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ORIGINAL
FILE COPY

August 5, 1991

BY HAND-DELIVERY

Mr. Steve C. Tribble, Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0850

Re: ~~Docket No. 910060-TP~~

Dear Mr. Tribble:

Enclosed for filing in the above-referenced docket on behalf of MCI Telecommunications Corporation are the original and fifteen copies of MCI's Motion for Protective Order.

By copy of this letter, this document has been furnished to the parties on the attached service list.

Sincerely,

Cheryl G. Stuart
Cheryl G. Stuart

- ACK
- AFA
- APP 1 w/m
- CAF
- CMU
- CTR
- EAG CGS/cia
- LEG Enclosure
- LIN 6
- OPC
- RCH 1
- SEC 1
- WAS
- OTH

cc: Parties of Record

RECEIVED & FILED

Cheryl G. Stuart
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

07891 AUG-5 1991

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL
FILE COPY

In re: Petition of the Attorney) Docket No. 910060-TP
General and Public Counsel to)
Adopt Rules Governing 900) Filed: August 5, 1991
Services.)
_____)

MCI TELECOMMUNICATIONS CORPORATION'S MOTION FOR
PROTECTIVE ORDER TO
CITIZENS OF FLORIDA FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS

MCI Telecommunications Corporation, ("MCI"), by and through its undersigned counsel, hereby files this Motion for Protective Order to Citizens of Florida ("Citizens") First Set of Requests for Production of Documents. Citizens' Request seeks production of documents on August 5, 1991. In support of this Motion, MCI states the following:

1. This docket was opened by the Commission granting the Petition of the Attorney General and Public Counsel to adopt rules relating to 900 service. On February 14, 1991, MCI filed a Petition to Intervene in this proceeding. By letter dated February 20, 1991, the Commission acknowledged receipt of MCI's petition, but noted that the Commission does not grant formal intervention in rulemaking proceedings, inasmuch as s. 120.54, Florida Statutes provides for participation, not intervention. MCI's interest in participating in the docket was noted. On May 6, 1991, the Commission issued a Notice of Rulemaking in this docket, pursuant to s. 120.54, Florida Statutes.

DOCUMENT NUMBER-DATE

07891 AUG -5 1991

PSC-RECORDS/REPORTING

2. Citizens' First Request for Production of Documents (Request) to MCI was filed July 1, 1991 with the Commission and served by mail. The Request asks for numerous documents relating to MCI's position on the various versions of the proposed rule in this docket, its complaint history on 900 service, certain guidelines and procedures dealing with the provision of 900 service and the resolution of customer complaints, and documents regarding the profitability of such services.

3. MCI objects to this Request and seeks a protective order because Citizens lack the legal authority to demand any discovery of MCI in this docket. This proceeding is governed by s. 120.54(3), F.S. The primary purpose of rulemaking is to encourage participation and comment by interested persons on a proposed statement of policy of an agency. As reflected in the Commission's determination that intervention was inappropriate in this case, this is not an adversarial proceeding where discovery is necessary to further the search for truth. Rulemaking proceedings are to elicit opinions and comments on a proposed declaration of an agency's policy. See General Tel. Co. v. PSC, 446 So. 2d 1063, 1067 (Fla. 1984); Adam Smith Enters. v. DER, So. 2d 1260, 1270 (Fla. 1st DCA 1989); Balino v. HRS, 362 So. 2d 21, 24 (Fla. 1st DCA 1978), cert. denied, 370 So. 2d 458, appeal dismissed, 370 So. 2d 462 (Fla. 1979). Nowhere in s. 120.54, nor anywhere in the applicable Commission rules (see Rule 25-22.010 - 22.022, F.A.C.) is discovery provided for or contemplated.

4. Citizens cite Rules 25-22.34 (sic) and 25-22.35 (sic) as the authority for this request. Both sections 25-22.034 and 25-22.035, F.A.C. deal with discovery in proceedings governed by s. 120.57 and 120.54(16), Florida Statutes. The Commission's notice specifies that this is a docket governed by s. 120.54, not 120.57. Section 120.57 is therefore inapplicable. Section 120.54(16) has been renumbered as subsection (17) since the 1981 adoption of the Commission's rules. The provisions of section 120.54(17), F.S., the rulemaking "draw out" procedures, have not been invoked here. None of the rules cited by Citizens support the basis for this request for discovery.

5. The Commission's rules are consistent with the Model Rules of Administrative Procedure. The analogous rule, Chapter 28-3, F.A.C., makes no explicit provision for discovery in rulemaking. This contrasts with Section 28-5.208, which explicitly allows for discovery in proceedings pursuant to s. 120.57 and 120.54(16) [since renumbered as (17)]. See section 28-5.101, F.A.C.

6. Citizens further cite section 350.0611(1), F.S., as statutory authority for the Request. This section, too, is inapplicable. Section 350.0611 is authority for Public Counsel to participate in and initiate Commission proceedings, but does not grant it any greater rights than any other party to a proceeding. In fact, this section, in pertinent part, provides that the Public Counsel shall have the specific power to

"...utilize therein all forms of discovery available to attorneys in civil actions generally, subject to protective orders of the commission..." No discovery on private parties is available to attorneys in rulemaking generally. Therefore, this section does not provide statutory authority for the Request.

7. Citizens have cited no authority for this request for discovery and no such authority exists.

8. MCI files this Motion without waiving any right to claim that the request demands disclosure of proprietary confidential business information and/or to seek an appropriate protective order and confidential treatment of such information should the Commission deny this Motion.

Wherefore, MCI respectfully requests that the Commission enter a protective order relieving MCI from any obligation to respond to Citizens Request for Production of Documents.

Respectfully submitted this 5th day of August, 1991.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. Mail to the following this 5th day of August, 1991.

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