

FLORIDA PUBLIC SERVICE COMMISSION  
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Tallahassee, Florida 32399-0850

MEMORANDUM

MAY 29, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (CSK) *[Handwritten initials]*  
DIVISION OF COMMUNICATIONS (KING, SHELPER) *[Handwritten initials]*

RE: DOCKET NO. 970172-TP - 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

DOCKET NO. 970173-TP - PETITION BY MCI TELECOMMUNICATIONS CORPORATION FOR AN ORDER REQUIRING GTE FLORIDA, INCORPORATED TO REMOVE ITS DEREGULATED PAYPHONE INVESTMENT AND ASSOCIATED EXPENSES AND REDUCE THE CARRIER COMMON LINE RATE ELEMENT OF ITS INTRASTATE SWITCHED ACCESS CHARGES

DOCKET NO. 970281-TL - ESTABLISHMENT OF INTRASTATE IMPLEMENTATION REQUIREMENTS GOVERNING FEDERALLY MANDATED DEREGULATION OF LOCAL EXCHANGE COMPANY PAYPHONES

AGENDA: REGULAR AGENDA - REQUEST FOR TARIFF SUSPENSION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\WP\970172A.RCM

CASE BACKGROUND

On September 20, 1996, the Federal Communications Commission (FCC) issued its First Report and Order, Order No. 96-388, 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

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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, the Commission issued Proposed Agency Action Order (PAA) 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 22, 1997, MCI filed a Petition on Proposed Agency Action, protesting the Commission's PAA Order with regard to all three dockets: Docket Nos. 970172-TP, 970173-TP, and 970281-TL. MCI's protest requests a hearing: (a) to determine the amount of

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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 the Commission suspend the tariff filed by BellSouth to implement its estimate of the required rate reduction pending resolution of the protest. MCI requests that the Commission also require BellSouth to hold the amount of such reductions subject to disposition by further order of the 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, staff believes it is appropriate to address the content of the responses because of the unique nature of the issues in this proceeding. Staff believes that the following recommendations are appropriate with regard to MCI's request to suspend the tariff filed by BellSouth.

#### DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant MCI Telecommunications Corporation's (MCI) request to suspend the tariff filed by BellSouth Telecommunications, Inc. to implement its estimate of the required rate reduction and require BellSouth to hold the amount of such reductions subject to disposition by further order of the Commission?

RECOMMENDATION: No. (COX)

STAFF ANALYSIS: MCI requests that the Commission suspend BellSouth's tariff and require BellSouth to hold the amount of its intrastate rate reduction subject to disposition by further order of the 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

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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 the Commission. (MCI Protest, p.3)

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 inter-exchange 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. (BellSouth Response, pp.7-8).

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 the Commission that the Commission has made its 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's Response, p.5). Sprint-Florida does not specifically address MCI's request that BellSouth's tariff be suspended.

Staff finds BellSouth's argument persuasive and recommends that the Commission deny MCI's request to suspend the tariff. 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). The Commission should 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.

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Accordingly, staff recommends that the Commission deny MCI's request to suspend BellSouth's tariff.

Staff does 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 the Commission. The Commission has given all interested parties opportunity to challenge the implementation of the rate reductions. Specifically, the Commission 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, the Commission 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, the Commission has fulfilled its obligations under the FCC's Order and given parties an opportunity to contest the Commission's decision. Staff believes at this point neither MCI nor any party has waived any right it may have to seek a refund or true-up if the Commission's PAA decision is different after hearing or on appeal.

Further, the Commission should 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 the Commission 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, staff recommends that the Commission not make the finding that Sprint-Florida requests at this time.

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**ISSUE 2:** Should these dockets be closed?

**RECOMMENDATION:** No. These dockets should remain open to address the issues presented in MCI's Protest of Order No. PSC-97-0358-FOF-TP and any other implementation matters concerning pay telephone deregulation. (COX)

**STAFF ANALYSIS:** As mentioned above, MCI has requested a formal Commission hearing under Chapter 120, Florida Statutes. Therefore, these dockets should 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.