

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for submission of proposal for provision of relay service, beginning in June 1997, for the hearing and speech impaired, and other implementation matters in compliance with the Florida Telecommunications Access System Act of 1991.

DOCKET NO. 960598-TP  
ORDER NO. PSC-00-0615-FOF-TP  
ISSUED: March 30, 2000

The following Commissioners participated in the disposition of this matter:

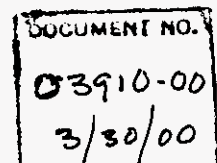
JOE GARCIA, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
E. LEON JACOBS, JR.  
LILA A. JABER

BY THE COMMISSION:

**ORDER ASSESSING LIQUIDATED DAMAGES**

The Telecommunications Access System Act of 1991 (TASA), Section 427.701, et. seq., Florida Statutes, directed the Commission to establish a statewide telecommunications relay system, beginning June 1, 1992. TASA required the development of a statewide relay service that could be certified by the Federal Communications Commission (FCC) under the provisions of the Americans with Disabilities Act. MCI Telecommunications Corporation (MCI) has been Florida's relay provider since the system was established. Most recently, MCI has provided service pursuant to a contract for relay service from June 1, 1997, through May 31, 2000. The contract incorporates the Commission's Request for proposals (RFP), issued in August of 1996. The current contract was awarded to MCI in December of 1996, with service beginning June 1, 1997.

The RFP provides for liquidated damages for failure to perform the obligations required by the contract. That section states, in pertinent part:



Liquidated damages shall accrue in amounts up to the following amounts per day of violation:

(a) For failure to meet answer time, blockage rate or transmission level requirement - \$5,000.

Any liquidated damages may be paid by means of the Administrator deducting the amount of the liquidated damage from a monthly payment to the provider. Such action shall only occur upon order of the FPSC.

Sections B-19 and B-20 of the August 1996 RFP provide:

**19. Blockage**

Provider is responsible for ensuring that 99% of calls reaching the relay center per day are either answered or continue to receive a ringing signal.

Provider is also responsible for ensuring that 97% of monthly random inbound test calls initiated by FPSC staff from various Florida locations are either answered or continue to receive a ringing signal.

Calls that are blocked must receive a network blockage signal of 120 impulses per minute.

**20. Answer Time.**

Provider is responsible for answering 90% of all calls per day within 10 seconds of reaching the relay switch. Elapsed time is calculated from the time inbound calls reach the relay switch. In calculating the percentage of calls meeting the answer time standard, the numerator shall be the total number of calls per day that are answered (with a CA ready to serve) in 10 seconds or less. The denominator shall be the total number of calls per day reaching the relay switch except that the total shall not include calls abandoned within 10 seconds after reaching the relay switch. However, calls abandoned after 10 seconds shall be included in the denominator. (Exception: If the Provider is unable to differentiate between calls abandoned within 10 seconds and those abandoned after 10 seconds of reaching the relay switch,

then all abandoned calls shall be included in the denominator.)

Provider is also responsible for answering 90% of random inbound FPSC staff test calls per month within 20 seconds after the last digit is dialed.

It is clear from MCI's monthly reports, and from our staff's tests of the relay system, that MCI has repeatedly failed to meet the blockage and answer time obligations of the Relay contract. As a result, the citizens of Florida have not received the service for which the Commission contracted, and, therefore, we find that we should assess liquidated damages as further described below.

The answer time requirement requires that the provider answer 90% of all calls each day within 10 seconds of reaching the relay switch. The blockage requirement requires that 99% of all calls reaching the relay center each day must either be answered or continue to receive a ringing signal, resulting in a maximum blockage rate of 1%.

MCI's contract requires a monthly report to the Commission on the daily percentage of calls answered and the daily percentage of calls blocked. The information provided in those reports shows that from October, 1997, through March, 1998, MCI missed the blockage requirement 45 days and the answer time requirement 62 days, out of a total of 182 days. That poor performance prompted our staff's May 13, 1998, letter to MCI expressing its concern with the quality of MCI's performance under the contract.

MCI attempted to improve its performance by replacing the FRS subcontractor, D.E.A.F., with Vista Information Technologies on June 4, 1998. During the changeover period, from June through July, 1998, service deteriorated further. MCI missed the answer time requirement 59 days and the blockage requirement 43 days, out of 61 total days. Service improved somewhat thereafter, for a time. From August through December, 1998, MCI missed the answer time requirement 25 days and the blockage requirement 2 days out of 151 total days. 2 days were excluded for hurricane Georges.

Since January, 1999, however, MCI's answer time service quality has continued to be deficient. MCI's reports show that MCI has markedly improved its performance of the blockage requirements of the contract. Since October of 1998 MCI has met the blockage standard consistently. With respect to the answer time

4requirement, MCI's performance has not improved, and it has recently taken a definite turn for the worse. During the first three months of 1999, MCI missed the answer time requirement 23 out of 90 days. From April through July, 1999, MCI missed only 2 days, but from August through December, 1999, MCI missed 49 days out of 150, with 3 days excluded for hurricanes. Thus, from June 1, 1997, through December 31, 1999, MCI has missed the answer time requirement 257 days. These facts demonstrate that MCI has not successfully corrected the answer time problem, and the quality of relay service MCI provides still does not meet the standards established in the contract.

TASA requires that the hearing and speech impaired community receive telecommunications service through the Florida Relay Service (FRS) that is comparable to the quality of service that a hearing person receives. FRS is often the only means by which hearing and speech impaired citizens can communicate by telephone. They depend upon the service. MCI has not provided the quality of service that the statute, the contract, and the citizens of Florida require. Therefore, we will assess liquidated damages in the amount of \$1,285,000, for failure to meet the answer time requirements of the contract 257 days, from June 1, 1997, through December 31, 1999, at \$5,000 for each violation. We will not assess liquidated damages for failure to meet the blockage requirements of the contract, because MCI has corrected the blockage problem.

Accordingly, MCI shall pay liquidated damages in the amount of \$1,285,000 by crediting the March, 2000 bill submitted to Florida Telecommunications Relay, Inc. (FTRI). FTRI shall reflect the liquidated damages credit in its payment for relay service bills from MCI beginning with the March, 2000 bill.

It is therefore,

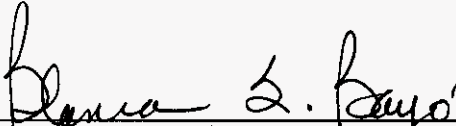
ORDERED by the Florida Public Service Commission that MCI shall credit the FTRI account \$1,285,000 and the FTRI Administrator shall reflect the liquidated damages credit in its payment for relay service bills from MCI beginning with the March, 2000 bill. It is further

ORDERED that the \$1,285,000 amount represents liquidated damages for failure to meet the answer time requirements of MCI's contract for Relay service from June 1, 1997, through December 31, 1999. It is further

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ORDERED that this docket shall remain open for the duration of MCI's contract.

By ORDER of the Florida Public Service Commission this 30th day of March, 2000.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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