

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause
proceedings against MCI
Telecommunications
Corporation for violation of
Rule 25-24.630, F.A.C.

DOCKET NO. 960617-TI
ORDER NO. PSC-98-0799-FOF-TI
ISSUED: June 9, 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 ON DISPOSITION OF UNREFUNDABLE OVERCHARGES

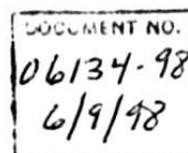
BY THE COMMISSION:

CASE BACKGROUND

MCI Telecommunications Corporation (MCI) is one of the current Department of Corrections (DOC) contract carriers for collect calls from penal institutions. On February 29, 1996, MCI began billing a \$3.00 surcharge for intrastate collect calls from prison facilities. This was a \$2.00 per call overcharge on calls made between February 29 and March 15, 1996, and a \$1.25 per call overcharge on calls made between March 16 and July 10, 1996. The overcharging is an apparent violation of Rule 25-24.630, Florida Administrative Code, Rate and Billing Requirements.

In Order No. PSC-96-1395-FOF-TI, issued November 20, 1996, we ordered MCI to implement direct refunds, with interest, to those customers who were overcharged between February and July 1996. We also ordered MCI to show cause why it should not be fined or have its certificate canceled for apparent violation of Rule 25-24.630, Florida Administrative Code.

Shortly thereafter MCI submitted a proposed settlement in lieu of proceeding with the show cause, which we approved in Order No. PSC-97-0088-AS-TI, issued January 27, 1997. MCI made a \$10,000 contribution for deposit in the State of Florida General Revenue fund, and filed a report on June 13, 1997, in which it indicated



ORDER NO. PSC-98-0799-FOF-TI
DOCKET NO. 960617-TI
PAGE 2

that it was unable to refund \$240,000. in overcharges. In Order No. PSC-97-1050-FOF-TI, issued September 5, 1997, we required MCI to make additional efforts to locate customers due a refund. We also directed MCI to consult with prisoner advocacy and prisoner's families public interest groups regarding suggestions for disposition of the unrefundable monies.

MCI filed a report on January 20, 1998, and a supplemental report on January 23, 1998, in which it indicated that \$189,482.49 remains unrefundable. In this Order we determine the appropriate disposition of that amount.

DECISION

In Order No. PSC-97-1050-FOF-TI, we required MCI to meet with the inmate advocacy groups and provide the Commission with its suggestion of how to dispose of any monies that could not be directly refunded to consumers. In its January 20, 1998, report to the Commission, MCI suggested that the unrefundable monies be placed in a "trust fund or similar fund created by and administered by the Advocacy Groups for the benefit of Florida inmates and their families." The report went on to state:

MCI recommends that the Advocacy Groups submit, for Commission approval, a description of the uses to which the funds shall be placed and a list of criteria to be used by the fund in determining when and how monies should be disbursed. Upon creation of such a fund and upon approval of its uses by the Commission, MCI shall issue a check payable to the fund for all remaining unrefundable monies.

We do not believe that the Commission has the authority to establish trust funds. The authority to establish trust funds is a power constitutionally reserved to the Florida Legislature. If the legislature specifically directs it, the Commission can administer the trust fund, but it is not within the Commission's authority to establish a trust fund itself. Nor can we do indirectly what we cannot do directly, and, therefore, we cannot approve the creation of a trust fund for disposition of the monies at issue here.

We find that it is more appropriate to dispose of the unrefundable monies by a prospective reduction in the amount of the

surcharge on collect calls from prisons. MCI currently provides telecommunications services to approximately 40 inmate facilities. While MCI cannot provide direct refunds to those customers who were specifically overcharged, it can provide a reduction to the surcharge for the same class of customers for intrastate calls made from those inmate facilities.

In a January 18, 1998, news release, the Families with Loved Ones In Prison, Inc., stated that it and other interested advocacy groups for families of prisoners met with and agreed with MCI concerning the creation of a trust fund. The news release went on to state, in pertinent part, however, that:

If for any reason, the Commission cannot comply with said agreement, the alternative might be to order MCI to eliminate surcharges or issue coupons for telephone credit to those families currently being serviced by MCI for collect calls from prisons.

For the reasons explained above, we cannot comply with the proposal to place the unrefundable monies in a trust fund. We will, however, approve a surcharge reduction to dispose of the remaining amounts. We will require MCI to provide prospective rate reductions of the surcharge on intrastate calls from the approximately 40 inmate facilities it currently serves. MCI shall file a report with the Commission within 30 days from the issuance of this Order describing the reduction amount per call, the estimated number of intrastate calls it currently handles per month, and estimating the length of time it believes it will take to use the unrefundable amount of \$189,482.49. MCI shall file a report by the last working day of each month until all monies have been refunded, and provide the Commission with a final status report.

When Commission staff has verified that MCI Telecommunications Corporation has completed the prospective refunds and submitted its final report to the Commission, this docket should be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that MCI shall provide prospective reductions to its surcharge on intrastate calls from the approximately 40 inmate facilities it currently serves to total \$189,482.49. It is further

ORDER NO. PSC-98-0799-FOF-TI
DOCKET NO. 960617-TI
PAGE 4

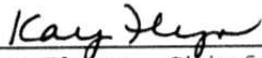
ORDERED that MCI shall file a report with the Commission within 30 days from the issuance of this Order describing the reduction amount per call, the estimated number of intrastate calls it currently handles per month, and estimating the length of time it believes it will take to use the unrefundable amount of \$189,482.49. It is further

ORDERED that MCI shall file a report with the Commission by the last working day of each month until all monies have been refunded, and provide the Commission with a final status report. It is further

ORDERED that this docket shall be closed when our staff has verified that the prospective refunds have been completed and MCI has submitted its final report to the Commission.

By ORDER of the Florida Public Service Commission this 9th Day of June, 1998.

BLANCA S. BAYÓ, Director
Division of Records and Reporting



Kay Flynn, Chief
Bureau of Records

(S E A L)

MCB

ORDER NO. PSC-98-0799-FOF-TI
DOCKET NO. 960617-TI
PAGE 5

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.

Any party adversely affected by the Commission's final action in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) 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 and/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 after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.