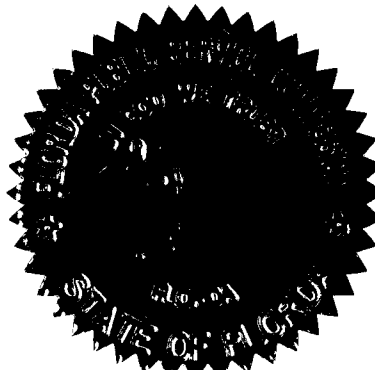


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of :
:
Initiation of show cause :
proceedings against MCI :
Telecommunications :
Corporation for charging :
FCC universal service :
assessments on intrastate :
toll calls. :

DOCKET NO. 980435-TI



PROCEEDINGS: HEARING

BEFORE: COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER E. LEON JACOBS, JR.

DATE: Wednesday, March 3, 1999

TIME: Commenced at 1:00 p.m.
Concluded at 2:15 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: KIMBERLY K. BERENS, CSR, RPR
FPSC Commission Reporter

DOCUMENT NUMBER - DATE

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FPSC-RECORDS/REPORTING

1 **APPEARANCES:**

2 **RICHARD D. MELSON**, Hopping Green Sams and
3 Smith, Post Office Box 6526, Tallahassee, Florida
4 32314, appearing on behalf of **MCI Telecommunications**.

5 **MARY L. BROWN**, 1801 Pennsylvania Avenue,
6 N.W., Washington, D.C. 20005, appearing on behalf of
7 **MCI WorldCom, Inc.**

8 **CATHERINE BEDELL**, Florida Public Service Commission,
9 Division of Legal Services, 2540 Shumard Oak Boulevard,
10 Tallahassee, Florida 32399-0870, appearing on behalf of the
11 **Commission Staff**.

12 **RICHARD BELLAK**, Florida Public Service Commission,
13 Division of Appeals, 2540 Shumard Oak Boulevard, Tallahassee,
14 Florida 32399, appearing on behalf of the **Commission**.

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P R O C E E D I N G S

(Hearing convened at 1:00 p.m.)

COMMISSIONER DEASON: Call this hearing to order. Can I have the Notice read, please.

MR. BELLAK: Pursuant to Notice, this hearing at this time and place was announced in the matter of Docket 980435-TI, initiation of show cause proceedings against MCI Telecommunications Corporation, for charging FCC universal service assessments on intrastate toll calls for the purpose of hearing oral argument and possible bench decision.

COMMISSIONER DEASON: Thank you. Take appearances.

MR. MELSON: Richard Melson of the law firm of Hopping Green Sams and Smith, P.A., Post Office Box 6526, Tallahassee, on behalf of MCI Telecommunications Corporation. Here today and handling the argument is Mary L. Brown of MCI WorldCom, Inc., 1801 Pennsylvania Avenue, Northwest, Washington, D.C.

MS. BEDELL: Catherine Bedell representing Commission Staff.

MR. BELLAK: Richard Bellak representing the Commission.

COMMISSIONER DEASON: As the prehearing order indicates, all factual matters have been

1 stipulated, agreed to, whatever, is that correct?

2 **MS. BEDELL:** There are no factual matters in
3 dispute so we're proceeding as of 120.17 hearing and
4 each party filed a memorandum of law and we are here
5 just to present our arguments.

6 **COMMISSIONER DEASON:** And Ms. Bedell, you're
7 going to go first; is that correct?

8 **MS. BEDELL:** Yes, sir.

9 **COMMISSIONER DEASON:** Okay. Is there a time
10 limit that's been established for these arguments?

11 **MS. BEDELL:** No.

12 **COMMISSIONER DEASON:** How much time do you
13 anticipate you shall require?

14 **MS. BEDELL:** I would like to have at least
15 15 minutes and I'd like to reserve five minutes for
16 rebuttal.

17 **COMMISSIONER DEASON:** Ms. Brown, is 15
18 minutes okay with you?

19 **MS. BROWN:** That's fine with me.

20 **COMMISSIONER DEASON:** Okay. We'll set the
21 time limit at 15 minutes per side, and Ms. Bedell,
22 you've requested five of those 15 in rebuttal.

23 **MS. BEDELL:** Yes, sir.

24 **COMMISSIONER DEASON:** Okay. Please proceed.

25 **MS. BEDELL:** This proceeding was initiated

1 when Staff discovered that MCI was charging universal
2 service and national access fee assessments based on
3 customers' total toll bills, including intrastate toll
4 calls. Staff believes that MCI was without authority
5 to assess these charges against intrastate toll
6 services.

7 Staff is asking the Commission to order MCI
8 to refund amounts collected based on intrastate toll
9 calls. Staff is no longer seeking an order against
10 MCI to cease charging universal service fees and
11 national access fees based on intrastate services
12 because MCI has stopped using the objectionable
13 methodology.

14 Section 254 of the Telecommunications Act,
15 which addresses universal service, specifically
16 assigns a dual role for states and the FCC and does
17 not preempt the states with regard to intrastate
18 services.

19 Section 254 (D) gives the FCC responsibility
20 over contributions for universal service by carriers
21 providing interstate services.

22 Section 254 (F) gives states responsibility
23 for contributions by carriers for intrastate services.
24 Nothing in the universal service order, FCC order
25 No. 97-1457, establishes preemption of the states'

1 overcharges assessed for universal service based on
2 intrastate services.

3 The FCC has made no pronouncements that
4 would purport to preempt the states. And MCI's filing
5 of a tariff, in and of itself, cannot preempt states
6 in this regard. Preemption cannot be inferred. And
7 particularly cannot be inferred by MCI.

8 Staff agrees with MCI that the Federal State
9 Joint Board on Universal Service recommended, and the
10 FCC ordered, that contributions by interstate service
11 providers would be assessed by the FCC based on total
12 revenues. The FCC also ordered that contributions
13 should be recovered on interstate services only.

14 The method the FCC uses to assess carriers'
15 contributions is not in question in this proceeding.
16 This is an important point because we do not want to
17 confuse the FCC's authority for assessing
18 contributions based on total revenues with MCI's
19 authority regarding the collection of the
20 contributions.

21 It is MCI's methodology of collection based
22 on intrastate calls that Staff believes was unlawful.
23 MCI also relies on its FCC tariff to establish the
24 validity of the charges against intrastate toll calls.
25 Staff believes that not only is the FCC without

1 authority to authorize charges based on intrastate
2 calls, but also that MCI's tariff did not specifically
3 authorize MCI to charge assessments based on
4 intrastate calls. MCI has failed to demonstrate where
5 the tariff, the FCC tariff, specifically authorizes
6 charges based on intrastate calls. The tariff was
7 very general in this regard.

8 Staff is not challenging the lawfulness of
9 the FCC tariff. Staff believes that MCI erred in
10 assessing charges that unquestionably were not
11 authorized by the FCC or the tariff.

12 As was discussed more fully when MCI's
13 motion to dismiss was before you, the Virginia Federal
14 District Court decision is not controlled -- is not
15 controlling precedent in Florida. Staff believes that
16 the Virginia decision is misguided on the matter of
17 preemption.

18 In conclusion, Staff believes that MCI was
19 not authorized to charge and collect universal service
20 and national access fees based on intrastate toll
21 calls. Therefore, the Commission -- we are requesting
22 that the Commission order MCI to refund to Florida
23 customers those funds collected based on intrastate
24 toll services for the periods of time that the tariffs
25 in question were being applied. Thank you.

1 **COMMISSIONER DEASON:** Thank you.

2 **COMMISSIONER CLARK:** I have a question.

3 **COMMISSIONER DEASON:** Surely.

4 **COMMISSIONER CLARK:** MCI cites a number of
5 cases that stand for the proposition that a properly
6 filed tariff becomes the equivalent of an FCC
7 regulation.

8 **MS. BEDELL:** And has the force of federal
9 law.

10 **COMMISSIONER CLARK:** Right. Are any of
11 those -- were any of those cases cited? Did they
12 involve factual circumstances similar to this?

13 **MS. BEDELL:** I don't believe so. I read
14 through those last night. They are -- there are a lot
15 of them that are carrier -- general carrier kinds of
16 cases. And, you know, the case that is closest to
17 ours would be the Louisiana decision that I think we
18 discussed when we were doing the motion to dismiss.
19 But, you know, one of the cases was a Blue Cross Blue
20 Shield case, I believe. I'm not real sure exactly
21 which ones you're looking at. And the --

22 **COMMISSIONER CLARK:** None of them had to do
23 with a notion of whether or not the tariff invaded the
24 jurisdiction of the State Commission.

25 **MS. BEDELL:** I don't believe so.

1 **COMMISSIONER CLARK:** Okay. Thanks.

2 **COMMISSIONER DEASON:** Ms. Brown.

3 **MS. BROWN:** Good afternoon. The issue at
4 question today involves historical practice of two
5 interstate charges that MCI established in its
6 interstate tariff effective January 1, 1998. One of
7 those charges, the National Access Fee, was in effect
8 for approximately three months during 1998 and applied
9 to our small business customers. And the issue as to
10 that National Access Fee is whether or not we
11 collected intrastate based charges as part of the
12 National Access Fee because small business National
13 Access Fee was applied to our small business
14 customers' total revenues. That practice ceased in
15 April of 1998.

16 Similarly, the federal universal service fee
17 was charged for the first six months of 1998 against
18 our business customers. So the issue there is did we
19 inappropriately collect the intrastate portion since
20 our fee was applied against the customers' total
21 revenues. In both cases, the set of customers we were
22 applying these fees to were interstate customers.

23 Okay. The issues that I would like to focus
24 on --

25 **COMMISSIONER CLARK:** Let me ask you a

1 question about that. Does -- in that case then, does
2 discrimination result because those people who are
3 also interstate customers are assessed on their
4 intrastate revenues, whereas those customers who only
5 make intrastate calls don't get assessed at all
6 according to your scheme? So you discriminate against
7 those customers.

8 **MS. BROWN:** We believe it would have been
9 improper to charge our intrastate-only customers in
10 both these cases for the limitations that the FCC
11 created in the federal universal service order in the
12 Spring of '97 and because we would believe that if we
13 were going to charge our intrastate customers in the
14 case of the NAF, we would have had to have filed a
15 federal -- state tariff.

16 **COMMISSIONER CLARK:** Well, from the
17 standpoint of a customer who makes the same intrastate
18 call, one is going to be charged the rate and the
19 other isn't. Isn't that discrimination to those
20 customers?

21 **MS. BROWN:** In our view, no, because both of
22 these fees recover interstate costs that were being
23 imposed upon us. So these are the result of federal
24 decisionmaking to create a federal universal service
25 plan or federal decisionmaking going to the access

1 charge recovery questions, which is the subject of the
2 national access fee. That's an access created or flow
3 through of an access charge.

4 **COMMISSIONER CLARK:** But you would agree for
5 the same call or the same business, suppose Customer X
6 makes 25 intrastate calls. Makes no international or
7 interexchange customers. You won't bill them -- under
8 the old program, you aren't going to bill them. But
9 if the customer -- Customer B made the same number of
10 calls intrastate and one interstate call, they would
11 be charged a different rate?

12 **MS. BROWN:** That's correct.

13 **COMMISSIONER CLARK:** Okay. And that's not
14 discriminatory?

15 **MS. BROWN:** Not in our view.

16 **COMMISSIONER CLARK:** Okay.

17 **COMMISSIONER JACOBS:** How does one add to
18 your costs and the other doesn't?

19 **MS. BROWN:** Well, in the case of the
20 national access fee, we are flowing through an access
21 charge that we have to pay by virtue of the FCC's
22 decision to create an access charge structure that the
23 ILECs use to bill us, and that is interstate only and
24 that is appropriately flowed through only to the
25 interstate customer.

1 In the case of the federal universal service
2 system the FCC created, pursuant to its jurisdiction,
3 a universal service cost that essentially gets passed
4 on to us. And in that order, we believe and
5 respectfully disagree with the Staff -- we believe the
6 FCC did give us the authority to design a charge based
7 on total revenues. But it is an FCC decision and a
8 matter for the FCC to decide based on their
9 jurisdiction the universal service cost that gets
10 applied to an interstate customer.

11 **COMMISSIONER JACOBS:** My point goes back
12 to -- sort of in the line of the prior question. If
13 your approach here is to recover the costs that have
14 been imposed on you --

15 **MS. BROWN:** Right.

16 **COMMISSIONER JACOBS:** -- and in one instance
17 where you have an intrastate-only customer who
18 doesn't -- is not surcharged for this and another who
19 is, how does one add to your costs and the other does
20 not?

21 **MS. BROWN:** Simply by virtue of the costs
22 imposed on us by virtue of doing business in the
23 interstate jurisdiction. Let me flip it around.
24 Suppose Florida were to create a universal service
25 system that imposed costs on the long distance

1 industry for state purposes. We would, if we were
2 going to recover those costs, tariff that in the state
3 jurisdiction and recover that from intrastate
4 customers. We would not be recovering that in our
5 federal tariff.

6 **COMMISSIONER CLARK:** I think the
7 Commissioner is right, though, that in this sense --

8 **COMMISSIONER DEASON:** Commissioner --

9 **COMMISSIONER CLARK:** -- what the FCC
10 collects from you is based on your total revenues,
11 both intrastate and interstate. So the customer who
12 only makes intrastate calls will be part of that
13 revenue although he will not be paying for it in the
14 form of your NAF or F -- so how is that fair? How is
15 that not discriminatory?

16 **MS. BROWN:** That's a good question. I
17 suppose we ought -- you know, if you want an answer,
18 we can go to the FCC and ask them. I -- we are simply
19 in the position of responding to a federal cost that's
20 been imposed to us by virtue of an FCC decision --

21 **COMMISSIONER CLARK:** Right. But that --

22 **MS. BROWN:** -- tariffing it in the
23 intrastate jurisdiction.

24 **COMMISSIONER CLARK:** But the imposition of
25 that cost didn't mandate that you tariff it the way

1 you did, and in fact, you could have simply raised
2 your rates to cover it. You could have done nothing.

3 **MS. BROWN:** That is certainly true. We
4 could have simply raised our rates. We chose,
5 however, as every other long distance company did, to
6 create a line item recovery, and indeed, there is some
7 language in the FCC decision that indicates their
8 expectation was that some form of line charge would
9 occur generally in the industry. Ours was structured
10 differently than some other long distance companies,
11 at least for this initial six-month period.

12 **COMMISSIONER CLARK:** Wasn't -- weren't these
13 two charges the ones some Commissioner said were
14 likely to be competed away?

15 **MS. BROWN:** I believe some federal
16 commissioners did make that observation.

17 **COMMISSIONER CLARK:** Okay. So they
18 anticipated perhaps it would not even appear as a line
19 item anywhere?

20 **MS. BROWN:** They personally may not have
21 anticipated that, but the order clearly -- it has
22 language included in it that discusses the long
23 distance industry passing through these charges to
24 customers, and in fact, makes reference to the fact
25 that as a result of its decision to impose these

1 costs, things like contracts with our business
2 customers, would need to be overridden, if you will,
3 by virtue of their decision. So they clearly
4 contemplated it would be passed on. You're correct
5 that they did not mandate exactly how that would
6 happen.

7 I would like to, if I could, focus on the
8 three issues that I think are the subject of dispute
9 today.

10 One of which is, of course, the authority
11 and the basis for the charges and Commissioner Clark
12 many of the questions you've just raised go right to
13 that point.

14 As you have correctly noted, our view is
15 that the Commission specifically stated and created a
16 universal service structure whereby we contribute to
17 universal service on the basis of total revenues. And
18 the FCC said, at paragraph 821 of its decision, that
19 when it is assessing contributions based on total
20 revenues, the Commission is, quote, "merely
21 calculating a federal charge based on both interstate
22 and intrastate revenues which is distinct from
23 regulating the rates and conditions of intrastate
24 service."

25 Our view is that if that is the mechanism

1 that they set up for universal service contribution,
2 then our structure, our tariff structure, during the
3 first six months of '98 simply mirrors that. We were
4 not seeking to create a state charge against
5 intrastate-only customers. We created an interstate
6 charge that applied to our interstate customers and it
7 applied, of course, to their total revenues. And we
8 think what we did is perfectly consistent with the
9 order, and indeed, have filed a petition for
10 declaratory ruling, asking the FCC to find that in our
11 favor.

12 **COMMISSIONER CLARK:** Let me ask you about
13 that. You're saying that, on the one hand, you argue
14 that this isn't rate setting with respect to
15 intrastate, therefore, it's not within our
16 jurisdiction. Yet, when you challenge our -- when you
17 challenge the notion that we could -- that we have --
18 we don't have jurisdiction, you base it on the fact
19 that it would be interfering with the federal rate
20 setting scheme with respect to interstate charges.
21 How is it a rate setting scheme with respect to
22 interstate charges but not intrastate charges?

23 **MS. BROWN:** Under federal law, when we
24 establish a tariff at the FCC and that tariff becomes
25 effective, it has the force of federal law. We've

1 cited a number of cases in our brief to that effect.

2 In our view, if there is a concern by a
3 state that the charge that we've established somehow
4 unlawfully applies to State Commissioners or State --
5 excuse me -- state customers, then the way to
6 challenge that rate is to go to the FCC and to make
7 the challenge there by way of tariff review or a
8 complaint proceeding. But at that point you have a
9 tariff that has the effect of federal law and that has
10 to be adjudicated at the FCC.

11 **COMMISSIONER CLARK:** Well, let me ask it a
12 different way perhaps. Suppose you filed a tariff
13 with the FCC and all your tariff did was raise rates
14 by one cent a minute for every long distance call.

15 **MS. BROWN:** Uh-huh.

16 **COMMISSIONER CLARK:** You make no distinction
17 of it being interstate, international or intrastate?

18 **MS. BROWN:** Uh-huh.

19 **COMMISSIONER CLARK:** You make no tariff
20 filing here at the Commission. Are you saying that we
21 cannot issue a show cause and demand you stop charging
22 them on intrastate and we have to go to the FCC and
23 ask them to exercise that jurisdiction?

24 **MS. BROWN:** Well, I guess my response, if I
25 understand your hypothetical correctly, it's adding a

1 penny a minute to every call.

2 **COMMISSIONER CLARK:** That's right.

3 **MS. BROWN:** The only -- if we were to simply
4 add a penny a minute in the federal tariff, the only
5 minutes we could affect are interstate, international
6 minutes because that's all that's tariffed there. If
7 we were going to add a penny a minute to in-state
8 calls we would have to go to each state jurisdiction
9 and tariff that penny a minute.

10 **COMMISSIONER CLARK:** So why aren't you
11 required to tariff it when you're going to charge it
12 on intrastate long distance costs? Why isn't it still
13 rate setting, I guess?

14 **MS. BROWN:** Because it only applies to
15 interstate customers pursuant to that federal tariff
16 and is in full compliance with the Commission's
17 structure set up in the universal service situation.

18 **COMMISSIONER CLARK:** Well, then what you're
19 saying, it depends on the customer, not the nature of
20 the call.

21 **MS. BROWN:** Depends on the customer. It
22 certainly is significant and I think it's critical in
23 this case that all MCI was attempting to do at the
24 time was to establish a charge on interstate
25 customers.

1 **COMMISSIONER CLARK:** Okay.

2 **MS. BROWN:** But I don't know -- in the
3 state -- in the example you raised I think we would --
4 if we were going to add a penny, we would have to
5 visit each of the state commissions and try to add
6 that penny that way.

7 **COMMISSIONER CLARK:** Well, and if you
8 didn't, what would our recourse be? We could only go
9 to the FCC or we could demand that you come before us
10 and show cause and demand refund of that if you hadn't
11 filed the tariff?

12 **MS. BROWN:** We would -- what we would have
13 to do I suppose is file at the FCC an in-state tariff
14 that --

15 **COMMISSIONER CLARK:** No. I'm not asking
16 what you have to do. If you did that, what would be
17 our recourse? Are you saying that we could not take
18 action and hold a proceeding here, but we would have
19 to go to the FCC?

20 **MS. BROWN:** I can't imagine a circumstance
21 in which the FCC would accept a tariff for in-state
22 purposes, but assuming they were to take leave of
23 their senses, then the answer is yes, under the filed
24 rate doctrine you would have to go to the FCC.

25 **COMMISSIONER CLARK:** Okay.

1 **COMMISSIONER JACOBS:** What if one of your
2 customers chooses, or I guess it wouldn't totally
3 achieve the point I'm making, but let's follow it.
4 Let's say one of your customers presubscribes to
5 another carrier for intraLATA toll. What happens to
6 your charge then?

7 **MS. BROWN:** They only get charged for MCI
8 charges, not for other carrier charges.

9 **COMMISSIONER JACOBS:** So, in essence, that
10 customer opts out of this charge as well for
11 interstate purposes?

12 **MS. BROWN:** They opt -- they don't opt out
13 of the charge. There is probably, if you put them
14 next to a customer who was MCI only for all services,
15 would probably end up paying something and they were
16 equivalent purchasers of telecommunication services.
17 If you compared those two cases, the person who's
18 opted for someone else in the in-state pick would
19 probably pay less.

20 **COMMISSIONER JACOBS:** And yet -- so your
21 argument is that you set no rate for intrastate,
22 right?

23 **MS. BROWN:** Right.

24 **COMMISSIONER JACOBS:** But your rate
25 automatically -- your rate changes by that person

1 choosing another intraLATA carrier?

2 **MS. BROWN:** The rate changes by customer
3 usage as well. It's a percentage of usage for MCI
4 services so it changes by any usage.

5 **COMMISSIONER JACOBS:** But yet still it
6 varies according to that intrastate usage?

7 **MS. BROWN:** And interstate usage, yes. But
8 you have to have -- you have to be an interstate
9 customer and have interstate usage for the charge to
10 apply.

11 **COMMISSIONER JACOBS:** Right. I can't see
12 how that's not applying some charge based on your
13 intrastate usage. I mean, I understand that the
14 incurrence of the charge is by incidence of your doing
15 intrastate traffic. I have no problem with your
16 statement on that. But it will vary by the level of
17 your intrastate usage. Because if this customer opts
18 out, his charges dramatically -- can dramatically
19 change if he's primarily intraLATA customer.

20 **MS. BROWN:** Right. And my only answer to
21 that is yes, that is, in fact, what happens here and
22 my understanding of MCI tariffs and long distance
23 tariffs generally, whether you're looking at the
24 federal tariff or the state tariff, is this is not
25 unusual. There are volume discounts built into

1 tariffs, particularly on the business side, that vary
2 by total usage. I have not examined our Florida
3 tariff or the Florida tariffs of the other IXCs. I
4 know in other state tariffs that we have, we have
5 those volume discount usages. We have them in the
6 federal tariff as well. This is not a new or
7 surprising feature of our tariff.

8 **COMMISSIONER JACOBS:** So if you had a
9 customer who's presubscribed to you for both, you
10 would give them discounts based on only intraLATA?

11 **MS. BROWN:** No. It would be based on your
12 total usage. You might qualify for a steeper discount
13 based on your total usage and that might be -- that is
14 definitely a feature of our FCC tariff. It may be a
15 feature of many of our state tariffs. I have not
16 examined our Florida tariff.

17 **COMMISSIONER JACOBS:** Okay.

18 **MS. BROWN:** But that is something that is
19 commonplace in the industry.

20 **COMMISSIONER DEASON:** Are you indicating you
21 have tariffs on file with the FCC which, in effect,
22 give a discount on intrastate tariffs which are not
23 filed with the state?

24 **MS. BROWN:** That I'm not saying. I just
25 haven't examined the Florida tariff to know what's

1 there. I do know in the case of Virginia we have
2 tariffs on file in both places that give volume
3 discounts on total usage. So if you were a Virginia
4 customer and you had intrastate volumes you might
5 qualify for an additional step in your volume discount
6 based on your total usage, which would include
7 interstate. Similarly, in the FCC, the opposite
8 applies.

9 **COMMISSIONER CLARK:** Are you saying that
10 tariff wouldn't also be filed in Virginia?

11 **MS. BROWN:** No. The tariff is filed in
12 Virginia. I'm just saying I haven't examined the
13 Florida one. I don't know.

14 **COMMISSIONER CLARK:** But your presumption
15 would be that if there is a total discount to all
16 calls, that the tariff would be filed both places?

17 **MS. BROWN:** The tariff is filed -- yes. But
18 in the FCC's case, we're establishing an interstate
19 discount based on total usage. In Virginia, we're
20 establishing an intrastate discount based on total
21 usage. It's the same thing. Okay. We're applying
22 total usage discounts in each jurisdiction
23 independently.

24 **COMMISSIONER CLARK:** But you filed tariffs
25 in both jurisdictions?

1 **MS. BROWN:** Yes.

2 **COMMISSIONER CLARK:** Okay.

3 **COMMISSIONER JACOBS:** If the rationale -- if
4 you were to follow the same rationale as you argue for
5 here, you wouldn't need to do that, would you? I mean
6 because they only want to get the discount in one
7 place. They really only want to logically get it in
8 one place. Or you want to give it -- or no -- you
9 would want to only logically give it in one place,
10 wouldn't you?

11 **MS. BROWN:** The Florida Commission had not
12 established a universal service cost structure that
13 required us to do any kind of universal service cost
14 recovery similar to what we had to do at the FCC.
15 There is no reason to file a universal service cost
16 recovery mechanism like the one we filed at the
17 federal level. We were only seeking at the federal
18 level to recover our costs from our interstate
19 customers.

20 I wanted to raise one other issue on the
21 jurisdiction, if I could, which is, we mentioned the
22 Louisiana case earlier and I think our position on
23 that is very clear. The Louisiana case, if it stands
24 for anything, stands for the theory that if it's
25 impossible for a carrier to comply with both sets of

1 regulations, that is federal and state at the same
2 time, federal can preempt.

3 And I think our view is that if we were
4 forced to try to simultaneously tariff our FUSF charge
5 or NAF charge around the country at state
6 jurisdictions, we would essentially be in a position
7 where we would have some states that would let us do
8 it and some states that wouldn't. And we would be in
9 the impossible position of having a federal tariff on
10 file that applies to our interstate customers with
11 State Commissions essentially being able to reach
12 different decisions.

13 **COMMISSIONER CLARK:** Would you agree that
14 the impossibility is only created because you chose to
15 tariff it the way you did?

16 **MS. BROWN:** No, I would not because it is a
17 federal charge which is established and has the effect
18 of federal law. If we tried to tariff that in the
19 state jurisdictions, we may quite easily be put in the
20 situation where it is impossible for us to comply with
21 both the decisions of State Commissions and the
22 federal tariff, which has the effect of law.

23 **COMMISSIONER CLARK:** How are you doing it
24 now?

25 **MS. BROWN:** How are we doing it now? We are

1 applying a charge, FUSF, against interstate and
2 international revenues only, and that has been the
3 case since July 1, 1998.

4 **COMMISSIONER CLARK:** So it appears to me
5 it's not an impossibility.

6 **MS. BROWN:** It's not an impossibility to
7 have the charge structured that way. What would have
8 been an impossibility during that six-month period is
9 to have a federal charge on file structured the way we
10 had it, which is applied to total revenues, and then
11 have State Commissions simultaneously disallowing our
12 ability to charge against the state portion of the
13 revenues. That would have been an impossibility.

14 **COMMISSIONER CLARK:** The way you tariffed it
15 made it an impossibility, not the FCC order.

16 **MS. BROWN:** The way we tariffed it? I guess
17 I respectfully disagree with that. We tariffed it the
18 way we did because we thought we were in the
19 compliance with the FCC's order, and we're seeking
20 clarification of that. Having done so, it then
21 becomes impossible for us to comply simultaneously
22 with a different opinion from the State Commissions
23 concerning whether our tariff is lawful.

24 **COMMISSIONER CLARK:** Is it currently
25 impossible for you to comply with the FCC order on --

1 the FCC order charging you based on total revenues?

2 **MS. BROWN:** Oh, no. And we're not making
3 that argument. We have simply -- we've simply changed
4 our rate structure and we're now proceeding in a
5 different way than we had in the past.

6 **COMMISSIONER CLARK:** So it's not impossible
7 to comply with the mandate of the FCC order?

8 **MS. BROWN:** And we've never argued that.

9 **COMMISSIONER CLARK:** Okay.

10 **COMMISSIONER DEASON:** What in your FCC
11 tariff, as it was originally filed, required you to
12 assess the collection on both interstate and
13 intrastate revenue? What in the tariff required you
14 to do that?

15 **MS. BROWN:** Why didn't -- why did the tariff
16 require us to assess on both?

17 **COMMISSIONER DEASON:** What in the tariff --
18 our Staff indicated to me in their argument that the
19 tariff in question did not specifically authorize
20 charges on intrastate.

21 **MS. BROWN:** Okay. That's a difference of
22 opinion about whether or not the tariff language that
23 we tariffed is vague. Our contention is that it
24 simply refers to customer usage. That's unambiguous
25 in our view.

1 **COMMISSIONER DEASON:** So the language of the
2 FCC tariff refers to customer usage?

3 **MS. BROWN:** Uh-huh.

4 **COMMISSIONER DEASON:** And so -- and when you
5 filed that, are your tariffs presumptively valid at
6 FCC?

7 **MS. BROWN:** Yes. They are presumptively
8 valid.

9 **COMMISSIONER DEASON:** Okay. So there was no
10 review by anyone at the FCC which indicated that they
11 also interpreted customer usage to mean all types of
12 usage, that being inter, intra and international?

13 **MS. BROWN:** There has been no ruling to
14 date. My understanding is that the --

15 **COMMISSIONER DEASON:** No. I'm talking about
16 when you filed the tariff did you get approval from
17 your tariff that said, "Oh, by the way, when we
18 approve this tariff, we want you to interpret customer
19 usage to mean all types of usage."

20 **MS. BROWN:** No, there's no --

21 **COMMISSIONER DEASON:** That was your
22 interpretation?

23 **MS. BROWN:** Yes.

24 **COMMISSIONER DEASON:** And there is nothing
25 at the FCC that said that was their interpretation at

1 the time that you filed the tariff?

2 **MS. BROWN:** That's correct. There is a
3 pending issue in the Virginia complaint on that
4 question, as I understand the Virginia complaint.

5 **COMMISSIONER DEASON:** Does the -- if the FCC
6 had flat out ordered you to collect these fees based
7 upon all sources of revenue, did they have the
8 authority to do that?

9 **MS. BROWN:** Did they have the authority to
10 do that? They certainly indicated they had a broad
11 range of authority. I'm not sure -- I'm not sure I
12 have an opinion or my company has an opinion on
13 whether or not they've exceeded their bounds here.

14 **COMMISSIONER DEASON:** Well, you've indicated
15 that the approval of a tariff has the force of law.

16 **MS. BROWN:** Uh-huh.

17 **COMMISSIONER DEASON:** And so by this tariff
18 that you filed, it was presumtively valid. I don't
19 know what review it got at the FCC. My guess is that
20 since it's presumtively valid there probably was not a
21 great deal of review.

22 **MS. BROWN:** That's correct.

23 **COMMISSIONER DEASON:** But nevertheless, by
24 you filing the tariff that's presumtively valid it
25 has the force of law. I guess my next question is,

1 does the FCC by law have the authority to do -- to
2 have ordered you to do what, in effect, you did by
3 filing your tariff the way you filed it?

4 **MS. BROWN:** Could they have ordered -- could
5 they have mandated the rate structure that we chose?

6 **COMMISSIONER DEASON:** Yes.

7 **MS. BROWN:** Yes, that's our position. They
8 could have if they wanted to.

9 **COMMISSIONER DEASON:** Does Staff agree with
10 that?

11 **MS. BEDELL:** If they chose to announce that
12 they were preempting us, they could.

13 **COMMISSIONER DEASON:** They've not done that,
14 though?

15 **MS. BEDELL:** No.

16 **COMMISSIONER DEASON:** Okay. I'm sorry. You
17 may continue.

18 **MS. BROWN:** Well, my time is relatively
19 short, so let me turn to the --

20 **COMMISSIONER DEASON:** Your time has expired
21 but I'm letting you continue due to the level of the
22 questions that you've received.

23 **MS. BROWN:** Okay. Well, I would just like
24 to conclude with the following points, which is the
25 issues here involve tariffs that were in effect for a

1 relatively short period of time. These issues are now
2 done, finished, and we're simply evaluating a
3 three-month period in case of the NAF and a six-month
4 period in the case of the FUSF.

5 If, as I understand the Florida Staff view,
6 if the Commission decides against us on the question
7 of jurisdiction, there is a separate issue about
8 whether or not refunds should be ordered. I simply
9 want to point out that the practical effect of that is
10 that what we would be doing is ordering refunds as to
11 some subset of interstate customers. So in effect,
12 we'd be removing some obligation that was paid by
13 interstate -- MCI WorldCom's interstate customers
14 during this period and giving them refunds. The
15 company at that point, of course, would have to assess
16 what it needs to do with the charges overall, but this
17 is a question about whether or not interstate
18 customers should have different obligations than what
19 the company imposed on them pursuant to the federal
20 tariff.

21 In light of that, we would argue that
22 refunds are not required in this case even if the
23 Commission finds that we have violated its
24 jurisdiction.

25 **COMMISSIONER CLARK:** I guess I don't

1 understand that. Would you just repeat that argument?

2 **MS. BROWN:** Well, the charges applied only
3 to interstate customers. They applied, if I
4 understand the Staff's argument correctly --

5 **COMMISSIONER CLARK:** But interstate
6 customers who are also intrastate customers.

7 **MS. BROWN:** Right. They applied to --
8 anyone who had interstate usage got this charge
9 applied to them. If you were an interstate customer
10 who had lots and lots of intrastate usage at that
11 time, the effect of the Florida Commission order, if
12 you were to order refunds, would be to have MCI
13 WorldCom refund money to that subset of interstate
14 customers. In effect, those who had intrastate usage
15 would get a refund.

16 **COMMISSIONER CLARK:** And what's wrong with
17 that?

18 **MS. BROWN:** What was -- what I simply am
19 pointing out to you is that we're talking about
20 reallocating money among interstate customers of MCI
21 WorldCom. That's the effect of the order.

22 Those interstate customers who had
23 intrastate usage, would get a refund, presumably those
24 who had high usage. There might be some subset to
25 whom that was meaningful. But we are not talking

1 about a lot of money in any event, and we're talking
2 only about that subset who had intrastate usage during
3 that time. So we'd essentially be changing --
4 shifting the burdens among interstate customers.

5 So what we're saying is simply if you find
6 that you have jurisdiction in this case, which we
7 don't agree with, but you could find that you had
8 jurisdiction in this case, we would simply point out
9 as to the refund question, we're not talking about a
10 refund involving intrastate customers. We're talking
11 about shifting money among interstate customers.

12 **COMMISSIONER DEASON:** When you use the
13 term --

14 **COMMISSIONER CLARK:** Who are also intrastate
15 customers.

16 **MS. BROWN:** Yes. Yes, they are.

17 **COMMISSIONER DEASON:** When you use the term
18 "shifting money", I think you use the term
19 "reallocate". Are you indicating that if there is a
20 refund, then you would, in essence, surcharge those
21 interstate customers who made no intrastate calls and
22 basically make up the difference from those customers?

23 **MS. BROWN:** No. But we certainly would not
24 surcharge the customers for that period of time, the
25 interstate-only customers for that period it time. I

1 don't think that would be possible in the competitive
2 environment that we're in. But it certainly would
3 leave us with a further shortfall. We are in a
4 position with both these charges where we are
5 underrecovering and have underrecovered our costs to a
6 degree, and this would simply add to the underrecovery
7 of those costs. We'd have to refund money to the
8 intrastate side. What the business would decide to do
9 in the future with respect to what would now be a
10 larger underrecovery, I don't know, but I simply point
11 that out as an issue.

12 **COMMISSIONER JACOBS:** There's an interesting
13 point here. And it dawns on me that -- and correct me
14 if I'm wrong. When the discussion of the method of
15 contribution came about, wasn't that primarily an
16 allocative discussion, i.e., the FCC had determined a
17 pot of money that was necessary for universal service
18 support, and when we come to this discussion, it's
19 about how do we allocate that pot amongst all the
20 companies, right?

21 **MS. BROWN:** That's correct.

22 **COMMISSIONER JACOBS:** And the idea of
23 looking at all revenues is simply how you stack up in
24 the queue more so than a cost causation issue. And
25 so now, I come back to the -- I guess I'm posing again

1 the question that Commissioner Clark posed. Isn't it
2 because you viewed it as a cost causation issue and
3 determined that it had to go through both
4 jurisdictions as opposed to simply a cost that you had
5 to recover from wherever, and most reasonably, you
6 know, from the place where it came which is interstate
7 jurisdiction? Isn't that what got you here? That you
8 decided that you wanted to make sure that both
9 jurisdictions covered this cost as opposed to, here is
10 a cost that came from an intrastate jurisdiction and
11 you simply had to recover that cold cost from that
12 area of your business?

13 **MS. BROWN:** What we simply decided to do on
14 the FUSF was to mirror what the FCC was doing to us.
15 They were collecting from us based on total revenues.
16 We collected from our interstate customers on the same
17 basis. That's basically what we were after.

18 **COMMISSIONER JACOBS:** I guess that
19 collecting from you based on total revenues sounds
20 like they imposed a cost on you and what -- and I
21 guess that is true, but it wasn't that they looked and
22 said, okay, because you imposed this kind of traffic
23 on the interstate level and you imposed this kind of
24 traffic on the intrastate level, we determined that
25 those costs add up and this is what you ought to be

1 incurred. I didn't take that to be the rationale.

2 The rationale I'm taking is that there was a
3 cost that came from this whole pie and you were simply
4 ranked in what portion you would take out of that pie
5 because of the level of revenues, albeit, that came
6 from both jurisdictions. It wasn't that, in my mind,
7 that FCC looked at the intrastate jurisdiction and
8 said, okay, because you have incurred these level of
9 costs or you have imposed these level of costs, we
10 deem that you ought to have to pay this much into this
11 fund. It was simply that the fund had this level of
12 support necessary and here's how you came up on the
13 ladder. You follow me?

14 **MS. BROWN:** I am following you and I agree
15 with you and if there is anything that I said that
16 indicated I was in disagreement -- I mean, that is
17 how, as I understand it, how the FCC came to its
18 determination. It simply rank ordered the companies
19 by total revenues and said here's your share.

20 **COMMISSIONER JACOBS:** But in your analysis
21 that automatically correlates to a right of recovery
22 from those intrastate customers.

23 **MS. BROWN:** Yes.

24 **COMMISSIONER JACOBS:** And I guess that's
25 where the line becomes, because arguably that cost was

1 totally imposed from your obligations under this
2 federal support mechanism. And the whole issue of the
3 intrastate only came in when you were being ranked as
4 to what portion you would pay out of that federal
5 support mechanism.

6 **MS. BROWN:** That's where the issue comes
7 from.

8 **COMMISSIONER JACOBS:** Right. Okay.

9 **MS. BROWN:** That's exactly where the issue
10 comes from. I think the only caveat I would apply to
11 your summation of it, is that we weren't going after
12 intrastate customers. We were going after interstate
13 customers who had both inter and intrastate usage.

14 **COMMISSIONER JACOBS:** I got you.

15 **COMMISSIONER CLARK:** You know, if you
16 followed that logic, then the FCC has jurisdiction
17 over virtually everyone because they make interstate
18 calls, if they make interstate calls.

19 **MS. BROWN:** I don't -- I wouldn't go that
20 far. I think universal service is a pretty unique
21 section of the statute about which there is much to be
22 said about where the jurisdictional line will finally
23 get drawn there and, as you know, it's the subject of
24 a separate court appeal. I don't know that generally
25 I would agree that they have broad jurisdiction.

1 **COMMISSIONER DEASON:** Ms. Bedell, you have
2 five minutes.

3 **MS. BEDELL:** I think you all have asked --
4 had answered some of the questions that Staff would
5 have addressed in rebuttal, but I would like to just
6 reemphasize that MCI did have some discretion in
7 determining how to recoup the universal service fees.
8 And they chose a methodology which we believe ended up
9 impacting on intrastate toll calls that was not
10 lawful, quite simply.

11 **COMMISSIONER CLARK:** Are you saying that it
12 had the effect of adding a charge?

13 **MS. BEDELL:** Yes.

14 **COMMISSIONER CLARK:** Okay.

15 **MS. BEDELL:** And as we have already
16 addressed, you know, it may perhaps have been
17 impossible for them to comply with the tariff in the
18 fashion that we were asking, but the fact was, that
19 was their choice, and furthermore, you know, their
20 choice to set up the charges in the manner that they
21 did. It was their choice and it was presumptively
22 valid the day after it was filed at the FCC.

23 And that puts us in a very awkward position
24 if we were to accept that argument if as, Commissioner
25 Clark, you suggested, they just simply filed a tariff

1 that said, you know, every customer in Florida will
2 pay it, you know, it makes -- they could do it
3 blatantly, you know, that said, every customer, every
4 MCI customer in Florida would be charged a dollar on
5 every intrastate call. The day after it was filed it
6 would be presumptively valid. It would be a federal
7 law. We would not be able to take any action at all.
8 This is absurd. I mean, it's not the way -- I know
9 it's not the argument that they're making, but it's
10 the end result of that argument if you take it the
11 next step.

12 And I do agree with MCI that they probably
13 did just mirror the setup that the FCC was using for
14 determining what their pot of the fund would be, but I
15 don't think that that makes it okay for them to then
16 affect intrastate calls.

17 **COMMISSIONER DEASON:** Thank you. Ms. Brown,
18 I do have another question. Did MCI give notification
19 to customers of the methodology they were going to
20 employ to recover these fees?

21 **MS. BROWN:** We had sought from the FCC an
22 ability to do so and had given the FCC the deadlines
23 by which we could have announced these in advance.
24 But because of the timing of their decisions on USF
25 implementation and access charge implementation we

1 were not able to get prenotification. We did do
2 simultaneous notification with invoices and I believe
3 filed tariffs on December 17th, about two weeks in
4 advance of the effective date. So they got
5 simultaneous invoice notice. The tariff was filed
6 early.

7 **COMMISSIONER DEASON:** So customers received
8 their first notification when they received their
9 first bill with the charges appearing thereon?

10 **MS. BROWN:** That would be correct.

11 **COMMISSIONER DEASON:** Did the notification
12 explain that it was a percentage factor applied to all
13 revenue or all charges?

14 **MS. BROWN:** Yes.

15 **COMMISSIONER DEASON:** Did it indicate that
16 it was subject to the charges only if the customer
17 made at least one interstate or international call?

18 **MS. BROWN:** I don't believe we used that
19 language. It indicated that there was a new
20 interstate charge appearing on the bill.

21 **COMMISSIONER DEASON:** An interstate charge,
22 but you didn't indicate that it was triggered by
23 placing an interstate or international call?

24 **MS. BROWN:** No.

25 **COMMISSIONER DEASON:** So if they had known

1 you were charging that way and one of your competitors
2 were charging a different way, and if a customer
3 assessed their situation and realized they made very
4 few interstate calls but perhaps averaged one a month,
5 and they made thousands of intrastate calls and they
6 would be better off to go with a competitor who
7 collected these fees in a different manner, they would
8 not have had that information to have made that
9 decision in the marketplace; is that correct?

10 **MS. BROWN:** I don't have the invoice
11 language in front of me to know to what extent a
12 customer would have been put on notice as to the
13 specific question you asked.

14 **COMMISSIONER DEASON:** Well, you know, you
15 indicated earlier that there was no need for a refund
16 and that you couldn't make these monies up because the
17 market wouldn't let you. I guess my question is, were
18 these customers notified so that they could have
19 exercised their ability to exercise their choices in
20 the market to have avoided these? And I'm hearing
21 your answer is no, they did not.

22 **MS. BROWN:** Unfortunately the FCC did not
23 get around to making its decision in time for us to do
24 prenotification, which was our strong preference and
25 has always been our strong preference.

1 **COMMISSIONER CLARK:** But you were not
2 required to tariff at the same time. In fact, some
3 companies didn't, did they?

4 **MS. BROWN:** Some companies waited several
5 months before they imposed line charges, yes. We felt
6 we had new costs being imposed upon us and chose to
7 tariff right away.

8 **COMMISSIONER CLARK:** It was a business
9 decision, not one forced by the FCC.

10 **MS. BROWN:** That's correct.

11 **COMMISSIONER DEASON:** Commissioners, any
12 final questions? I take it then the oral argument is
13 concluded. Are there any other matters? I know that
14 there is the possibility of a bench decision. Is
15 there anything else to come before the Commission
16 before we even entertain the question as to whether
17 there is to be a bench decision? Any other matters?

18 **MS. BEDELL:** No, sir.

19 **COMMISSIONER DEASON:** Commissioners, what's
20 your pleasure?

21 **COMMISSIONER CLARK:** I am prepared to make a
22 decision.

23 **COMMISSIONER DEASON:** Commissioner Jacobs?

24 **COMMISSIONER JACOBS:** I am as well.

25 **COMMISSIONER DEASON:** Okay. Well, then we

1 can discuss the matter or if a motion is --

2 **COMMISSIONER JACOBS:** I'm sorry. There was
3 one question that -- I am sorry. I mean to ask
4 earlier. Do we know if anybody complained to the FCC
5 about how their piece of the pie was developed? Did
6 anybody come back and say, "I was charged too much,"
7 in essence?

8 **MS. BEDELL:** Are you talking about the
9 companies or about customers?

10 **COMMISSIONER JACOBS:** The companies.

11 **MS. BROWN:** Is your question whether or not
12 business customers complained?

13 **COMMISSIONER JACOBS:** No. Whether any telco
14 came back to FCC after these -- this allocation -- the
15 contribution levels were determined and complained
16 that they were charged too much, they were given too
17 big a piece of the pie?

18 **MS. BROWN:** There are a number of petitions
19 for reconsideration pending. There is also a court
20 appeal. The issues touch virtually every aspect of
21 the universal service decision. Without having
22 examined that right before coming in I couldn't tell
23 you if their mechanism is definitely one of the recon
24 issues, but given the breath of recon and appeal
25 issues, I feel comfortable that we could assume that

1 virtually everything is under reconsideration or
2 appeal.

3 **MS. BEDELL:** We would disagree with that.

4 **COMMISSIONER JACOBS:** Okay. Now, if --
5 let's say that's -- on somebody's reconsideration the
6 pot was reallocated. Okay. And you came out with a
7 lower number. Are you going to come back and adjust
8 this number downward that you now -- that your
9 contribution -- I'm sorry -- your charge? You going
10 to come downward I would assume?

11 **MS. BROWN:** You're asking if we got a lower
12 assessment on universal service at this point would we
13 lower the charge?

14 **COMMISSIONER JACOBS:** Right.

15 **MS. BROWN:** That would be a business
16 decision. We would evaluate our position in the
17 marketplace relative to other carriers and also the
18 extent to which we are in an underrecovery position
19 today. And the extent to which the amount of money or
20 the amount of cost imposed on us did go down. So
21 there would be a mix of factors affecting the
22 decision. I don't think sitting here today I could
23 tell you.

24 **COMMISSIONER JACOBS:** All right.

25 **COMMISSIONER DEASON:** I do have one further

1 question for our Staff. Have we determined, if there
2 is to be a refund, the total dollar amount and the
3 total number of customers involved and the
4 administrative cost of actually determining those
5 amounts and actually having a refund?

6 **MS. BEDELL:** No, we haven't.

7 **COMMISSIONER DEASON:** Has the company made
8 any attempt to determine that?

9 **MS. BROWN:** Not at this time.

10 **COMMISSIONER DEASON:** Okay. Further
11 questions or a motion?

12 **COMMISSIONER JACOBS:** You want a
13 recommendation? I suggest we make one.

14 **MS. BEDELL:** The recommendation has to come
15 from --

16 **COMMISSIONER DEASON:** Mr. Bellak would have
17 to make a recommendation if you're seeking a
18 recommendation.

19 **COMMISSIONER CLARK:** I'm ready to -- and I
20 suppose we can go issue by issue. With respect to
21 Issue 1, I guess I would have stated the issue a
22 little bit differently. It says, did MCI bill
23 customers for the NAF and the FUSF based on intrastate
24 charges.

25 It appears to me that they did and it

1 appears to me that what, in fact, it is, is an
2 interstate charge over which we have jurisdiction. It
3 is an additional rate for an intrastate service.

4 I know they've raised the issue of -- I
5 believe it is within our jurisdiction to decide this
6 issue because we are responsible for intrastate
7 charges and what we are enforcing, and it is our
8 responsibility to determine that jurisdiction, not the
9 FCC's. And I don't think we have invaded their
10 jurisdiction in the sense that this was not an ordered
11 method of charging by the FCC.

12 I think Commissioner Jacobs made a very good
13 point that this was an allocation among the carriers.
14 It was a way to determine your share. It was not an
15 authorization to impose a charge on intrastate
16 service.

17 So to that extent I don't think it's an
18 issue that is more properly taken up with the FCC. I
19 think it is proper to do it here. That's my motion.
20 I move Staff on Issue 1.

21 **COMMISSIONER JACOBS:** I second.

22 **COMMISSIONER DEASON:** Moved and seconded
23 without objection. Show then that that motion is
24 approved on Issue 1.

25 **COMMISSIONER CLARK:** Well -- and with

1 respect to Issue 2, I would -- because it is an
2 intrastate charge it needed to be tariffed here. And
3 I would indicate moreover, I don't think -- I think
4 it's questionable as to whether they can point to
5 their FCC tariff as being a protection, in effect, for
6 that charge because, as you indicated, Commissioner
7 Deason, that it's not clear in the federal tariff that
8 it was to be on intrastate usage. Perhaps if it had
9 been clearer it would have been caught. So I move
10 Staff on Issue 2.

11 **COMMISSIONER DEASON:** There's been a motion.
12 Is there a second?

13 **COMMISSIONER JACOBS:** I'll second that.

14 **COMMISSIONER DEASON:** It's been moved and
15 seconded without objection. Show then that that
16 motion carries and disposes of Issue 2. Issue 3.

17 **COMMISSIONER CLARK:** Move Staff.

18 **COMMISSIONER JACOBS:** This speaks to our
19 authority, correct?

20 **COMMISSIONER CLARK:** Right.

21 **COMMISSIONER JACOBS:** Second.

22 **COMMISSIONER DEASON:** Show then without
23 objection that issue -- motion on Issue 3 is approved.
24 Issue 4.

25 **COMMISSIONER CLARK:** Well, we don't have to

1 do this now, right, because they've ceased collecting
2 it?

3 **MS. BEDELL:** That's correct.

4 **COMMISSIONER CLARK:** It's moot. Okay.

5 **COMMISSIONER DEASON:** There is no need for a
6 vote on this issue? It's moot? Is that correct?

7 **MS. BEDELL:** That question really should be
8 directed to Mr. Bellak.

9 **COMMISSIONER DEASON:** Mr. Bellak, is this a
10 moot issue at this point or do we need to take a vote?

11 **MR. BELLAK:** I'm sorry. I don't have the --

12 **COMMISSIONER DEASON:** You don't have those
13 issues?

14 **MR. BELLAK:** -- the issue in front of me
15 right at this point.

16 **COMMISSIONER DEASON:** Question is, if we
17 have authority, should we prohibit this practice, and
18 basically MCI has already changed their billing
19 methodology so it's no longer at issue, at least on a
20 going-forward basis.

21 **MR. BELLAK:** It appears to be a moot issue.

22 **COMMISSIONER DEASON:** Okay.

23 **COMMISSIONER CLARK:** With respect to Issue
24 5, I believe they should be ordered to make a refund
25 with interest and let me just state the rationale for

1 that.

2 I think it was an unauthorized charge.
3 Whether it's an overcharge or not, in my view, based
4 on what we've decided, you were not authorized to
5 charge it, and as a result the customers are entitled
6 to a refund. And I would say that there is even more
7 reason to do that, because as Commissioner Deason
8 pointed out, customers did not have the opportunity to
9 change their service or make some other arrangements
10 so they would not be charged in that way.

11 In effect, you chose to impact their
12 revenues as opposed to your revenues and you made a
13 business decision that they were -- they did not have
14 the ability to respond to.

15 I have one other thing to say that is not --
16 I don't know how to say it. It's not personal to you
17 all. But it is something I have seen MCI do before.
18 And that is the notion of blaming some other person or
19 order or entity for what they did. And it recalls to
20 me the fact that we had another case before you all,
21 where -- you had a case before us where you filed a
22 tariff that the charges were inappropriate and we
23 didn't catch it and I think one of your rationales was
24 well, you didn't catch it either. This has that same
25 flavor.

1 You're saying it was impossible for you to
2 do something because you didn't get the information
3 from the ILECs. Well, you could have done it a
4 different way. And it's not persuasive to argue that
5 it's not entirely your fault. It was a decision your
6 company made. And having made that decision, since it
7 was unauthorized and no notice, I think the customers
8 are entitled to a refund. That's my motion.

9 **COMMISSIONER DEASON:** Okay. Let me first
10 make an observation and perhaps a friendly amendment
11 and it may not be friendly, and if it's not let me
12 know.

13 First of all, I agree with everything that
14 you said, except that my vote on this matter has no
15 bearing whatsoever about perhaps a previous tariff
16 filing that was filed and it was approved apparently
17 or something was --

18 **COMMISSIONER CLARK:** You're right. That's a
19 friendly amendment and it's not really part of that,
20 but I want to convey that message to you all. I'm
21 sure, Mr. Melson, you have heard it before. The
22 notion that, you know, we hold you responsible for
23 your business decisions. I understand the fact that
24 it may not have been -- you may not have been able to
25 get that information. But you could have just charged

1 your interstate customers. You should -- you could
2 have just put it on your interstate charges.

3 **COMMISSIONER DEASON:** Okay. With that
4 clarification then, maybe there is another friendly
5 amendment coming and I don't know if this will be
6 friendly or not.

7 You've made the motion to order the refund.
8 My concern is that this record is -- we have no
9 understanding of the amount of money that potentially
10 could be refunded, amount per customer, the amount of
11 administrative cost involved in making the
12 identification and actually carrying through with a
13 refund. My concern -- that's my concern. I certainly
14 don't want to be in a position of imposing \$10 worth
15 of cost to refund \$1. I don't think that's a good
16 thing to do.

17 So, I think generally a refund is in order.
18 However, I would indicate to MCI that if there is a
19 cheaper alternative, and I would also provide that if
20 it's determined that it would be more palatable and
21 more efficient to perhaps pay a fine as opposed to
22 requiring a refund, that's something that we can
23 considering at that point. But my -- not having the
24 information, but my intuition tells me we're talking
25 about small amounts per customers but you're talking

1 about huge administrative costs per customer to
2 effectuate this and I want to avoid that. And so if
3 that can be considered a friendly amendment to have
4 that, I would appreciate it.

5 **COMMISSIONER CLARK:** How would we phrase
6 that though? That we would withhold a decision on the
7 refund until we have information from MCI and the
8 Staff as to the amount and the cost?

9 **COMMISSIONER DEASON:** I would put the burden
10 back on MCI to indicate that we're ordering a refund,
11 but that during the course of them doing the necessary
12 research to determine the amounts and the amounts per
13 customers, it is determined that it is not a feasible
14 way and if there is another alternative, that they
15 would be free to bring that to us at that time, and I
16 guess they always would be free to do that.

17 But I just want it understood that we're
18 trying to -- first of all, we believe that there
19 should be a refund but we want it done in a
20 cost-effective way. And if there are some other
21 alternatives out there, and personally I would think
22 that, you know, perhaps some type of a payment of a
23 fine or something in lieu of a refund, because it's
24 something that could be considered, once we get
25 information concerning the administrative cost of

1 actually going through with a refund.

2 **COMMISSIONER CLARK:** I consider that a
3 friendly amendment.

4 **COMMISSIONER JACOBS:** The only concern I
5 have is that we not get too far removed from the
6 consumers. That might be a reasonable option. By the
7 same token, credits to consumers could be looked at as
8 options, you know. I think a focus on them would be
9 of great use.

10 **COMMISSIONER DEASON:** And it may be that
11 it's determined that one free day of calling or
12 something as opposed to actually having to identify
13 each customer, recompute their bills, determine that
14 this customer is due a three-cent refund and they have
15 to send -- you know, a three-cent check doesn't make
16 sense. Sending them the notice, perhaps the postage
17 on the notice.

18 There may be a better way to actually get
19 this achieved so that customers benefit and certainly
20 so that the company does not benefit; that they bear
21 the burden of -- and I'm sure that they disagree with
22 this finding and it there may be a legal challenge --
23 but in the event that there is to be a refund of some
24 sort, I think it needs to be done in a cost-effective
25 manner, and that we should -- that we should give the

1 company some flexibility or at least present some
2 alternatives if they find themselves in that
3 situation.

4 **COMMISSIONER JACOBS:** I can go along with
5 that.

6 **COMMISSIONER DEASON:** Okay. We have a
7 motion with that clarification.

8 **COMMISSIONER JACOBS:** I would second and I
9 guess add briefly that I think the thing that gives me
10 a lot of clarity on this is the pot of money from
11 which these charges were derived came purely from a
12 federal decision on support of a federal mechanism.
13 The whole issue of intrastate came about as the
14 determination was made about how to allocate that pot
15 of money to the companies and how they should pay for
16 that federal fund. I cannot see how that translates
17 into a right of recovery from intrastate customers,
18 whether they happen to engage in interstate traffic or
19 not. I do not see how that translates into a right of
20 recovery based on their intrastate activity.

21 So for that reason, I view this charge as
22 highly suspect and I will second the motion.

23 **COMMISSIONER DEASON:** Okay. Motion is
24 seconded without objection. Show then that motion
25 carries and I think Issue 5 is the last issue and that

1 should dispose of this matter for today. Thank you
2 all. This hearing is adjourned.

3 (Thereupon, the hearing concluded at
4 2:15 p.m.)

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STATE OF FLORIDA)
:
COUNTY OF LEON)

CERTIFICATE OF REPORTER

I, KIMBERLY K. BERENS, CSR, RPR, Official
Commission Reporter,

DO HEREBY CERTIFY that the Hearing in Docket
No. 980435-TI was heard by the Florida Public Service
Commission at the time and place herein stated; it is
further

CERTIFIED that I stenographically reported
the said proceedings; that the same has been
transcribed by me; and that this transcript,
consisting of 56 pages, constitutes a true
transcription of my notes of said proceedings.

DATED this March 3, 1999.

Kimberly K. Berens
KIMBERLY K. BERENS, CSR, RPR
Florida Public Service Commission
Official Commission Reporter

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