BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against MCI Telecommunications Corporation for charging FCC Universal service assessments on intrastate toll calls.	DOCKET NO. 980435-TI ORDER NO. PSC-98-0681-SC-TI ISSUED: May 18, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER TO SHOW CAUSE

BY THE COMMISSION:

BACKGROUND

On May 8, 1997, the Federal Communications Commission (FCC) issued the Federal-State Joint Board Report and Order on Universal Service, CC Docket No. 96-45, FCC 97-157, 12 FCC Rcd 8776 (Order). In its Order, the FCC concluded that carriers contributing to the federal universal service support mechanisms may recover their contributions only through rates for interstate services. (Order FCC 97-157, ¶ 829) Since the FCC issued its Order, the Commission has received a number of complaints regarding charges that interexchange carriers (IXCs) have placed on customers' bills to recover federal universal service contributions.

Upon investigation, we found that at least one carrier, MCI Telecommunications Corporation (MCI), has been recovering its federal universal service contributions from intrastate revenues. Specifically, MCI is charging interstate fees based on the total bill, including intrastate toll calls. By letter dated February 24, 1998, the Commission requested that MCI discontinue the billing practice of recovering the federal universal service contributions from intrastate revenues. The Commission also

requested that MCI provide refunds or bill credits to those Florida consumers who were improperly charged.

By letter dated March 17, 1998, MCI informed us that it would continue to recover its universal service contributions from intrastate revenues based on its understanding of the FCC's Order. On March 23, 1998, MCI met with our staff to further discuss the matter. The matter was not resolved.

We are not the only state regulatory authority that has asked MCI to cease the recovery of universal service contributions from intrastate revenues. On March 13, 1998, the Virginia State Corporation Commission (VCC) filed a Motion for Rule to Show Cause requesting that MCI show cause why it should not be enjoined from continuing to bill customers illegally for its 'Federal Universal Service Fee' and 'National Access Fee' and why it should not be required to refund to customers all amounts collected in excess of its tariffed rates. On May 8, 1998, VCC issued its final order on the Motion for Rule to Show Cause, enjoining MCI from billing these fees on intrastate calls place by business and residential customers, and requiring MCI to provide refunds with interest to customers who were billed illegally.

Prior to the issuance of the VCC's final order and the issuance of this order, on April 3, 1998, MCI filed a Petition for Declaratory Ruling (Petition) with the FCC, asking that it find that carriers are not precluded by the Universal Service Order from imposing a charge on their customers to recover federal universal service assessments that is based on customers' total billed revenues, including intrastate revenues. In its petition, MCI requested that the FCC resolve the issue before July 1, 1998, when MCI intends to begin applying charges to residential customers' bills. The arguments raised by MCI in its petition are essentially the same as those provided in its letter to the Commission.

Universal Service and Access Charges

MCI is currently charging two new fees to recover assessments for the federal universal service fund and for access charge restructuring, which MCI calls the Federal Universal Service Fee (FUSF) and the National Access Fee (NAF). The FUSF is an interstate charge that is designed to recover MCI's federal universal service fund contributions. The NAF is intended to recover the amount of presubscribed interexchange carrier charges assessed by the incumbent local exchange carriers. MCI states that

these charges are included in its federal tariff. There are no corresponding charges in its Florida tariff.

MCI is collecting the FUSF in the following manner: small business customers are charged 5 percent of their total MCI billed revenues, and large business customers are assessed 4.4 percent of their total MCI revenues. In its March 5, 1998, response to our data request, MCI states that it does not currently assess residential customers the universal service fee.

For the recovery of the NAF, MCI currently imposes a charge on its interstate customers on a per-line or per-account basis. Until April 1, 1998, small business customers were charged a percentage of their total MCI bill. MCI contends that the NAF is a federal charge which appears as a separate line item on the customer's bill. As such, MCI claims that this does not constitute the establishment of a state rate via the federal tariff.

DECISION

In its response letter, MCI cites several paragraphs of the FCC's Order to support its contention that it has the authority to recover universal service contributions from intrastate revenues. Specifically, MCI states that carriers are permitted to pass through their contributions to interstate access and interexchange customers. MCI claims that its recovery mechanism is a logical result of the FCC's decisions and is consistent with the FCC's rationale for determining the contribution base for federal universal service support. MCI also states that a large portion of the federal universal service fund is assessed based on total revenues. MCI further states that its recovery mechanism matches costs with cost causation. MCI asserts that the FCC's Order did not address the issue of recovery of universal service contributions from combined intrastate, interstate, and international revenues. MCI also asserts that the FCC has jurisdiction to assess intrastate revenues of interstate carriers.

While we agree that the FCC's Order provided that a portion of the universal service fund assessment should be based on total revenues, we disagree with MCI's assertion that recovery of contributions should be based on total revenues, both intrastate and interstate. The Order clearly and unambiguously requires carriers to recover their contributions for the FUSF from rates for interstate services only. After a thorough review of the FCC's Order, we did not find any support for MCI's contention that it has

the authority to recover contributions via intrastate rates. In addressing the issue of recovery of universal service contributions, the FCC stated:

> We have determined to continue our historical approach to recovery of universal service support mechanisms, that is, to permit carriers to recover contributions to universal service mechanisms through rates for interstate services only. In discussing recovery we are referring to the process by which carriers' recoup the amount of their contributions to universal service. (Order FCC 97-157, ¶ 825)

The above paragraph clearly and unambiguously provides that carriers must recover their universal service contributions only through rates for interstate services. This paragraph also explains the FCC's rationale for requiring carriers to recover their contributions from rates of interstate services only. We find no contrary provision in the FCC's Order.

We also disagree with MCI's statement that carriers are permitted to pass through their contributions to interstate access and interexchange customers, citing Paragraph 829 of the FCC's Order as authority. Specifically, Paragraph 829 states that carriers are "permitted . . . to pass through their contributions to their interstate access and interexchange customers,". MCI fails to consider the footnote to this sentence, which says, "[t]he details of the recovery mechanism for price cap LECs are explained in [the FCC's] companion Access Charge Reform Order, Section VI.D.2.b." A review of the referenced section shows that it deals solely with recovery of universal service contributions for incumbent price cap Local Exchange Carriers (LECs) from interstate mechanisms. Thus, the reference to interexchange customers that MCI relies on refers to the customers of LECs, not IXCs.

Regarding MCI's assertion that the FCC has jurisdiction over the recovery of universal service contributions, we note that intrastate rates are regulated by the Commission. Although the FCC has concluded in its Order that it has the authority to require carriers to seek state approval to recover a portion of their contribution from intrastate revenues, Florida and other states have previously taken the position that the FCC has no such authority. In their brief filed in the 5th Circuit Court of

Appeal, State Petitioners argued that the provisions of the FCC's Order which intrude on state authority over intrastate telecommunications should be annulled because there is no grant of such authority to the FCC. Accordingly, we believe that the FCC has no authority to permit MCI to recover its contributions from intrastate revenues, or even to require it to seek approval from the state to do so.

We also disagree with MCI's characterization of its charges as "federally mandated." In its Order, the FCC clearly stated that the universal service contribution is not a federally mandated direct end-user surcharge. While we have not seen any misleading statements in MCI's bills, we are concerned because MCI has called this a federally mandated charge in correspondence. Based on our reading of the Order, the charges are not federally mandated, and carriers have wide discretion in determining how to recover the charges.

Finally, we are concerned both with the present FUSF and the small business NAF that was charged until April 1, 1998. Both of these interstate charges are being or have been assessed on intrastate toll revenues. We disagree with MCI that its application of these charges is supported by the FCC's Order. We are also concerned with MCI's plans to institute charges on intrastate calls for its residential customers. Based on our discussion herein concerning the FUSF and NAF charges to business customers, we also find it appropriate to Order MCI to refrain from implementing such charges on the intrastate portion of residential customers' bills.

CONCLUSION

Based on the foregoing, we believe that MCI has no authority for its assessment of the NAF and the FUSF on the intrastate portion of customer bills. Accordingly, we find that there is sufficient cause to order MCI to show cause in writing within 20 days why it should not cease to recover universal service contributions from intrastate toll calls and make appropriate refunds, with interest, to its customers. Refunds shall include amounts collected before April 1, 1998, plus interest, for the intrastate revenue based NAF.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that MCI show cause, in writing, within 20 days why it should not cease to charge FCC universal service assessments on intrastate toll calls and make appropriate refunds, with interest, to its customers. It is further

ORDERED that MCI response shall contain specific allegations of fact and law. It is further

ORDERED that if MCI responds to the show cause order by ceasing to charge FCC universal service assessments on intrastate toll calls and makes appropriate refunds, with interest, to its customers, this docket shall be closed. It is further

ORDERED that refunds shall include amounts collected before April 1, 1998, plus interest, for the intrastate revenue based NAF. It is further

ORDERED that MCI shall not implemented FUSF and NAF charges on intrastate calls for its residential customers. It is further

ORDERED that if MCI does not respond to the show cause order with the appropriate action, or if MCI requests a hearing, this docket shall remain open for final disposition.

By ORDER of the Florida Public Service Commission this 18th day of May, 1998.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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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.

This order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 7, 1998.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.