

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause ) DOCKET NO. 960617-TI  
proceedings against MCI ) ORDER NO. PSC-96-1395-FOF-TI  
Telecommunications Corporation ) ISSUED: November 20, 1996  
for violation of Rule 25-24.630, )  
F.A.C. )  
\_\_\_\_\_)

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
J. TERRY DEASON  
JOE GARCIA  
JULIA L. JOHNSON  
DIANE K. KIESLING

**PROPOSED AGENCY ACTION**  
**ORDER REQUIRING DIRECT REFUND**

**AND**  
**ORDER TO SHOW CAUSE**

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein regarding a direct refund is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

**CASE BACKGROUND**

This proceeding was initiated in response to numerous complaints we have received regarding a \$3 surcharge that MCI Telecommunications, Corp. (MCI) assessed on each collect call made from correctional facilities in Florida, beginning February 29, 1996. MCI is the new Department of Corrections (DOC) contract telephone service provider, and recipients of inmate collect calls are complaining to both DOC and the Commission. The surcharge MCI collected exceeds AT&T of the Southern States' (AT&T) intrastate rates for operator-assisted calls, and thus exceeds the rate cap required by our Rule 25-24.630, Florida Administrative Code, and established by our Order No. 24101, issued February 14, 1991, in Docket Nos. 860723-TP and 891168-TC.

DOCUMENT NUMBER-DATE

12377 NOV 20 96

FPSC-RECORDS/REPORTING

At the time MCI filed its tariff, and at the time it was approved, our staff did not realize that the tariff did not conform with the rate cap we had established for operator-assisted intrastate collect calls. MCI had devised the rates in the tariff to conform to AT&T's interstate rates, not AT&T's intrastate rates. AT&T's interstate rates provide for a surcharge on collect calls made from prison facilities, while its intrastate rates do not. When our staff became aware of this discrepancy, they asked MCI to withdraw its tariff, refile it to conform with applicable rules, and refund all charges in excess of the rate cap. MCI responded that its tariff was valid because it was "approved by the Commission."

On May 30, 1996, our staff filed a recommendation to require MCI to show cause why it should not be fined or have its certificate cancelled for overcharging and for various other rule violations. We deferred a decision on the show cause, because MCI indicated that it would propose a settlement. MCI filed a revised tariff with rates in accord with the established rate cap effective July 11, 1996, and corrected other rule violations identified in the first show cause recommendation. While not conceding that it had violated Commission rules and policy, MCI offered to refund the prison overcharges it had collected from February to July.

#### OFFERS OF SETTLEMENT

On July 9, 1996, MCI filed a Motion to Consider and Accept Offer of Settlement. MCI proposed to refund the overcharges to the customers who had paid the surcharge, if those customers contacted MCI and requested the refund. MCI's motion included a letter from DOC in which it agreed to refund the share of the overcharges that it had received in commissions from MCI through deductions to its future commissions. Our staff objected to MCI's proposed refund method because it placed the burden on the customers, first to determine if they were entitled to a refund, and then to affirmatively request the refund.

On September 12, 1996, MCI filed a Motion to File Substitute Offer of Settlement, in which it withdrew its offer to refund any of the overcharges in any fashion to the customers who paid the charges. Instead, MCI proposed to distribute the refund amount directly to DOC's Inmate Welfare Trust Fund. MCI asserted that its proposal ". . . ensures that the refund will be issued immediately and will benefit the inmates who made the collect calls, which in turn is a benefit to the relatives and friends who accepted the calls." In its Substitute Offer, MCI also stated that:

the bad debt on prison collect calls presents an insurmountable problem with regard to issuing refunds directly to individuals in this situation, whether by an 800 call-in number, as MCI previously proposed, or by a credit on customer bills, as suggested by Staff. . . [T]he bad debt on inmate collect calls averages 11.4% per month in Florida and is on an upward trend, running as high as 14%. This is drastically higher than the normal long distance calling bad debt of 3%. The bad debt comes directly out of MCI's share of the surcharge, which is 47%.

Substitute Offer, p. 5.

MCI also asserted that many customers who paid the surcharge may have moved, and in many cases customers may have already received refunds from their local exchange company (LEC), " which the LEC issues liberally." MCI claimed that it has no way to determine who has received a refund, which "creates a double credit or double refund problem." In a revised show cause recommendation filed on September 30, 1996, our staff objected to that proposal on the grounds that the refund should be made directly to the customers who had paid the overcharges.

We scheduled consideration of the show cause and the appropriate means to refund the overcharges for our October 29, 1996, Agenda Conference. Before that conference, MCI filed two more proposals. One proposal suggested that the refund amount should be given to Families of Loved Ones in Prison, (FLIP), a private charitable organization. The other proposal provided for a prospective reduction in MCI's prison call surcharge to present customers accepting collect calls from prisoners for the time necessary to refund the total overcharged amount. Before the agenda conference, the DOC filed a letter indicating its approval of MCI's prospective surcharge reduction proposal.

At our Agenda Conference we received comments from several groups regarding the refund. FLIP suggested that it would use the refund money, or any amounts that could not be refunded directly to overcharged customers, to benefit prisoners' families and friends. FLIP stated that the money should not go to the DOC's Inmate Welfare Trust Fund under any circumstances. FLIP also stated that while it was not strongly opposed to MCI's prospective surcharge reduction proposal, it wanted the Commission to know that most customers it was in contact with definitely wanted the overcharges refunded directly to them. Florida Institutional Legal Services

also suggested that it would be interested in receiving any excess amounts that could not be refunded back to the customers, and also stated that the refund should not be made to the welfare trust fund. The Pay Telephone Association recommended that MCI should make a direct refund to the overcharged customers.

MCI then elaborated on its prospective surcharge reduction proposal, suggesting that it would forego the surcharge completely during the holiday season, when prisoners call their families and friends most often. MCI stated that its proposal could be implemented quickly, and the overcharges would be refunded to many of the customers who had paid them, because their family members and friends were still in the prison system. MCI stated that no refund method is perfect, and it believed that its proposal would return a good portion of the overcharges to those who had paid them without burdening MCI with the administrative expenses of implementing a direct refund.

We have carefully reviewed all the proposals MCI has presented to us, and we cannot accept any of them. None of the proposals adequately returns the amounts overcharged to those who were harmed. We hold that MCI shall implement direct refunds, with interest, to those customers who were overcharged between February and July, 1996, in accordance with the provisions of Rule 25-4.114, Florida Administrative Code. We further hold that MCI shall show cause why it should not be fined or have its certificate revoked for failure to comply with Commission Rule 25-24.630, Florida Administrative Code. Our reasons for these decisions are explained below.

#### DECISION

##### Direct Refunds

This is the third incident of overcharges and refunds involving MCI's operator assisted rates in less than two years. In Docket No. 950788-TI, the Commission accepted MCI's proposal to implement a refund for billing in excess of conversation time with a temporary prospective rate reduction. In another case, not docketed before this Commission, MCI voluntarily sent coupons in the amount of \$2.50 to every person that used the operator assisted collect system in an attempt to refund overcharges in excess of conversation time to customers that may have made calls during a specific time frame. Individual callers were not necessarily made whole in either of these cases. In this case, however, unlike the previous two cases, MCI knows the telephone number, date, and amount overcharged for each incident.

We appreciate the fact that MCI has reduced its surcharge rate, but we do not believe that the company's refund proposals, or the justifications for them, are satisfactory. MCI has not identified any insurmountable hurdle that would prevent it from refunding the overcharges to those who paid them. MCI is the seventh company to appear before us in proceedings concerning overcharges for inmate calling. Attachment A is a list of the dockets and amounts involved, along with penalties imposed. We have ordered direct refunds for similar overcharges in the past, and we see no reason not to do so here. Certainly, MCI may not be able to reach each customer who overpaid, but that is not a reason to deny a refund to those who can be reached. The FCC has ordered that local exchange companies (LECs) make available non-discriminatory access to the billing names and addresses of LEC subscribers who authorize collect calls for a carrier's services. There will of course be administrative expense associated with implementation of a direct refund, but we do not believe that expense will be prohibitive. MCI has access to sufficient information to make accurate refunds, and in most instances a refund can be made to one number for multiple overcharges, which will reduce the administrative expense associated with the refund. Therefore, we will require MCI to implement direct refunds to those overcharged, with interest, in accordance with Rule 25-4.114, Florida Administrative Code.

#### Show Cause

By Order No. 22243, issued November 29, 1988, in Docket No. 871394-TP, we ordered alternative operator services providers to file tariff revisions reflecting rates at or below AT&T's rates for operator-assisted intrastate calls. In Order No. 24101, cited above, we changed the rate cap from AT&T's day-time rate to AT&T's time-of-day rate for 0+ dialed calls. The order retained AT&T's tariff as the established rate cap. On September 9, 1993, we adopted rules to govern the provision of operator services. Specifically, Rule 25-24.630(1)(a), Florida Administrative Code, requires that operator services providers charge no more than the Commission-approved rate for collect calls. The Commission-approved rate at the time the rules were adopted was, and still is, the AT&T intrastate tariffed rate.

As previously stated, MCI filed a tariff effective February 29, 1996, listing a \$3.00 surcharge for all collect calls placed from confinement facilities served by MCI. The tariff tracked AT&T's rates for interstate collect calls from prison facilities. The tariff was approved by our staff on February 29, 1996. MCI contends that because its \$3.00 surcharge was approved in its tariff, it is in compliance with Rule 25-24.630(1)(a), Florida

Administrative Code, because the surcharge was a "Commission-approved" rate as the rule requires.<sup>1</sup>

MCI was a party in Docket No. 871394-TP, where we first established that the rate cap for operator services would mirror the AT&T rate for a comparable call. Moreover, MCI was provided an opportunity to provide Economic Impact Statement information in Docket No. 920749-TP which codified the rate cap. MCI has also been reminded of the rate cap in earlier proceedings involving overcharges.

The rate cap was also identified in the contract for the provision of operator services between MCI and the Department of Corrections. The contract specifies in part:

#### 4.2 Allowable Rates

At all times the rates charged by the contractor to the called party shall not exceed the dominant carrier (AT&T) rates for the same call - distance, length of call, time of day and day of week. ---There shall be no add-ons, such as service charges or surcharges-charges, which are not in the approved AT&T tariff. (emphasis supplied).

In the invitation to bid for the contract, in question 20, the Department of Corrections clearly identified the maximum rates it would accept for bid purposes as AT&T's rates. In its response MCI stated that it would charge in accordance with AT&T's tariff for a comparable call since AT&T has the \$3.00 surcharge for prison collect calls in its interstate tariff. AT&T, however, does not have such a tariff on file with this Commission for intrastate service. It is difficult to understand how MCI could have considered an interstate tariff to be the governing tariff for intrastate charges. MCI recognizes the fact that when it files intrastate tariffs for all of its other services, these rates apply only to intrastate services.

MCI is presumed to be aware of the statutory requirements under which it operates, such as the requirement that the

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<sup>1</sup> MCI has stated that this increased surcharge is necessary because of the expense of providing the security features necessary to prevent fraud and to protect persons such as witnesses from harassing calls. Other carriers offer similar if not identical fraud control features as MCI, yet remain within the intrastate rate cap.

Commission must cap operator services rates and require refunds to those persons overcharged.

Section 364.3376, Florida Statutes, states in part:

(3) For operator services, the commission shall establish maximum rates and charges for all providers of such services within the state.

(4) Operator Service providers shall:

(b) not intentionally charge for incompletd calls and provide **full refund or credit for any misbilled** or incomplete calls (emphasis added).

(c) Bill for services approved in their tariff and only at the tariff or **otherwise approved** rate, and disclose their names on bills which include charges for services rendered (emphasis added).

Our staff has acknowledged its error in administratively approving a tariff with rates exceeding the Commission's rate cap; but that does not relieve MCI from the responsibility to comply with the rate cap. We cannot, and do not, delegate our substantive authority to change rates to our staff through the tariff approval process. It is the responsibility of all utilities regulated by this Commission to ensure that their tariff filings comply with Commission rules and policy. An oversight by our staff cannot relieve the utilities of that responsibility. If a utility is uncertain about what rates it may lawfully file in its tariffs, the reasonable thing to do is, simply, to ask. Accordingly, MCI should be held accountable for the overcharges, and should show cause in writing why it should not be fined in accordance with Chapter 364.285, Florida Statutes for each day it is found in violation, or have its certificate cancelled, for violation of Rule 25-24.630(1)(a), Florida Administrative Code.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that MCI Telecommunications Corporation shall refund all overcharges assessed on each collect call made from correctional facilities from February, 1996, to July, 1996, directly to those customers who paid the overcharges. It is further

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ORDERED that unless a person whose substantial interests are affected by the Commission's action proposing to order a direct refund in this Docket files a petition protesting the proposed action in the form and by the date specified in the Notice of Further Proceedings or Judicial Review, below, the Commission's decision to order a direct refund shall become final. It is further

ORDERED that MCI Telecommunications Corporation shall show cause, in writing, why its certificate should not be cancelled or why fines allowed by Section 364.285, Florida Statutes, should not be imposed for violations of Rule 25-24.630, Florida Administrative Code. It is further

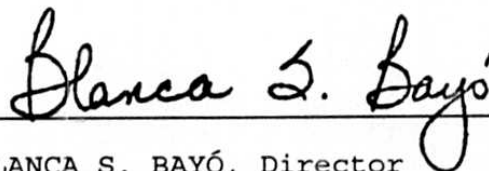
ORDERED that MCI Telecommunications Corporation's response must contain specific allegations of facts and law. It is further

ORDERED that MCI Telecommunications Corporation's response must be received by the Director of the Division of Records and Reporting within twenty (20) days of the date of this Order. It is further

ORDERED that if MCI Telecommunications Corporation fails to file a timely response, that failure shall constitute an admission of the facts alleged herein and a waiver of any right to a hearing. It is further

ORDERED that this docket shall remain open pending resolution of the show cause process.

By ORDER of the Florida Public Service Commission, this 20th day of November, 1996.



BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

MCB



NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

As identified in the body of this order, our action ordering a direct refund in this case is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 11, 1996. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date 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.

The Commission's order to show cause in this docket is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided

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by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on December 10, 1996.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.

**OVERCHARGES FROM CONFINEMENT FACILITIES**

<b>DOCKET #</b>	<b>COMPANY</b>	<b>FINE AMOUNT</b>	<b>OTHER ACTION</b>
910666	Peoples Telephone	\$100,000	Refund \$653,000
910666	International Telecharge	\$250,000	Refund \$750,000
910875	Equal Access Corp.	\$200,000	Cert. Cancelled
910888	Integretel, Inc.		Changed Procedures
920687	Own Your Own Phone	\$500	Refund \$7,063
930416	North American Intelcom	\$25,000	Refund \$414,000
950149	North American Intelcom		
960617	MCI Telecommunications Corp.	Pending	Pending

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ATTACHMENT A