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MEMORANDUM

July 24, 1997

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

FROM: DIVISION OF COMMUNICATIONS (TAYLOR, MOSES) *WP*  
DIVISION OF LEGAL SERVICES (CULPEPPER) *MCB*

RE: DOCKET NO. 970166-TI - MCI TELECOMMUNICATIONS - 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

AGENDA: 08/05/97 - REGULAR AGENDA - PROPOSED AGENCY ACTION -  
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: August 18, 1997 - STATUTORY DEADLINE FOR  
DECISION

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\970166bTI.RCM

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CASE BACKGROUND

MCI provides telecommunications services to inmates pursuant to contracts with the Florida Department of Corrections (DOC) and other inmate facility administrators. MCI typically bills recipients of collect calls from inmates on a casual calling basis through local exchange companies (LECs). MCI initially filed tariff revisions to implement its high toll monitoring program on December 9, 1996. Through customer complaints, staff became aware that MCI was using this tariff filing as its authority to block calls to subscribers without notice. Staff informed MCI of staff's concerns that MCI's tariff did not comply with applicable Commission rules on notice of discontinuance of service and carrying all calls authorized by the confinement facility. In response to staff's concerns, MCI discontinued its blocking policy on inmate calls pending its request for an exemption. MCI subsequently withdrew the tariff and revised and refiled new high toll monitoring program tariffs T-97-0109 and T-97-0110. The difference between its first tariff and the second filing was that MCI modified language regarding security deposit requirements for residential customers, instead requiring advance payments. The

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tariffs became effective and authorized MCI to block inbound collect calls to subscribers MCI identified as high risk until prebilling prepayments were made by those subscribers in amounts determined by MCI. MCI did, however, verbally agree not to block additional inmate calls pending the Commission's decision on its Petition for Exemption from Rules 25-4.113, 25-24.471, and 25-24.515, Florida Administrative Code, filed February 6, 1997.

In its February 6, 1997, petition, MCI sought exemption from the applicable rules so that it could implement its tariff revisions authorizing it to block collect calls to certain subscribers suspected to be a credit risk, even if the subscriber is in good standing with the LEC. MCI stated that blocked subscribers would be required to make advance payments to the LEC prior to MCI completing additional collect calls.

Staff filed its original recommendation on MCI's petition on April 24, 1997. As a result of concerns raised by staff regarding MCI's compliance with Section 120.542, Florida Statutes, and the applicability of MCI's request to confinement facilities, MCI requested that the Commission defer its decision on MCI's petition to allow MCI to amend its request. The Commission granted MCI's request.

On May 20, 1997, MCI filed an Amendment and Supplement to Petition for Exemption. In its amended request, MCI withdraws its request for exemption as it applies to tariff T-97-0110, which pertains to confinement facilities. MCI states that it will file the appropriate tariff amendments to withdraw the language added to T-97-0110. Tariff T-97-0110 has now been withdrawn. As a result of this withdrawal, MCI no longer seeks exemption from Rules 25-24.471(4)(c) and 25-24.515(17), Florida Administrative Code. In addition, MCI has conformed its amended petition with the requirements of Section 120.542, Florida Statutes.

Pursuant to Section 120.542(6), Florida Statutes, notice of MCI's amended and supplemented request for exemption was submitted to the Secretary of State on May 28, 1997, for publication in the Florida Administrative Weekly on June 6, 1997. No comments were submitted during the comment period, which ended July 7, 1997. The Commission must rule on the petition by August 18, 1997, pursuant to Section 120.542(7), Florida Statutes.

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### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission grant MCI's amended request for exemption from Rule 25-4.113, Florida Administrative Code, to permit MCI to block collect calls to local exchange company subscribers MCI believes to be a credit risk and to require advance payments from those subscribers before completing additional collect calls, as set forth in its tariff T-97-0109?

**RECOMMENDATION:** Yes. MCI's Petition for Exemption substantially complies with Section 120.542, Florida Statutes. MCI's Petition for Exemption should be granted, as it pertains to tariff T-97-0109, as long as the term "certain facilities," found in Section 2.2.2.2 of the tariff, does not include correctional or hospital confinement facilities. MCI should, however, be directed to submit a supplemental report to the Commission outlining how it will address any billing and advance payment problems that may arise, as well as how quickly a block will be lifted once payment has been made.

**STAFF ANALYSIS:** MCI states that fraud is an increasing and troubling problem, and MCI is attempting to limit its exposure to fraud through a high toll monitoring process. MCI explains how the procedure works and claims that its proposed practices comply with Commission rules. MCI claims that its procedure complies with Rule 25-4.113, Florida Administrative Code, requiring notice of discontinuance of service.

Specifically, MCI asserts that its blocking practices conform with Rule 25-4.113, Florida Administrative Code, Refusal or Discontinuance of Service by Company, because subparagraph (j) of that rule authorizes a company to discontinue service without notice in the event of unauthorized or fraudulent use of service. MCI states, however, that it filed its Petition in response to staff concerns that the no notice blocking authorized by its earlier tariff was contrary to Commission rules. MCI claims that approval of its Petition is consistent with the legislative mandate to avoid "unnecessary regulatory constraints" and to eliminate rules that "delay or impair the transition to competition." Sections 364.01(4)(e) and 364.01(4)(f), Florida Statutes (1995).

MCI also asserts that if the requested waiver is granted, the purpose of the underlying statutory provisions, Sections 364.03, 364.19, and 427.704, Florida Statutes, will be achieved by other means. First, MCI asserts that it is exempt from the provisions of 364.03, Florida Statutes, by Section 364.337(4), Florida Statutes, which exempts IXCs from the provisions of that section. MCI next asserts that, in accordance with Section 364.19, Florida Statutes, its tariff provisions enabling it to identify high toll usage and

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to minimize toll fraud are reasonable terms in a telecommunications service contract. MCI also argues that its tariff provisions protect subscribers from third party fraud, as well as protect MCI and its general body of customers from increased costs resulting from such fraud. Furthermore, MCI asserts that while it is unable to clearly identify what portion of Section 427.704, Florida Statutes, dealing with service for the hearing impaired, is implemented by Rule 25-4.113, Florida Administrative Code, MCI's high toll tariffs treat hearing impaired customers in a manner consistent with Section 427.704, Florida Statutes.

In addition, MCI asserts that if Rule 25-4.113, Florida Administrative Code, is applied to prevent MCI from requiring advance payment in high toll cases, or blocking toll calls without 5 days' advance written notice, MCI will suffer substantial economic hardship. MCI states that fraud is an increasing and costly problem for the company, which results in higher prices for consumers. MCI explains that not only is fraud costly, but it can take an extended amount of time to stop the offender. In addition, collection efforts are not always successful, which results in a loss to the company. MCI asserts that if it is allowed to institute its call blocking procedures, it will be able to protect itself and its customers from fraud while still providing quality service. Without the ability to take proactive steps to protect itself in situations where fraud is clearly indicated, MCI argues that it will continue to incur fraud-related losses. MCI asserts that these losses will, therefore, have to be borne by both MCI and its general body of customers.

Upon review of the amended and supplemented petition, staff believes that MCI's petition meets the specifications set forth in Section 120.542(5), Florida Statutes, and that MCI's assertions of fraud adequately establish that application of Rule 25-4.113, Florida Administrative Code, would work a substantial hardship on MCI and its customers, in accordance with Section 120.542(2), Florida Statutes.

As it addresses tariff T-97-0109, staff notes that MCI's Petition focuses on subscription fraud. MCI believes that if the Commission grants its request for exemption, it will be better able to detect fraud at an early stage, instead of waiting to go through the cycle of sending a bill and waiting for payment. MCI asserts that customers will also benefit by being alerted to fraud on their account or by receiving early warning that they may need to better manage their telecommunications expenses.

MCI explains that new accounts typically receive 60 to 90 days of unrestricted usage before they are canceled for non-payment. If they are canceled for non-payment, MCI must pursue collection

efforts for the unpaid debt. If those collection efforts are unsuccessful, MCI must write off the debt. MCI asserts that the key to avoiding such protracted fraud is to stop it early, before it gets to the point of canceling the account and implementing collection efforts. Therefore, MCI monitors the usage of customers, before bills are sent, to look for indications of a fraud problem. MCI states that if fraud is detected at an early stage, instead of waiting to go through the cycle of sending a bill and waiting for payment, customers benefit by being alerted to fraud or by learning to better manage telecommunications expenses.

Staff used the fraud summary chart included with MCI's Petition, attached to this recommendation as Attachment D, for its estimates provided in this recommendation. Based on MCI's market share, staff estimates that MCI's subscription fraud loss nationwide is approximately \$10 million and approximately \$500,000 in Florida<sup>1</sup>.

With respect to the subscription fraud MCI describes, staff has a different understanding of the way such debt is processed between MCI and LECs. It is staff's understanding that LECs typically purchase casual calling accounts receivable from MCI at a discount, which represents the LEC's billing fee and an estimate of the amount that will be uncollectible. The LECs subsequently bill their own customers for these MCI charges. See Order Approving Stipulation, Order No. 13429, issued June 18, 1984, in Docket 820537-TP, where the Commission approved a billing/collection stipulation submitted by the LECs and ordered the LECs to draft a uniform tariff with uniform rates for billing/collection consistent with the approved stipulation. If a call is disputed by the LEC subscriber, the LEC routinely charges that amount back to the IXC. If the calls are not disputed, or if MCI determines that the charge is correct, the LEC is authorized to disconnect the subscriber's local service for non-payment. Then the LEC is also authorized to pursue collection of the entire unpaid balance through collection agencies or other legal means if appropriate. In this regard, the debt is to the LEC and not MCI. As such, staff is concerned that both the LEC and MCI may be contacting the subscriber over the same charges, with both MCI and the LEC insisting on advance payments and/or a deposit. Moreover, staff is also concerned that it is unclear to whom subscribers will make advance payments and how quickly thereafter the block will be lifted. Staff also believes that it is possible, due to bill cycles, that there will be cases where advance payments made to MCI will not be deducted prior to the LEC billing and attempting to collect the same charges. Staff

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<sup>1</sup> These amounts include indirect costs, such as attorney fees and management/staff time.

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notes that in BellSouth's case, BellSouth collects deposits (for local & toll) from 11% of its new subscribers, potentially the same subscribers toward whom MCI's tariff is directed.

While staff is concerned that MCI's proposal duplicates fraud control measures that LECs are authorized by MCI in their billing contracts to undertake, staff acknowledges that customers have calling options. Thus, if customers are unhappy with MCI's ability to block calls, the customers may use a competing carrier.

As for staff's concern that MCI's blocking procedures may result in both the LEC and MCI contacting the subscriber over the same charges, staff believes that the benefits of early fraud detection outweigh the potential billing problems. As such, staff recommends that MCI's request for exemption be approved, but that MCI be directed to submit a supplemental report to the Commission outlining how it will address billing and advance payment problems, as well as how quickly a block will be lifted once payment has been made.

Furthermore, staff is concerned that the phrase "certain facilities," found in Section 2.2.2.2 of tariff T-97-0109 should not be interpreted to include confinement facilities. Thus, staff recommends that MCI should not be allowed to interpret the phrase "certain facilities" to include confinement facilities.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If no person whose substantial interests are affected by the Commission's proposed agency action, files a protest within twenty-one days, this docket should be closed.

STAFF ANALYSIS: If no person whose substantial interests are affected, files a timely request for a Section 120.57, Florida Statutes hearing, no further action will be required and this docket should be closed.