

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by MCI
Telecommunications Corporation for
an order requiring BellSouth
Telecommunications, Inc. to remove
its deregulated payphone
investment and associated expenses
from its intrastate operations and
reduce the Carrier Common Line
rate element of its intrastate
switched access charges by
approximately \$36.5 million as
required by the Federal
Telecommunications Act of 1996.

DOCKET NO. 970172-TP

In re: Petition by MCI
Telecommunications Corporation for
an order requiring GTE Florida
Incorporated to remove its
deregulated payphone investment
and associated expenses from its
intrastate operations and reduce
Carrier Common Line Rate element
of its intrastate switched access
charges by approximately \$9.6
million as required by the Federal
Telecommunications Act of 1996.

DOCKET NO. 970173-TP

In re: Establishment of
intrastate implementation
requirements governing federally
mandated deregulation of local
exchange company payphones.

DOCKET NO. 970281-TL ✓
ORDER NO. PSC-97-0810-FOF-TL
ISSUED: July 7, 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

DOCUMENT NUMBER-DATE

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FLORIDA PUBLIC SERVICE REPORTING

ORDER DENYING REQUEST FOR SUSPENSION OF TARIFF

BY THE COMMISSION:

I. BACKGROUND

On September 20, 1996, the Federal Communications Commission (FCC) issued its First Report and Order, Order No. PSC-97-0810-FOF-TP96-388, CC Docket No. 96-128, implementing the Telecommunications Act of 1996, 47 U.S.C. § 276(b)(1)(B) (Act). On November 8, 1996, the FCC issued its Order on Reconsideration, Order No. 96-439, on the same issues presented in Order No. 96-388. As the FCC indicated in its Order No. 96-388, Section 276(b)(1)(B) of the Act requires that incumbent local exchange carriers (LECs) remove from their intrastate rates charges that recover the costs of their pay telephones. Further, FCC Order No. 96-388 requires that the revised intrastate rates must be effective no later than April 15, 1997. Also by this date, FCC Order No. 96-388 directs the states to determine the intrastate rate elements that must be removed to accomplish this elimination of any intrastate subsidies. FCC Order No. 96-388, ¶ 186.

Paragraph 145 of FCC Order No. 96-388 requires that all local exchange carriers (LECs) deregulate their pay telephone operations by separating the pay telephone operation from the local exchange carrier. The LEC can accomplish this separation with either of two options: structural safeguards (separate subsidiary) or non-structural safeguards (accounting separations).

On February 7, 1997, MCI Telecommunications Corporation (MCI) filed a petition requesting that we order BellSouth Telecommunications Inc. (BellSouth) to remove its deregulated payphone investment and associated expenses from its intrastate operations and reduce its intrastate Common Carrier Line (CCL) charge by 36.5 million dollars (Docket No. 970172-TP). On the same date, MCI filed a similar petition for GTE Florida Incorporated (GTEFL) to reduce its intrastate CCL charge by 9.6 million dollars (Docket No. 970173-TP). On February 26, 1997, BellSouth filed a revised tariff (T-97-156). On February 27, 1997, BellSouth and GTEFL responded to MCI's petitions. MCI subsequently filed a response to GTEFL's answer to the MCI petition and particularly GTEFL's motion to dismiss.

On March 27, 1997, we issued Proposed Agency Action (PAA) Order No. PSC-97-0358-FOF-TP denying both of MCI's petitions. This

Order also established several generic implementation requirements that apply to all LECs (Docket No. 970281-TL). The implementation requirements dealt with the LEC pay telephone operation separation and the removal of the intrastate pay telephone subsidy. The Order required that LEC tariff changes regarding the removal of the intrastate subsidy should be filed and become effective April 15, 1997.

On April 21, 1997, MCI filed a Petition on Proposed Agency Action, protesting our PAA Order with regard to all three dockets: Docket Nos. 970172-TP, 970173-TP, and 970281-TL. MCI's protest requests a Commission hearing: (a) to determine the amount of rate reductions required to eliminate the intrastate pay telephone subsidies for BellSouth and GTEFL; and (b) to determine the specific rate elements to which such reductions should be applied. A hearing on MCI's protest is scheduled for August 7, 1997.

MCI's protest also requests that we suspend the tariff filed by BellSouth to implement its estimate of the required rate reduction pending resolution of the protest. MCI requests that we also require BellSouth to hold the amount of such reductions subject to disposition by further order of this Commission.

On May 15, 1997, BellSouth filed a Response to MCI's Petition and Motion for Expedited Resolution. On May 16, 1997, Sprint-Florida Incorporated (Sprint-Florida) filed its Response to MCI's Petition. While responses other than motions to dismiss to protests of PAA orders are not contemplated by the PAA procedure, we believe it is appropriate to address the content of the responses because of the unique nature of the issues in this proceeding. This Order addresses MCI's request to suspend the tariff filed by BellSouth.

II. DISCUSSION

MCI requests that we suspend BellSouth's tariff and require BellSouth to hold the amount of its intrastate rate reduction subject to disposition by further order of this Commission. MCI believes that Order No. PSC-97-0358-FOF-TP, which provided that in the event of a protest the LECs' tariffs should remain in effect with revenues held subject to refund, is insufficient to protect MCI's interest in the disposition of the required rate reduction. MCI argues that a suspension of the tariff is necessary because BellSouth is making a rate reduction, and therefore no revenues can be held subject to refund. MCI believes that the only way to protect any party's right to challenge the manner in which BellSouth's reductions are made is to suspend the effectiveness of

BellSouth's tariff and to require BellSouth to hold the appropriate amount of revenues subject to disposition by further order of this Commission.

In its Response to MCI's Petition on Proposed Agency Action and Motion for Expedited Resolution, BellSouth strongly opposes MCI's request to suspend the tariff. BellSouth notes that the removal of the pay telephone subsidy from BellSouth's intrastate operations is a prerequisite to the payment by interexchange carriers, such as MCI, of interim dial-around compensation to BellSouth and other pay telephone providers. See FCC Order No. 96-388, ¶ 125. BellSouth believes that delaying this payment of compensation is MCI's true motive in its request for suspension of the tariff. BellSouth argues that a suspension would force BellSouth to violate the requirements of FCC Order No. 96-388 and would give MCI a basis to argue that it is not required to pay the interim compensation as long as MCI is able to keep its instant protest alive. BellSouth, therefore, believes that it will be financially harmed and MCI will be unjustly enriched by the suspension of BellSouth's tariff.

In its Response to MCI's Petition on Proposed Agency Action, Sprint-Florida takes no position on the substantive issues raised with respect to BellSouth. Sprint-Florida requests a clear finding from us that we have made our determination regarding the removal of pay telephone subsidies required by FCC Order No. 96-388 or, in the alternative, that any such determination has been made with respect to Sprint-Florida since no timely objections have been filed regarding the Sprint-Florida tariff filing. Sprint-Florida does not specifically address MCI's request that BellSouth's tariff be suspended.

III. CONCLUSION

We find BellSouth's argument persuasive. Section 276(c) of the Act expressly states that FCC requirements regarding the provision of pay telephone service preempt any conflicting state requirements. The FCC's Order implementing Section 276 of the Act specifically states that all incumbent LECs must revise their intrastate rates by April 15, 1997. FCC Order No. 96-388, ¶ 186. We will not issue an order that would directly conflict with FCC Order No. 96-388's requirement that revised LEC tariffs be effective by April 15, 1997. Accordingly, we hereby deny MCI's request to suspend BellSouth's tariff.

We do not agree with MCI's argument that the only way to protect the interests of MCI or any other party who wishes to

challenge the manner in which the rate reductions are implemented is to suspend the effectiveness of BellSouth's tariff and to require BellSouth to hold the appropriate amount of revenues subject to disposition by further order of this Commission. We have given all interested parties opportunity to challenge the implementation of the rate reductions. Specifically, we reviewed MCI's petitions, Docket Nos. 970172-TP and 970173-TP, requesting specific rate reduction from the Carrier Common Line (CCL) Charge and denied those petitions. As a part of that decision, we determined that the LECs have the discretion to determine where the rate reductions should be made to remove the intrastate subsidy, with the revised tariffs to be effective by April 15, 1997. Therefore, we have fulfilled our obligations under the FCC's Order and given parties an opportunity to contest our decision. Neither MCI nor any party has waived any right it may have to seek a refund or true-up if our PAA decision is different after hearing or on appeal.

Further, we decline to make a finding as requested by Sprint-Florida regarding the effect later proceedings in these dockets will have on the tariffs filed by Sprint-Florida. Sprint-Florida requests that we make a finding that the proceedings resulting from MCI's protest shall have no effect on Sprint's recent revised tariff filings. Although there have been no specific protests timely filed regarding Sprint-Florida's tariff filings, Docket No. 970281-TP is a generic docket of general application to all LECs. Because the issues raised by MCI in its protest are a part of Docket No. 970281-TP, we shall not make the finding that Sprint-Florida requests at this time.

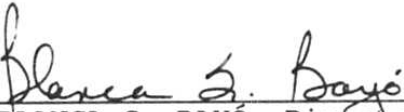
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that MCI Telecommunications Corporation's request to suspend the tariff filed by BellSouth Telecommunications, Inc. (T-97-156) is hereby denied. It is further

ORDERED that Dockets Nos. 970172-TP, 970173-TP, and 970281-TL shall remain open to address the remaining issues in MCI's protest of Order No. PSC-97-0358-FOF-TP and any other implementation matters concerning pay telephone deregulation.

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By ORDER of the Florida Public Service Commission, this 7th
day of July, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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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.

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 25-22.0376, 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.