

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 980435-TI  
ORDER NO. PSC-99-0613-FOF-TI  
ISSUED: April 2, 1999

The following Commissioners participated in the disposition of this matter:

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

ORDER REQUIRING REFUND BY MCI TELECOMMUNICATIONS, INC.  
OF NATIONAL ACCESS FEES AND FEDERAL UNIVERSAL SERVICE FUND  
CHARGES ATTRIBUTABLE TO CHARGES FOR INTRASTATE CALLS

BACKGROUND

By Order No. PSC-98-0681-SC-TI, issued May 18, 1998, we ordered MCI Telecommunications Corporation (MCI) to show cause in writing why it should not cease to charge FCC universal service assessments on intrastate toll calls and make appropriate refunds, with interest, to its customers. At the March 3, 1999 formal hearing requested by MCI, we issued a bench ruling to the effect that all such assessments based on intrastate charges, including both Federal Universal Service Fund (FUSF) charges and National Access Fees (NAF) levied to date should be refunded to customers, with interest. This Order memorializes that bench decision.

DISCUSSION

The basic position presented by MCI throughout the course of these proceedings was that MCI lawfully collected the charges at issue from its customers based, in part, on their intrastate charges in Florida. MCI's allocation of responsibility for the FUSF fund was based by the FCC on both interstate and intrastate revenues. MCI argued that the customers from whom the charges were

DOCUMENT NUMBER-DATE

04275 APR-28

FPSC-RECORDS/REPORTING

collected were considered interstate customers because each made at least one interstate call during the collection period. MCI also stated that the collections were made in good faith pursuant to MCI's federal tariffs filed with the FCC and did not aggregate any larger sum than MCI was entitled to collect under federal law. Therefore, MCI took the position that no refunds should be required even if we determine that the collections were unauthorized.

Our ruling rejected that position. This Commission, not the FCC, has jurisdiction over the assessment of charges for intrastate service. 47 U.S.C. §§152(b), Communications Act of 1934; Louisiana Pub. Serv. Comm'n v. FCC, 476 U.S. 355 (1986); Chapter 364, Florida Statutes. That jurisdiction is not affected by MCI's denomination of its customers as "interstate customers". To accede to MCI'S arguments would unavoidably involve the nullification of important aspects of that unquestioned FPSC jurisdiction over Florida intrastate telecommunications charges. First, it would support the claim, which we rejected, that the mere listing of such charges by a telecommunications company in its federal tariff preempts our jurisdiction over those charges. Second, it would support the further claim, which we also rejected, that collections based on intrastate charges can be effectuated by a telecommunications company without our approval.

Moreover, our exercise of jurisdiction is required, not permissive:

The Florida Public Service Commission shall exercise over and in relation to telecommunications companies the powers conferred by this chapter.

§364.01(1). See also, §§364.08; 364.09; 364.10. [e.s.]

MCI has not identified any basis on which its arguments identify exceptions to this Commission's jurisdiction over intrastate charges. The assignment of an allocation formula for MCI's share of FUSF fund responsibilities does not affect our jurisdiction. Therefore, we properly declined, at the conclusion of the March 3, 1999 hearing, to allow MCI to retain collections which disregarded that jurisdiction and were unauthorized by us.

Since MCI ceased collecting the charges at issue when based on intrastate calls effective April 1, 1998 (NAF) and August 1, 1998

ORDER NO. PSC-99-0613-FOF-TI  
DOCKET NO. 980435-TI  
PAGE 3

(FUSF) respectively, it only remains for MCI to effectuate the refunds of any such charges collected prior to those dates.

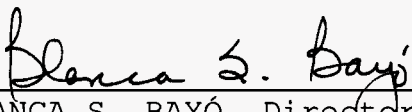
In view of the above, it is

ORDERED by the Florida Public Service Commission that MCI Telecommunications, Inc. refund, with interest, the NAF and FUSF collections described in the body of this Order. It is further

ORDERED that MCI Telecommunications, Inc. report to the Commission as to the methods by which the refunds at issue can be accomplished in an economic and cost-effective manner. It is further

ORDERED that this docket remain open pending receipt of the report as to an economic method of accomplishing the refunds and subsequent effectuation of the refunds.

By ORDER of the Florida Public Service Commission this 2nd day of April, 1999.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

ORDER NO. PSC-99-0613-FOF-TI  
DOCKET NO. 980435-TI  
PAGE 4

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.