

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for exemption from Rules 25-4.113, 25-24.471, and 25-24.515, F.A.C. and for authorization to discontinue service without notice and to require advance payment for service to certain customers, and for such other relief as may be appropriate, by MCI Telecommunications Corporation.

DOCKET NO. 970166-TI
ORDER NO. PSC-97-1024-FOF-TI
ISSUED: August 26, 1997

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING PETITION FOR RULE WAIVER

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminarily in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Case Background

MCI initially filed tariff revisions to implement a high toll monitoring program on December 9, 1996. Through customer complaints, we became aware that MCI was using this tariff filing as its authority to block calls to subscribers without notice. MCI was informed that its tariff did not comply with applicable

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Commission rules on notice of discontinuance of service and on calls from confinement facilities. In response to our concerns, MCI discontinued its blocking policy pending a request for an exemption from the applicable rules.

On February 6, 1997, MCI filed a petition seeking exemption from Rules 25-4.113, 25-24.471, and 25-24.515, Florida Administrative Code. MCI sought the exemption so that it could implement its revised tariff authorizing it to block collect calls to certain subscribers suspected to be a credit risk, even if the subscriber is in good standing with the customer's local exchange company (LEC). MCI stated that blocked subscribers would be required to make advance payments to the LEC prior to MCI completing additional collect calls.

As a result of various concerns raised by Commission staff regarding MCI's compliance with Section 120.542, Florida Statutes, and the applicability of MCI's request for exemption to confinement facilities, MCI requested that we defer our decision on the petition to allow MCI to amend its request. We granted MCI's request.

Subsequently, on May 20, 1997, MCI filed an Amendment and Supplement to Petition for Exemption. By its amended request, MCI withdraws its request for exemption as it applies to tariff T-97-0110, pertaining to confinement facilities. Since the filing of its amended petition, MCI has also withdrawn tariff T-97-0110. Thus, by its amended petition, MCI seeks exemption only from Rule 25-4.113, Florida Administrative Code. In addition, MCI has conformed its amended petition with the requirements of Section 120.542, Florida Statutes.

Pursuant to Section 120.542(6), Florida Statutes, notice of MCI's amended and supplemented request for exemption was submitted to the Secretary of State on May 28, 1997, for publication in the Florida Administrative Weekly on June 6, 1997. No comments were submitted during the comment period, which ended July 7, 1997.

The Petition

MCI states that it is attempting to limit its exposure to fraud through a high toll monitoring process. MCI claims that approval of its Petition is consistent with the legislative mandate to avoid "unnecessary regulatory constraints" and to eliminate rules that "delay or impair the transition to competition." See Sections 364.01(4)(e) and 364.01(4)(f), Florida Statutes (1995).

MCI also asserts that if the requested waiver is granted, the purpose of the underlying statutory provisions, Sections 364.03, 364.19, and 427.704, Florida Statutes, will be achieved by other means. First, MCI asserts that it is exempt from the provisions of 364.03, Florida Statutes, by Section 364.337(4), Florida Statutes, which exempts IXCs from the provisions of that section. MCI next asserts that, in accordance with Section 364.19, Florida Statutes, its tariff provisions enabling it to identify high toll usage and to minimize toll fraud are reasonable terms in a telecommunications service contract. MCI also argues that its tariff provisions protect subscribers from third party fraud, as well as protect MCI and its general body of customers from increased costs resulting from such fraud. Furthermore, MCI asserts that while it is unable to clearly identify what portion of Section 427.704, Florida Statutes, dealing with service for the hearing impaired, is implemented by Rule 25-4.113, Florida Administrative Code, MCI's high toll tariffs treat hearing impaired customers in a manner consistent with Section 427.704, Florida Statutes.

In addition, MCI asserts that if Rule 25-4.113, Florida Administrative Code, is applied to prevent MCI from requiring advance payment in high toll cases, or blocking toll calls without 5 days' advance written notice, MCI will suffer substantial economic hardship. MCI states that fraud is an increasing and costly problem for the company, which results in higher prices for consumers. MCI explains that not only is fraud costly, but it can take an extended amount of time to stop the offender. In addition, collection efforts are not always successful, which results in a loss to the company. MCI asserts that if it is allowed to institute its call blocking procedures, it will be able to protect itself and its customers from fraud while still providing quality service. MCI argues that if it cannot take proactive steps to protect itself in situations where fraud is clearly indicated it will continue to incur fraud-related losses. MCI asserts that these losses will have to be borne by both MCI and its general body of customers.

Determination

We are concerned that MCI's proposal may duplicate fraud control measures that LECs are authorized to use in their billing contracts with MCI. Typically, LECs purchase casual calling accounts receivable from MCI at a discount, which represents the LEC's billing fee and an estimate of the amount that will be uncollectible. The LECs subsequently bill their own customers for these MCI charges. See Order Approving Stipulation, Order No. 13429, issued June 18, 1984, in Docket 820537-TP. If a call is disputed by the LEC subscriber, the LEC routinely charges that amount back to the IXC. If the calls are not disputed, or if MCI determines that the charge is correct, the LEC is authorized to disconnect the subscriber's local service for non-payment. Then the LEC is also authorized to pursue collection of the entire unpaid balance through collection agencies or other legal means if appropriate. In this regard, the debt belongs to the LEC and not MCI. As such, we are concerned that both the LEC and MCI may contact a subscriber over the same charges, with both MCI and the LEC insisting on advance payments and/or a deposit. Moreover, we are also concerned that it is unclear to whom subscribers will make advance payments and how quickly thereafter the block will be lifted. It seems possible, due to billing cycles, that there may be instances where advance payments made to MCI will not be deducted before the LEC bills and attempts to collect the same charges.

Although we have concerns regarding MCI's proposal, we nevertheless acknowledge that customers have calling options. Thus, if customers are unhappy with MCI's ability to block calls, the customers can use a competing carrier. In addition, the benefits of MCI's proposal appear to outweigh any potential billing problems.

Upon review of the amended and supplemented petition, we find that MCI's petition meets the specifications set forth in Section 120.542(5), Florida Statutes, and that MCI's assertions of fraud adequately establish that application of Rule 25-4.113, Florida Administrative Code, would work a substantial hardship on MCI and its customers, in accordance with Section 120.542(2), Florida Statutes. As such, we hereby approve MCI's request for exemption. We shall, however, require MCI to submit a supplemental report to us outlining how it will address billing and advance payment problems, as well as how quickly a block will be lifted once payment has been made. Furthermore, we clarify that the phrase

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"certain facilities," found in Section 2.2.2.2 of tariff T-97-0109 shall not be interpreted to include correctional or hospital confinement facilities.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that MCI Telecommunications Corporation's amended and supplemented Request for Exemption is granted. It is further

ORDERED that MCI Telecommunications Corporation shall submit a supplemental report to us outlining how it will address any billing and advance payment problems that may arise, as well as how quickly a block will be lifted once payment has been made. It is further

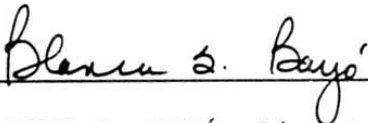
ORDERED that the phrase "certain facilities," found in Section 2.2.2.2 of MCI Telecommunications Corporation tariff T-97-0109, is clarified as set forth in the body of this Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

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By ORDER of the Florida Public Service Commission this 26th
day of August, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

BC

Dissents

Chairman Johnson and Commissioner Kiesling dissent, without
comment, from the decision set forth in this Order.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 16, 1997.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The

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notice of appeal must be in the form specified in Rule 9.900(a),
Florida Rules of Appellate Procedure.