

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against MCI Telecommunications Corporation for charging FCC universal service assessments on intrastate toll calls.

DOCKET NO. 980435-TI
ORDER NO. PSC-99-0273-PHO-TI
ISSUED: February 11, 1999

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case. A prehearing was not conducted in this proceeding as the parties agreed to the issues and there were no pending matters. The hearing in this proceeding will be conducted pursuant to Section 120.57(2), Florida Statutes. In lieu of testimony, memoranda of law are to be filed on February 19, 1999.

II. CASE BACKGROUND

By Order No. PSC-98-0681-SC-TI, issued on May 18, 1998, the Commission ordered MCI Telecommunications Corporation (MCI) to show cause in writing why it should not cease to charge FCC universal service assessments on intrastate toll calls and make appropriate refunds, with interest, to its customers. On June 8, 1998, MCI filed its response to the show cause order requesting a formal hearing in this matter. This matter has been set for hearing, pursuant to Section 120.57(2), Florida Statutes. This Order sets forth the controlling dates for this hearing.

III. POST-HEARING PROCEDURES

In this proceeding, the Commissioners may make a decision at the conclusion of oral argument by the parties. If the Commissioners make a determination on the pending issues at the conclusion of the hearing, a final order memorializing the Commissioner's decision will be issued. If no determination of the issues is made at hearing, a recommendation will be prepared for the Commissioner's review at a regularly scheduled agenda.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

IV. BASIC POSITIONS

MCI: From January 1, 1998 through August 1, 1998, MCI lawfully collected federal universal service fund (FUSF) charges from its business customers in Florida based in part on their intrastate charges in Florida. From January 1, 1998 through April 1, 1998, MCI lawfully collected national access fees (NAF) from its small business customers in Florida based in part on their intrastate charges in Florida. The FUSF and NAF were collected pursuant to federal tariffs and FCC orders. Even assuming that the Commission has authority, it should not require MCI to refund such charges. Such charges were collected in good faith reliance on FCC orders and MCI's effective federal tariffs and MCI did not in the aggregate collect a penny more from its customers than it was entitled to collect under federal law.

STAFF: The Commission, not the FCC, has jurisdiction over the assessment of charges on intrastate service. MCI has no basis for its assessment of the NAF and FUSF on the intrastate portion of customers' bills. All assessments on intrastate charges levied to date should be refunded to customers, with interest.

V. ISSUES AND POSITIONS

ISSUE 1: **Did MCI bill customers for National Access Fee (NAF) and Federal Universal Service Fund (FUSF) based on intrastate charges in Florida?**

MCI: No. MCI collected the NAF from small business customers based on a customer's total bill, including intrastate and international charges, from January 1, 1998 to April 1, 1998. MCI collected the FUSF from business customers on the same basis from January 1, 1998 to August 1, 1998.

STAFF: Yes.

ISSUE 2: **What authority did MCI have to collect NAF and FUSF based on intrastate charges in Florida?**

MCI: MCI collected such charges on a customer's total bill pursuant to orders of the Federal Communications Commission and pursuant to lawful, effective tariffs for such charges on file with the FCC.

STAFF: MCI did not have Florida Commission approval to collect the NAF and FUSF based on intrastate charges in Florida. Therefore, MCI did not have authority to assess these fees.

ISSUE 3: **What authority, if any, does the Commission have over MCI's collection of NAF and FUSF based on charges for intrastate calls in Florida?**

MCI: The Commission has no authority over such charges, which were collected pursuant to a lawful, effective tariff on file with the FCC.

STAFF: The Florida Commission has exclusive jurisdiction over MCI's intrastate interexchange rates, charges and services. The FCC has not preempted the states in this regard.

ISSUE 4: **If the Commission has authority, should it prohibit MCI from collecting NAF and FUSF based on charges for intrastate calls in Florida?**

MCI: No. MCI ceased collecting such charges on that basis effective April 1, 1998 and August 1, 1998, respectively. There is therefore no need for any prospective prohibition.

STAFF: Yes. MCI has ceased collecting these charges on intrastate calls. The company should be prohibited from doing so in the future.

ISSUE 5: **If the Commission has authority, should it order MCI to refund with interest all monies collected for NAF and FUSF attributable to charges for intrastate calls in Florida?**

MCI: No. MCI collected such charges in good faith reliance on effective federal tariffs. More importantly, MCI did not in the aggregate collect a penny more than it was

entitled to collect under federal law. Because the collection base for the FUSF included revenues from intrastate calls, the rate at which the charge was imposed was lower than it would have been if such revenues had been excluded. With respect to the NAF, failure by the LECs to provide critical customer information made it impossible for MCI to pass through ILEC PICC charges on a customer-by-customer and line-by-line basis, and MCI's collection methodology was designed to recover its PICC costs on an equitable basis.

STAFF: Yes. MCI should be ordered to refund, with interest, all monies collected for the NAF and FUSF that were based on intrastate charges in Florida.

VI. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.


VII. PENDING MOTIONS

Motion for Continuance filed on January 29, 1999, by MCI.

It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner J. Terry Deason as Prehearing Officer, this 11th day of February, 1999.



J. TERRY DEASON
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.