

HOPING GREEN SAMS & SMITH
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS

123 SOUTH CALHOUN STREET
POST OFFICE BOX 6526
TALLAHASSEE, FLORIDA 32314

1904/ 222-7800
FAX 1904/ 224-8551
FAX 1904/ 425-3415

Writer's Direct Dial No.
(904) 425-2313

May 20, 1997

**ORIGINAL
FILE COPY**

JAMES S. ALVES
BRIAN H. BIBEAU
KATHLEEN BLIZZARD
ELIZABETH C. BOWMAN
RICHARD S. BRIGHTMAN
PETER C. CUNNINGHAM
RALPH A. DEMEO
THOMAS M. DIROSE
WILLIAM H. GREEN
WADE L. HOPPING
FRANK E. MATTHEWS
RICHARD D. NELSON
MICHAEL P. PETROVICH
DAVID L. POWELL
WILLIAM D. PRESTON
CAROLYN S. RAEPPEL
DOUGLAS S. ROBERTS
GARY P. SAMS
ROBERT P. SMITH
CHERYL G. STUART

GARY K. HUNTER, JR.
JONATHAN T. JOHNSON
ROBERT A. MANNING
ANGELA R. MORRISON
GARY V. PERKO
KAREN M. PETERSON
R. SCOTT RUTH
W. STEVE SYRES
T. KENT WETHERELL, II
OF COUNSEL
W. ROBERT FOXES

Ms. Blanca S. Bayó
Director, Records & Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket 970166-TP

Dear Ms. Bayó:

Enclosed for filing on behalf of MCI Telecommunications Corporation in the above docket are the original and 15 copies of MCI's Amendment and Supplement to Petition for Exemption.

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

Very truly yours,



Richard D. Melson

ACK _____
AFA _____
APP _____ RDM/cc
Enclosures
CAF _____ cc: Service List
CMU Jose
CTR _____
EAG _____
LEG 1
LIN 5
OPC _____
RCH _____
SEC 1
WAS _____
OTH _____

DOCUMENT NUMBER-DATE
05084 MAY 20 97
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 970166-TI

Filed: May 20, 1997

MCI's AMENDMENT AND SUPPLEMENT TO PETITION FOR EXEMPTION

MCI Telecommunications Corporation (MCI) hereby files this amendment and supplement to the Petition for Exemption previously filed in this docket on February 6, 1997.

BACKGROUND

1. On February 6, 1997, MCI filed a petition for exemption from Rules 25-4.113, 25-24.471 and 25-24.515 to the extent necessary to enable MCI to require customers to provide advance payment for service and to block calls without notice when necessary to prevent nonpayment for its service. The petition for exemption was filed concurrently with the filing of tariffs T-97-0109 and T-97-0110 which established new high toll monitoring programs ("high toll tariffs").

2. In its recommendation dated April 24, 1997, the staff's primary recommendation stated that MCI's petition for exemption did not comply with Section 120.542, Florida Statutes, in that it did not expressly demonstrate how the requested waivers would serve the purpose of the underlying statutes or how that purpose would be met by other means. In addition, both the primary and

alternate recommendations stated that the petition should be denied as it relates to tariff T-97-110, which specifically applies to collect calls from confinement facilities.

3. On May 1, 1997, MCI requested that the Commission defer action on the petition for two agendas in order to give MCI an opportunity to supplement its petition to make the demonstration required by Section 120.542. That deferral request was granted.

4. As a preliminary matter, MCI would like to point out that it believes the petition for exemption was not required to comply with Section 120.542 and was procedurally sufficient as originally filed.¹ Nevertheless, to avoid the necessity for a Commission ruling on this procedural issue, MCI hereby supplements its petition to include the showing required by Section 120.542.

AMENDMENT TO WITHDRAW EXEMPTION REQUEST AT TO TARIFF 97-110

5. MCI hereby withdraws its exemption request as it relates to tariff T-97-110, which deals with the blocking of certain collect calls from confinement facilities. MCI will file the appropriate tariff amendments to withdraw the language added

¹ Section 120.542(1) specifically states that "[t]his section is supplemental to, and does not abrogate, the variance and waiver provisions in any other statute." Section 364.337(4) contains a specific waiver provision applicable to interexchange carriers such as MCI. That section permits an IXC to petition the Commission for a waiver or some or all the requirements of Chapter 364, except s. 364.16, s. 364.335(3), or s. 364.337(5), and permits the Commission to grant such petition "if determined to be in the public interest." This statutory waiver provision, which survives the enactment of Section 120.542(1), has been implemented by Rule 25-24.455. Consistent with the statutory standard in Section 364.337, that rule permits waivers when such waivers are determined by the Commission to be consistent with the public interest. This is a different standard than the one contained in Section 120.542, and MCI submits that this preexisting standard remains available for IXC waiver requests as an alternative to the new standard in the APA.

by T-97-110.² By virtue of this withdrawal, MCI no longer requires an exemption from Rules 25-4.471(4)(c) and 25.24.515(17).

SHOWING REQUIRED BY SECTION 120.542

6. Section 120.542(2) provides in pertinent part as follows:

Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness. For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. . . .

7. MCI will address the requirements of this rule as it relates to MCI's requested exemption from Rule 25.4.113, which is the only rule potentially impacted by tariff T-97-109. That rule deals with the circumstances under which service can be discontinued by a local exchange company. This rule is made applicable to IXCs through incorporation by reference in Rule 25-24.490.

8. As stated in MCI's original petition for exemption, MCI believes that its high toll tariff -- which permits MCI to request advance payments and to place toll blocks without notice in circumstances which suggest toll fraud -- is consistent with

² This withdrawal is without prejudice to MCI's right to file a new tariff and/or a exemption request at a later date to address the prison collect calling situation.

this rule, since subsection (j) permits service to be discontinued without notice in the event of unauthorized or fraudulent use of service. Because MCI was informed that staff disagrees with MCI's interpretation of this rule, MCI requested a waiver to the extent necessary to allow MCI to request advance payments and place toll blocks without notice where high toll usage indicates potential fraud.

9. Purpose of the Underlying Statute. Rule 25-4.113 implements sections 364.03, 364.19, and 427.704, Florida Statutes. MCI believes that if its requested waiver is granted, the purpose of the underlying statutes will be achieved by other means for the following reasons:

(a) Under section 364.337(4), IXCs are exempt from the provisions of Section 364.03. To the extent that Rule 25-24.113 implements Section 364.03, there is no statutory basis for applying this rule to MCI, and a waiver would be fully consistent with the underlying statute.

(b) Section 364.19 provides in its entirety that:

The commission may regulate, by reasonable rules, the terms of telecommunications service contracts between telecommunications companies and their patrons.

MCI submits that tariff provisions which enable MCI to identify high toll usage and take quick steps to minimize toll fraud are reasonable terms in a telecommunications service contract within the meaning of Section 364.19. Such provisions protect the subscriber from unauthorized charges in the event of fraudulent activity by a third party. Similarly, they protect MCI and its

general body of customers from increased costs due to fraud in the event of fraudulent use by the subscriber. In a competitive environment for long distance services, customers are also protected by their ability to choose a different carrier -- either by presubscription or by use of an alternative dialing pattern on a call-by-call basis -- in the event that they are dissatisfied with MCI's policies on discontinuance of service.

(c) Section 427.704 deals with service for the hearing impaired. MCI is frankly unable to identify what portion of this statute is implemented by Rule 25-4.113. In any event, MCI's high toll tariffs treat hearing impaired customers identically to hearing customers, and therefore are fully consistent with the statutory policies in Section 427.704.

10. Hardship. If Rule 25-4.113 is applied to preclude MCI from requiring advance payment for services in cases where high amounts of toll charges are incurred, or from instituting toll blocking without 5 days' advance written notice in such circumstances, MCI will suffer a substantial economic hardship. As stated in MCI's original petition, fraud losses for U.S. telecommunications carriers in 1996 were estimated at \$3.7 billion. Without the ability to take proactive steps to protect itself in cases where calling patterns indicate the likelihood of fraud, MCI will continue to incur substantial fraud-related losses and the cost of such losses will be borne by MCI and its general body of customers.

SUMMARY

11. For the reasons detailed above, MCI submits that its requested rule waiver is consistent with the purposes of the underlying statutes and is necessary to prevent substantial economic hardship to MCI and its customers.

RESPECTFULLY SUBMITTED this 20th day of May, 1997.

HOPPING GREEN SAMS & SMITH, P.A.

By: Richard D. Melson
Richard D. Melson
P.O. Box 6526
Tallahassee, FL 32314
(904) 425-2313

and

THOMAS K. BOND
MCI Telecommunications Corporation
Suite 700
780 Johnson Ferry Road
Atlanta, GA 30342
(404) 267-6315

Attorneys for MCI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by U.S. Mail this 20th day of May, 1997.

Martha Carter Brown
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Thompson

Attorney