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June 8, 1998

Ms. Blanca S. Bayó
Director, Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: MCI Show Cause Proceedings -- Docket No. 980435-TI

Dear Ms. Bayó:

Enclosed for filing on behalf of MCI Telecommunications Corporation are the original and fifteen copies of MCI's Response to Order to Show Cause.

By copy of this letter, this document is being furnished to the parties on the attached service list.

Very truly yours,

Richard D. Melson

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cc: Parties of Record

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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 Filed: May 18, 1998

RESPONSE OF MCI TELECOMMUNICATIONS CORPORATION TO ORDER TO SHOW CAUSE

On May 18, 1998 the Florida Public Service Commission (the Commission or FPSC) issued Order No. PSC-98-0681-SC-TI (AShow Cause Order@) requiring MCI Telecommunications Corporation (MCI) to show cause:

> why it should not cease to charge FCC universal service assessments on intrastate toll calls and make appropriate refunds, with interest, to its customers.
>
> Show Cause Order, pp. 5-6.

MCI's response to the Show Cause Order and its request for relief are provided below.

RESPONSE

I. General Response

A. MCI has made a good-faith effort to reach a resolution with the FPSC on this disagreement.

As correctly noted in the Commission's Order of May 18, 1998, MCI has attempted to resolve this issue with the Commission and its staff and has sought a declaratory ruling on this issue at hand from the FCC. In short, MCI has attempted to work cooperatively with the FPSC to resolve this issue.

MCI has responded to every request of the Commission and its staff. We have provided the Commission and its staff with MCI internal federal regulatory experts to explain our interpretation of the FCC's Access Reform and Universal Service Orders and we have met with Commissioners and staff regarding current and future billings of our Federal Universal Service Fee (FUSF) and National Access Fee (NAF). It is apparent in the staff's recommendation and in the Commission's Order that MCI and the FPSC have a difference of opinion in the interpretation of the FCC's Universal Service and Access Reform Orders in how the fees may be assessed to consumers. And the Commission also notes that MCI has filed a Petition for a Declaratory Ruling with the FCC seeking its clarification of its Order.[1] No decision has been rendered to date by the FCC which may help resolve this impasse.

The Commission does not contest that MCI is authorized to recover these amounts, nor does it allege that MCI is collecting more than is necessary to recover these costs. In fact, MCI is under-recovering the costs it is incurring. The Commission, as evidenced in its Order, disagrees with the formulae MCI is currently employing to recover these amounts. MCI is aware of no material facts in dispute.

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[1]MCI Petition for Declaratory Ruling, In the matter of Petition for Declaratory Ruling That Carriers May Assess Interstate Customers An Interstate Universal Service Charge Which is Based on Total Revenues, CC Docket No. 96-45 (filed April 3, 1998).

B. The dispute between MCI and the FPSC is confined to a discrete period of time.

As a practical matter, the issues of this show cause proceeding are confined to a distinct period of time. MCI has recently announced it intends to begin recovering FUSF fees from residential subscribers on July 1, 1998. MCI will assess residential subscribers 5.9% of the customer's interstate and international revenues. There will be no assessment of intrastate revenues. On July 1, 1998, small business customers will be assessed a FUSF of 5% to 5.9% (depending on the service) based on interstate and international revenues of the customer. There will be no assessment of intrastate revenues. On August 1, 1998, large business customers will be assessed FUSF based on interstate and international revenues utilizing a percentage of 4.9.[2] Therefore, one of the subjects of this show cause proceeding—whether MCI has correctly interpreted the FCC order to allow intrastate revenues to be a part of the revenues assessed for the FUSF--is confined to the January, 1998, through June, 1998, period for small business customers and January, 1998, through July, 1998, for large business customers. There is no dispute regarding the collection of the FUSF on residential customers because MCI is not currently assessing FUSF to its residential customers. As for the application of the National Access Fee (NAF) to small business customers on a total revenue

[2] MCI filed these new surcharge rates, terms and conditions in tariffs at the FCC on June 4, 1998.

basis, that issue is confined to the January, 1998, through March, 1998, timeframe[3].

II. Specific response to the allegation that MCI has no authority for its assessment of the NAF and FUSF on the Intrastate portion of customer bills

The Order of the FPSC takes issue with two basic arguments of MCI. First, MCI asserts that the FCC's order allows MCI to collect the FUSF contributions based on a customer's total revenues, both intrastate and interstate and that carriers are permitted to pass through their contributions to interstate access and interexchange customers under Paragraph 829 of the FCC's order. The FPSC disagrees. Additionally, the FPSC takes issue with MCI's assertion that the FCC has jurisdiction over the recovery of universal service contributions. The disagreement leads the Commission to conclude that MCI has no authority for its assessment of the NAF and the FUSF on the intrastate portion of customer bills. In light of that conclusion, the FPSC seeks a response from MCI as why it should not cease to recover universal service contributions from intrastate toll calls and make "appropriate refunds," plus interest, to MCI's Florida customers.

A. The FPSC lacks authority to require MCI to violate its federal tariffs.

The FPSC lacks authority to order MCI to depart from its federally tariffed rates. The specific charges the Commission

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[3] MCI filed a tariff with the FCC changing the method of collection of the NAF for small business customers on March 31, 1998, effective April 1, 1998, for bills rendered on and after April 2, 1998. The new method of collection is a flat-rated, per line charge and is not based on revenues of the customer.

challenges are two particular line items on MCI's bills: the NAF (from January 1, 1998, through March 31, 1998) and the FUSF. MCI has on file at the FCC tariffs setting forth the NAF and FUSF charges. The tariffs setting forth these charges are fully effective. Pursuant to them, MCI is charging customers of interstate service in Florida-- and every other State -- the NAF and FUSF. These charges apply to interstate customers. An FPSC order requiring MCI to cease assessing the intrastate revenues of Floridians for the FUSF, or to refund amounts previously collected, would be preempted by the Communications Act of 1934 because it would require MCI to charge Florida consumers rates different from those set forth in the federal tariff and thereby violate its federal obligation to comply with its federal tariff. Moreover, the legality of charges imposed on interstate customers pursuant to an interstate tariff is governed exclusively by federal law, administered by the FCC.

Under the Communications Act, the only entity with authority to order MCI to change the charges set forth in MCI's interstate tariff is the FCC -- acting on a nationwide basis. Indeed, the FCC is presently conducting an inquiry -- at MCI's behest -- into the very issues raised by the FPSC, and the FPSC is a participant in that proceeding. Moreover, even in the unlikely event that the FCC finds MCI's interstate tariffs unlawful in the manner asserted by the FPSC, the FCC is the only entity with authority to order refunds of amounts collected pursuant to a federal tariff. Until the FCC issues such an order, MCI may, under

federal law, continue to collect the NAF and FUSF in Florida, as well as in every other state.

B. The FCC's Order on universal service allows MCI's interpretation.

The FCC's Universal Service Order establishes "specific, predictable and sufficient mechanisms" to provide funding for universal service preservation and advancement. In compliance with this FCC Order, MCI and all other telecommunications carriers that provide interstate telecommunications services must contribute to universal service support for eligible schools, libraries and health care providers and for high cost and low-income programs.[4] Following the recommendation of the Federal-State Joint Board on Universal Service, the FCC ordered that "universal support mechanisms for schools and libraries and rural health providers be funded by assessing both the intrastate and interstate revenues of providers by interstate telecommunications services."[5]

The FCC considered and concluded that its decision to base carriers' contributions on intrastate revenue, as well as interstate revenue, did not violate Section 2(b) of the Communications Act establishing the parameters of its jurisdiction. Section 2(b) provides that "nothing in [the Communications Act] shall be construed to apply or give the

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[4] Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, FCC 97-157, (rel. May 8, 1997). (Univ. Service Order) at ¶ 772.
[5] Id. at ¶ 806 (emphasis added).

[Federal Communications] Commission jurisdiction with respect to . . . charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communications service by wire or radio."[6] According to the FCC, even when it exercises jurisdiction to assess contributions for universal service support from intrastate as well as interstate revenues, such an approach does not constitute rate regulation of those services so as to violate Section 2(b).[7] The FCC merely is calculating a federal charge based on both interstate and intrastate revenues, which is distinct from regulating the rates and conditions of intrastate service.[8] If the FCC may calculate a federal charge in such a manner, then the corollary is appropriate—that a carrier may establish an interstate rate in its interstate tariff that is in part calculated from the customer's total usage.[9]

The FCC also authorized carriers such as MCI to recover their contributions to the universal service support mechanisms through interstate rates.[10] Although the FCC declined to create a single interstate fee that would be paid by basic residential dialtone subscribers, carriers were not precluded from creating

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[6] 47 U.S.C. § 152(b).
[7] Universal Service Order at ¶ 821.
[8] Id.
[9] The FCC's observations about its ability to assess intrastate revenues is on appeal to the Fifth Circuit. No stay has been issued in that case and the FCC's order remains valid federal law.
[10] Id. at ¶ 809.

such a fee to be assessed to their customers.

MCI established the Federal Universal Service Fee to be paid by its interstate customers as a means to recover the universal service fees imposed by the FCC. Although the fee is assessed on its interstate customers, MCI chose to calculate the amount a customer will pay based on the method the FCC used to determine the assessment MCI must pay, i.e., based on total revenues. That is, the amount a particular customer reimburses MCI under the Federal Universal Service Fee is dependent upon its total revenue, both intrastate and interstate. MCI believes this is a logical approach and the fairest to all subscribers. Moreover, it believes this to be a legal approach as evidenced by its federally accepted tariffs implementing this recovery method. Because a sizable portion of the federal universal service fund allocation is based on total revenues, not just interstate revenues, MCI's recovery mechanism is also based on total revenues in an effort to match its costs with cost causation. If MCI calculates its Federal Universal Service Fee on the customer's interstate revenue only (as the Commission contends it should), MCI would be authorized by the FCC's Order to recover the same amount of revenue it is currently recovering by simply increasing the percentage it is currently applying to interstate revenue. Such an increase would not impact customers whose long distance charges are equally balanced between intrastate calls and interstate calls. However, MCI believes that customers whose total long distance bill is weighted more heavily to either

interstate or intrastate calls would be shouldering either too much or too little of their share of the FCC mandated costs.

In sum, MCI's Federal Universal Service Fee is an interstate fee properly filed with the FCC to recover certain FCC mandated costs which MCI is entitled to collect from its customers on a total revenue basis.

C. MCI's assessment of the small business National Access Fee for the three-month period ending March 31, 1998 is reasonable andaccurately captures PICC costs for the average small business customer.

In the FCC's Access Charge Reform Docket,[11] the FCC restructured its common line rate structure to permit the largest local exchange carriers to shift over time from a cost-recovery mechanism that recovered a significant portion of non-traffic sensitive common line costs (e.g. the loop) through per-minute Carrier Common Line (CCL) charges to a method that recovers these costs solely through flat-rated charges. As part of this restructuring, effective January 1, 1998, the FCC authorized these local exchange carriers to begin to phase out the per-minute CCL charges and instead charge interexchange carriers (IXCs) through a presubscribed interexchange carrier charge (PICC).

In addition to the fundamental economic deficiencies of the access structure and rate levels resulting from the FCC's Access

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[11] Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges, CC Docket Nos. 96-262, 94-1, 91-213, and 95-72, First Report and Order, FCC 97-158 (rel. May 16, 1997).

Charge Reform Order (e.g., access charges that continue to significantly exceed forward-looking economic cost), the manner in which the FCC has chosen to implement its access reform policies is impractical. For example, long distance carriers typically have many customers that, in a given month, place no long distance calls. In a given month, approximately 25 to 30 percent of MCI's long distance customer base have zero-usage. Under the per-minute access structure, effective prior to January 1, 1998, an IXC was not adversely impacted if a significant portion of its customers were zero-usage customers. However, under the current flat-rate line structure (i.e., where IXCs are assessed a PICC for each presubscribed line, regardless of usage), IXCs are placed in a position where there is no efficient cost-causative manner in which they can recover PICC charges assessed on them by the ILEC for zero-usage customers.[12] So that customers and their long distance carriers are not harmed, MCI and other IXCs are currently advocating to the FCC that it require ILECs to recover the PICC directly from end users. This modification would end the guessing on which IXCs currently must base their PICC cost recovery, significantly reduce the risk of uncollectibles that will, no doubt, exert upward pressure on long distance rates, and allow all carriers to recover costs in the most efficient, cost-causative manner.

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[12] Based on MCI's experience, it is not practical for IXCs, especially those which rely on BOC billing, to recover flat-rated line costs from zero-usage customers.

In the case of PICCs, the FCC recognized that there were numerous implementation issues to be resolved in order that IXCs could be assured that they were receiving accurate PICC bills from ILECs. These implementation issues, however, have not been resolved, making reconciliation of PICC bills extremely costly to IXCs, and creating difficult implementation issues for IXCs which have decided to use line items to recover these costs in lieu of keeping per minute prices higher.

On February 24, 1998, MCI filed an Emergency Petition with the FCC.[13] In it, MCI demonstrated that the FCC's limited access reform policies have placed long distance carriers in the position of having to recover new access costs represented by the PICC without data essential to assure that long distance carriers are collecting these fees in the most accurate way from their customer base. This "guessing game" forces long distance carriers to balance the risk of charging customers too much -- resulting in competitive consequences in the long distance markets -- or too little, leaving long distance carriers financially weaker and less able to enter local markets.

For example, as pointed out in the Emergency Petition, the FCC recognized that it must adopt a standardized definition on which the ILECs will base their PICC bills. Absent such definitions, ILEC tariffs that became effective January 1, 1998

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[13] MCI Telecommunications Corporation Petition to the Commission for Prescription of Tariffs Implementing Access Charge Reform, CC Docket No. 97-250, DA 98-385.

included a wide range of definitions for primary and non-primary residential lines. Although the FCC has determined that the ILECs' inconsistent definitions are often "vague" and "circular," it has not yet provided standardized definitions.[14]

The FCC has also recognized that accurate, timely, verifiable information is necessary to provide IXCs the opportunity to develop a rate structure that recovers these costs in a cost-causative manner.[15] Specifically, the FCC stated that:

> If an IXC were to receive a bill for the aggregate amount of the PICCs assessed on its presubscribed lines and did not have access to information that indicates for which lines the LEC is assessing a primary or non-primary line residential PICC, the IXC would be unable to develop residential rates that accurately reflect the underlying costs of providing service over those lines.[16]

To date, more than five months later, some ILECs have yet to provide IXCs with information required by the FCC to support PICC bills, and which will allow IXCs "to recover the costs of serving its customers in an efficient manner.[17]

Accordingly, in its Emergency Petition, MCI requested that the FCC eliminate the distinctions between primary and non-primary lines, as the costs associated with implementing such distinctions clearly outweigh the benefits. MCI also requested

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[14] Designation Order at ¶15.
[15] Id.
[16] Id.
[17] If IXCs are forced to collect the PICC fees on behalf of the ILECs, it is imperative that IXCs be given real time access to ILEC databases for PICC in order to respond to customer inquiries.

that the FCC hold the ILECs responsible for collection of PICC until such time as they can provide all necessary information to IXCs in advance of billing. Finally, MCI requested the FCC to require the ILECs to provide auditable line count information, by telephone number, immediately.

The FCC's implementation of the PICC charges to IXCs without establishing and enforcing mechanisms for the industry to deal with the new charges has caused substantial problems for MCI as well as other carriers. These problems have been highlighted as MCI seeks to recover these charges through a federally tariffed National Access Fee. Now that a portion of access is assessed on a per line basis, MCI believes the cost of serving low usage customers should be reflected in the retail price to those customers - as the FCC's new access rate structure encourages. Other IXCs have done the same.

The FPSC only takes issue with MCI's National Access Fee as applied to small business customers from January 1, 1998, to March 31, 1998, which was based on a formula that included, as a variable, a customer's total MCI revenues.[18] The National Access Fee, including the small business National Access Fee, is intended to recover only the amount assessed on MCI by ILECs through the PICC.

As MCI receives line data information from the ILECs, MCI is

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[18] MCI's formula applied during the period of January, 1998 through March, 1998, is more fully explained in its March 17, 1998 letter to Mr. Walter D'Haesseleer, Director, Division of Communications.

committed to reviewing its line charges to ensure that the collection of line charges remains consistent with the goal of collecting the least amount possible to cover costs. Further in April, 1998 MCI modified the manner in which the small business National Access Fee is recovered. For competitive reasons and with the expectation that the FCC will move to resolve the line auditability issues, MCI moved to a per line charge beginning April 2, 1998.

MCI submits, however, that the current small business National Access Fee does not constitute the establishment of an intrastate charge as the Commission infers in its Order. MCI believes that its small business National Access Fee is just and reasonable and not unreasonably discriminatory pursuant to the Communications Act of 1934 as amended.

First, while the formula used to derive the federally-tariffed National Access Fee during the period in question used a customer's total MCI invoice as a component in calculating the final charge, the purpose of the formula was to achieve a reasonable fee that accurately captured MCI's PICC costs for an average small business customer. Given that MCI had no data to check the accuracy of the ILEC charges, MCI believes that its then-tariffed charge reflected a reasonable estimate of the costs that MCI incurred in serving it presubscribed customers.

MCI's National Access Fee is a federal charge which appears as a separate line item on the customer's bill. Accordingly, MCI

did not establish a state rate via its federal tariff. The charge is valid and enforceable pursuant to MCI's then effective federal tariff, and fully consistent with the Communications Act of 1934 as amended.

III. Conclusion

Because the National Access Fee and Federal Universal Service Fee are interstate fees to recover FCC mandated costs, any dispute regarding MCI's collection of the fees is exclusively within the jurisdiction of the FCC and should be resolved by the FCC. MCI believes it is calculating both fees in a manner that is not inconsistent with the FCC's Orders.

MCI is required to have uniform interstate rates across the country.[19] Accordingly, MCI cannot develop and implement a federal recovery fee such as the National Access Fee differently in one state than it does in another state. MCI is currently seeking a national solution to resolve the confusion brought about by the FCC's Orders.

Based on the foregoing, MCI respectfully suggests that a show cause order is not warranted. MCI established the National Access Fee and the Federal Universal Service Fee to recover costs mandated by the FCC and did so in a manner it thought most fair to its customers consistent with the data it has available to it.

[19] 47 U.S.C. § 254(g).

REQUEST FOR HEARING

MCI requests a formal hearing on the issues of policy and law raised by the Show Cause Order and this response.

RESPECTFULLY SUBMITTED this 8th day of June, 1998.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following parties by U.S. Mail or Hand Delivery (*) this 8th day of June, 1998.

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