do not specifically address unclaimed refunds, the Commission's rules do. Rules 25-4.114(8), 25-6.109(8), 25-7.091(8), and 25-30.360(8), Florida Administrative Code, all state that the Commission shall order a method of disposing of any unclaimed refunds.

In the case of Lewis v. Public Service Commission, 463 So.2d 227 (Fla. 1985), a copy of which is attached as "Attachment A," the Florida Supreme Court addressed the Commission's disposition of unclaimed refunds resulting from the Commission's changing the rate structure of a municipally owned electric utility, the City of Tallahassee. The Commission had ordered the city to eliminate a surcharge on out-of-city electric customers, and the Supreme Court approved the Commission's authority to do so, City of Tallahassee v. Florida Public Service Commission, 441 So.2d 620 (Fla. 1983). Thereafter, the city submitted to the Commission a plan for a refund, including a provision for the disposition of unclaimed refunds. Gerald Lewis, in his capacity as the Comptroller of the State and head of the Department of Banking and Finance, intervened. He contended that the unclaimed refunds were subject to disposition as abandoned property by virtue of Section 717.05(2), Florida Statutes (1983).

At that time, Section 717.05 read, in pertinent part, as follows:



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717.05 Deposits and refunds held by utilities. The following funds held or owing by any utility are presumed abandoned:

(2) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state . . . that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than 7 years after the date it became payable, in accordance with the final determination or order providing for the refund.

Even though the City agreed with the Comptroller's interpretation and modified its refund plan, the Commission disagreed and ordered that the refund be undertaken in accordance with the City's original plan. The court held that the Commission's reliance on Section 366.06(3), Florida Statutes, which addressed refunds and unclaimed refunds, was misplaced because the Commission did not have authority over the rates of or refunds from municipal utilities. The court held that the unclaimed refunds were subject to Section 717.05(2).

In 1987, Chapter 717 was repealed in its entirety and replaced. The new Chapter 717 establishes, just as its predecessor did, presumptions of abandonment and provisions for the state's disposition of same. However, the new Chapter 717 expressly addresses utility deposits and unclaimed refunds (pertinent excerpts attached and marked "Attachment B"). Under Section 717.108, Florida Statutes (1991), utility deposits unclaimed by the owner for more than one year after the termination of utility service are presumed abandoned and, thus, subject to the state's authority. Section 717.109, Florida Statutes, entitled, "Refunds held by business associations," provides as follows.

Except to the extent otherwise ordered by the court or administrative agency, any sum that a business association has been ordered to refund by a court or administrative agency which has remained unclaimed by the owner for more than 1 year after it became payable in accordance with the final determination or order provided for the refund, regardless of whether the final determination or order requires any person entitled to a refund to make a claim for it, is presumed abandoned.  
(Emphasis supplied)

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A "business association" is defined broadly in Section 717.101(6) and includes any "utility." "Utility" is defined in Section 717.101(14) as "a person who owns or operates, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing electricity, water, steam, or gas." Interestingly enough, wastewater utilities are not included; however, "business association" is so broadly defined that a wastewater utility could be deemed included.

Thus, because of the change in the law, the Commission's existing rules on the disposition of a utility's unclaimed refunds are appropriate.

Legal staff has also reviewed Chapter 716, Florida Statutes (attached and marked "Attachment C"). Generally, this Chapter provides that certain unclaimed and abandoned money and property escheats to the State. However, it appears from the wording of the Chapter that it pertains only to abandoned money and property of the federal government.

In conclusion, if the Commission orders a refund and disposes of unclaimed refunds in accordance with its rules, the unclaimed refunds would not be considered abandoned property in Legal staff's opinion, and the provisions of Chapter 716 regarding the escheating of property to the State would not apply.

REFUND.MJF  
NSD/SFS/MJF/slc  
cc: Rob Vandiver  
Bill Talbott  
Charles Hill  
Walter D'Haeseleer  
Joe Jenkins  
Tim Devlin