

State of Florida



Public Service Commission

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RECORDS AND REPORTING

DATE: SEPTEMBER 23, 1999

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF APPEALS (BELLAK) *RCB*
DIVISION OF COMMUNICATIONS (SIMMONS, DOWDS) *JD*

RE: DOCKET NO. 980435-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST MCI TELECOMMUNICATIONS CORPORATION FOR CHARGING FCC UNIVERSAL SERVICE ASSESSMENTS ON INTRASTATE TOLL CALLS.

AGENDA: OCTOBER 5, 1999 - REGULAR AGENDA - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\APP\WP\980435.RCM

CASE BACKGROUND

By Order No. PSC-98-0681-SC-TI, issued 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. Following a formal hearing on March 3, 1999, we issued Order No. PSC-99-0613-FOF-TI, issued April 2, 1999, which ordered that MCI refund, with interest, the National Access Fee (NAF) and Federal Universal Service Fee (FUSF) collections that had been collected based on revenues from intrastate calls.

On April 16, 1999, MCI filed a timely petition for reconsideration of Order No. PSC-98-0681-SC-TI based on the intervening issuance by the Federal Communications Commission on March 22, 1999 of a Memorandum Opinion and Order which addressed similar matters with respect to MCI's NAF and FUSF charges in

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Virginia (FCC Order). The FCC order was appealed to the 4th Circuit Court of Appeal, which subsequently remanded the case to the FCC for further consideration in light of the 5th Circuit's decision in Texas Office of Public Utility Counsel v. Federal Communications Commission, Slip Opinion (5th Circuit, July 30, 1999).

In May 1999, MCI contacted staff to discuss the settlement of this case. After several meetings with staff, on September 22, 1999, MCI submitted its offer of settlement which is attached hereto and incorporated herein as Attachment A. In light of the 5th Circuit's decision, which supports the Commission's decision, and staff's recommendation that the Commission accept MCI's offer of settlement in order to avoid further needless litigation, the outstanding petition for reconsideration will be moot if the settlement is approved.

In its settlement offer:

1) MCI apologized for its failure to consult with staff prior to making its decision on a cost recovery methodology and the appropriate jurisdiction in which to file a tariff for such charges, and acknowledged that such failure resulted in a significant expenditure of Commission and staff time and resources. MCI agreed to make efforts to ensure that such an oversight does not occur in the future.

2) In recognition of the Commission and staff resources expended in the investigation and prosecution of this show cause proceeding, MCI agreed to make a voluntary contribution of \$10,000 to the General Revenue Fund of the State of Florida, with no admission of liability or wrongdoing, in lieu of making the refunds required by Order No. PSC-99-0613-FOF-TI. Thus, upon acceptance of the settlement offer by the Commission, MCI will have no further obligation to any party, governmental or private, relating to the charges at issue in this proceeding.

DISCUSSION OF ISSUES

ISSUE 1: Should MCI's offer of settlement be approved?

RECOMMENDATION: Yes. The Commission should approve MCI's offer of settlement.

STAFF ANALYSIS: Upon consideration of the settlement offer, staff believes that the terms of the settlement are fair and reasonable and that acceptance of the settlement offer is in the public interest under the circumstances of this case. If MCI's NAF and FUSF had been designed to be applied only to interstate and international revenue, the resulting percentage surcharges would have been greater than those MCI actually assessed. Accordingly, some Florida end users actually benefited from the manner in which MCI handled these assessments. In order to truly correct this situation, every customer's bill would need to be re-calculated. Under the circumstances, staff believes the settlement offer is reasonable. MCI should be required to make the payment to the General Revenue Fund, pursuant to Section 364.285(1), Florida Statutes, within ten business days after the issuance of the order.

ISSUE 2: Upon payment of the settlement amount by MCI, should this docket be closed?

RECOMMENDATION: Yes.

RCB

Attachment

Docket No.980435-TI
Date: September 23, 1999

ATTACHMENT 1

HOPPING GREEN SAMS & SMITH
PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS

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September 22, 1999

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

Re: Docket No. 980435-TI

Dear Ms. Bayó:

Enclosed for filing on behalf of MCI Telecommunications Corporation are the original and fifteen copies of its Offer of Settlement.

By copy of this letter, these documents are being furnished to the parties on the attached service list.

Very truly yours,



Richard D. Melson

RDM/kcg
Enclosures
cc: Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause)
proceedings against MCI) Docket No. 980435-TI
Telecommunications Corporation for)
charging FCC universal service) Filed: September 22, 1999
assessments on intrastate toll)
calls.)
_____)

MCI's OFFER OF SETTLEMENT

WHEREAS, by Order No. PSC-98-0681-SC-TI, issued 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; and

WHEREAS, MCI's position is that it lawfully collected its Federal Universal Service Fee (FUSF) and National Access Fee (NAF) pursuant to a federal tariff from interstate customers based on a percentage of the customer's total usage for international, interstate and intrastate usage; and

WHEREAS, prior to the hearing in this case, MCI ceased collecting FUSF and NAF on a basis that included intrastate revenues; and

WHEREAS, after a formal hearing on March 3, 1999, the Commission made a bench decision in which it rejected MCI's position that the charges were lawfully collected pursuant to a federal tariff and required MCI to refund, with interest, the portion of the FUSF and NAF charges which were based on intrastate revenues; and

WHEREAS, that bench decision was reduced to writing in Order No. PSC-99-0613-FOF-TI, issued April 2, 1999 (the "Refund Order"); and

WHEREAS, on March 5, 1999, the Federal Communications Commission adopted a decision in a complaint proceeding brought by the Virginia State Corporation Commission (VSCC) challenging the legality of the same recovery methodology that was at issue in these proceedings in which the FCC held that MCI's recovery methodology did not violate the FCC's Universal Service Order; and

WHEREAS, on March 22, 1999, that FCC decision was reduced to writing in a Memorandum Opinion and Order (the FCC Order); and

WHEREAS, on April 16, 1999, MCI filed its Petition for Reconsideration of the Commission's Refund Order based on the FCC Order; and

WHEREAS, the Petition for Reconsideration requested that the Commission withdraw the Refund Order and enter a new order dismissing the underlying show cause proceeding on the grounds that MCI's FUSF and NAF charges were charges for interstate services over which the Commission has no jurisdiction or, in the alternative, vacate the portion of the Refund Order which required refunds on the grounds that in collecting the charges, MCI acted in reliance on a reasonable interpretation of the FCC's Universal Service Order; and

WHEREAS, the VSCC appealed the FCC Order to the 4th Circuit Court of Appeals, which recently remanded the case to the FCC for

Date: September 23, 1999

further consideration in light of the 5th Circuit's decision on universal service funding in Texas Office of Public Utility Counsel v. Federal Communications Commission, ___ F.3d. ___ (5th Cir., July 30, 1999); and

WHEREAS, MCI desires to avoid the time and expense of further litigation and appellate proceedings, and to that end has negotiated with the staff of the Commission in an effort to reach a mutually agreeable resolution of the matters at issue in this case.

NOW, THEREFORE, MCI makes the following Offer of Settlement:

1. MCI acknowledges that, regardless of its legal position, it should have recognized that the collection of the FUSF and NAF on a basis that included Florida intrastate revenues would be a matter of serious concern to the Commission and should have consulted with the staff of the Commission prior to filing a tariff for such charges.

2. MCI recognizes that its failure to consult with the Commission staff on this issue resulted in a significant expenditure of Commission and staff time and resources which possibly could have been avoided if MCI had consulted with the staff prior to making its final decision on a cost recovery methodology and on the appropriate jurisdiction in which to file a tariff for such charges.

3. MCI hereby apologizes to the Commission for the inconvenience that has resulted from its failure to consult in advance with the staff regarding this matter. MCI will make

efforts to ensure that such an oversight does not occur in the future.

4. In recognition of the Commission and staff resources which have been expended in the investigation and prosecution of the show cause proceeding in this docket, MCI offers to make a voluntary contribution of \$10,000 to the General Revenue Fund of the State of Florida. Upon payment of this contribution, MCI will have no further obligation to any party, governmental or private, relating to the charges at issue in this proceeding.

5. If the Commission finds that the acceptance of this Offer of Settlement is in the public interest, the Commission will enter an "Order Approving Settlement Offer" which approves and accepts this Offer of Settlement. This Offer of Settlement will be included as an attachment to that order, and incorporated therein by reference.

6. MCI agrees not to appeal or institute other judicial proceedings relating to the final order referred to in Paragraph 5.

7. By making this Offer of Settlement, MCI does not admit to any violation of Florida statutes or Commission rules, does not waive its position that the FCC has exclusive jurisdiction over the charges at issue in this docket, and does not waive its right to assert the primacy of federal jurisdiction in any future case in which it believes such an assertion is appropriate.

8. By accepting this Offer of Settlement, the Commission does not waive its position that it has exclusive jurisdiction

over the charges at issue in this docket, and does not waive its right to assert the primacy of state jurisdiction in any future case in which it believes such an assertion is appropriate.

9. If this Offer of Settlement is not accepted by the Commission in its entirety and without modification, it shall have no further force and effect and shall not be admissible in any further proceedings in this docket, any appeal or other judicial proceedings related to the final order in this docket, or any future judicial or regulatory proceedings.

RESPECTFULLY SUBMITTED this 22nd day of September, 1999.

HOPPING GREEN SAMS & SMITH, P.A.

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Telecommunications Corporation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by U.S. Mail or Hand Delivery (*) this 22nd day of September, 1999.

Catherine Bedell (*)
Division of Legal Services
Florida Public Service Commission
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Richard Bellak (*)
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