



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** NOVEMBER 6, 1998

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

**FROM:** DIVISION OF APPEALS (SMITH) *DS*  
DIVISION OF COMMUNICATIONS (BARRETT) *meB*

**RE:** DOCKET NO. 981405-TL - COMPLAINT BY VANGUARD SCHOOL  
AGAINST MCI TELECOMMUNICATIONS CORPORATION REGARDING T-1  
SERVICE.

**AGENDA:** NOVEMBER 17, 1998 - REGULAR AGENCA - INTERESTED PERSONS  
MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMU\WP\981405.RCM

RECEIVED - FIN  
 NOV-4 AM 10:30  
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 NOV-4 AM 10:30

## CASE BACKGROUND

### **Nature and Status of Complaint**

This complaint arises from a dispute between Vanguard School of Lake Wales (Vanguard) and MCI Telecommunications Corporation (MCI) over charges billed for T-1 access and long-distance services provided to the school. MCI has billed Vanguard for \$58,060.59. Vanguard claims that this amount includes improper charges for taxes, monthly T-1 "access" charges, improperly rated long-distance calls and, most significantly, some \$22,117.97 in charges for local calls billed as long-distance by MCI. According to Vanguard, it is no longer a customer of MCI, having terminated its month-to-month service after the dispute arose.

An informal conference was held in Lakes Wales on September 17, 1998. No settlement was reached. The issue of local calls billed as long distance remains the primary sticking point,

DOCUMENT NUMBER-DATE

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although there is no binding recognition by either party that the subsidiary issues have yet been resolved.

### **Origin of the Complaint**

Vanguard ordered T-1 access and long distance service from MCI in October, 1997, to serve its revamped phone system. There was no detailed written contract spelling out the mutual obligations of the parties. Rather, the written documentation of the agreement apparently consists only of standard offer and order forms from MCI setting out basic rates for T-1 access and long distance (Attachments 1, 2, pp. 5-6). There is also a letter of agency from Vanguard appointing MCI as agent "to order changes to and maintenance on specific telecommunications services you provide . . . ." (Attachment 3, p. 7). That letter references "long distance service with T-1". Id.

Vanguard claims there is more to their agreement with MCI than reflected in these documents. Specifically, Vanguard says that the MCI sales agent who signed the school up for the service represented that, in addition to long distance calls, the school would also be able to use the T-1 line to make local calls without charge. That agent was one Ed Harrison of MCI's Tampa office, now no longer in the company's employ, but apparently still residing in the Tampa area.

This is the account of Ms. Sandra Odom, secretary/treasurer of the school, who negotiated with MCI and who brought the complaint with the Commission. Vanguard also offers a letter from the vendor installing the new phone system for the school, Choice Communications. That letter, from Choice's Vice President, Michael Birmingham, states that he was present when the issue of local calling on the T-1 line was discussed by phone with Mr. Harrison. Mr. Birmingham states that Mr. Harrison said that the T-1 line "could be engineered to require only a (7) digit number for a local call . . . ." (Attachment 4, p. 8 ). Mr. Birmingham notes that Vanguard was still having to use an eleven digit number to make the local calls. Id.

As a consequence of dialing eleven digits, e.g. 1-941-676-1234, Vanguard's calls, even in its local calling area, were routed over MCI's long distance facilities and billed accordingly. When Ms. Odom brought this situation to the attention of MCI, she received a reply from the company stating:

Vanguard school is being billed for their local calling areas as if they are long distance. Please contact the local

telephone company and have them explain the difference in the intrastate calling and local calling area. They will be able to provide a map for you.

Letter of Mary Kennedy, March 27, 1998. (Attachment 5, p. 9).

MCI does not dispute one way or another what Mr. Harrison may have told Vanguard. Rather, it relies on the written documentation establishing the service. This, MCI says, makes it clear that all that was ever contemplated was T-1 with long-distance service, not free local calling over the T-1 line. (Attachment 7, pp. 12-13). Moreover, since Vanguard knew it was being charged long distance rates for local calls, it should have stopped doing it. Id.

#### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Commission set this matter for hearing?

**RECOMMENDATION:** Yes, a fair resolution of this complaint demands an opportunity to develop relevant facts and argue the legal consequences which attach. (Smith)

**STAFF ANALYSIS:** It is clear that, even if issues related to taxes, monthly charges for T-1 and improperly rated long-distance calls are resolved, a substantial amount of money, at least \$22,617.97, remains in dispute. (Attachments 7, 8, pp. 11-17). Staff believes that fair resolution of that dispute turns on factual information which must be developed through a hearing process. Vanguard should be given an opportunity to prove that the bare written documents establishing service are not the whole story and to argue the legal consequences of representations made by MCI. MCI, on the other hand, should have an opportunity to test these allegations and develop its own evidence. Telecommunications staff initially felt that it could not resolve this dispute because it could not substantiate the representations of Mr. Harrison. That remains the posture of the case at this point. Although both parties argue that their positions are legally sound and their evidence conclusive, staff believes it would be presumptuous to judge a controversy of this magnitude on the existing record. Therefore, the Commission should set the matter for an evidentiary hearing.

DOCKET NO. 981405-PL  
DATE: November 6, 1998

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No, it should remain open pending resolution through the hearing process.

DES

Attachments



*- local calling  
- representation  
of contract*

**networkMCI One  
Proposed For  
VANGUARD SCHOOL**

**BASED ON NO YEARLY COMMITMENT  
MONTHLY T1 ACCESS IS INCLUDED AS USAGE**

**INSTATE RATES            \$0.080 PER MINUTE  
OUT OF STATE RATES    \$0.1130 PER MINUTE**

**T1 MONTHLY ACCESS  
\$250.00 PER MONTH  
THIS IS GOOD FOR OCTOBER ONLY**

**INTERNATIONAL RATES FOR:  
BAHAMAS \$0.4686 PER MIN.  
BERMUDA \$0.7638 PER MIN.  
MEXICO \$0.700 PER MIN.  
COLUMBIA \$0.9385 PER MIN**



# new access

CUSTOMER NAME **VANGUARD SCHOOL OF LAKE WALES, FL INC.**  
 CUSTOMER ADDRESS **2249 N. U.S. Hwy 27**  
 CITY **LAKE WALES** STATE **FL** ZIP **33583**

ACCESS TYPE SELECTION  
 DSO - \$100  
 DIS - \$125  
 T-1 - \$250

PRODUCT SELECTION  
 EQUIPATED ACCESS TO THE INTERNET

ORDER TYPE NEW EXISTING

CONTRACT TERM

ANNUAL COMMITMENT ~~12000~~ **0**

EXPIRATION DATE

BILLING ID **02390948**

BRANCH NAME **WFL Sales** VCC

ACCOUNT MANAGER **Ed Harrison** VNET **95-1376**

\*SEE REVERSE FOR ORDER PREPARATION INSTRUCTIONS

Nº 13245



# new access

CUSTOMER NAME

DATE **10/21/97**

TYPE  
 DSO \$100  
 DIS \$125  
 T-1 \$250

PRODUCT SELECTION  
**NMI LONG DISTANCE**

BRANCH MANAGER SIGNATURE **Ed Harrison**

\*SEE REVERSE FOR ORDER PREPARATION INSTRUCTIONS

**the Vanguard School**



2348 North U.S. Highway 27  
Largo, Fla. 33025-7018

841/878-8221  
FAX 841/878-8227

e-mail: vanguard@digis.net

Dear Sir/Madam:

The undersigned appoints MCI Telecommunications Corporation, or any of its affiliated companies, as agent ("the Agent") to order changes to and maintenance on specific telecommunications services you provide to the undersigned including (and without limitation) removing, adding to or rearranging such telecommunications services.

This specific service is:

MCI NETWORK SERVICE as per order of LONG DISTANCE SERVICE WITH TS

You are hereby released from any and all liability for making pertinent information available to the Agent and for following the Agent's instructions with reference to any changes to our maintenance on the undersigned's telecommunications service.

You may deal directly with the Agent on all matters pertaining to said telecommunications service and should follow the Agent's instructions with reference thereto. This authorization will remain in effect until otherwise notified.

Sincerely,

*Sandra J. Odon*  
*Secretary / Treasurer.*

## Choice Communications, Inc.

1020 W. Poplar Road  
Lakeland, FL 33811

Tel: (941) 644-7445 Fax: (941) 644-1742 Tel: (800) 644-3000

April 13, 1998

RECEIVED

APR 13 1998

SJM

CMU

Public Service Commission  
Attn: Brian Musselwhite  
Fax: (850) 413-6511

Re: The Vanguard School, Its T-1 Service, and Long Distance Rates.

## To whom it may concern:

Please be advised that at the time when the T-1 service at The Vanguard School, Lake Wales, FL, was installed, (late December 1997), Vanguard was told by MCI that the T-1 could be engineered to require dialing only a (7) digit number for a local call. (i.e.: 676-8021). To date they are still having to dial (11) digits for local calling. (i.e.: 1-941-676-8021). This information was given to Ms. Sandy Odom and myself from the MCI representative on a conference call while I was in Sandy Odom's office.

The initial telephone communication between the MCI representative and Sandy Odom, concerning the long distance rates were discussed, also in her office while I was present. The initial rates, quoted Ms. Odom were very competitive. After further negotiations between MCI and Ms. Odom she has advised me that the rates are not at all what she had negotiated.

Both Ms. Odom and I have continuously tried to contact the MCI representative, concerning these complaints, only to have to leave voice mail messages. The MCI representative has yet to return any of these calls, or tried to resolve either of these problems.

If there is any recourse that can be taken in this matter, by your service- please contact my client, Ms. Sandra Odom at this number: (941) 676-6091. Thank You.

Sincerely,


Michael C. Birmingham  
Vice President





MCI Telecommunications  
Corporation

PO Box 4661  
Iowa City, IA 52240-4661

March 27, 1998

ATTN MS SANDRA ODOM  
THE VANGUARD SCHOOL OF LAKE WALES  
2249 N U S HIGHWAY 27  
LAKE WALES FL 33853-7818

Dear Ms. Odom:

This letter comes in response to the complaint you filed with the Florida Public Service Commission concerning the T-1 service for The Vanguard School's new phone system. Please accept our apology for any frustration this matter has caused.

Mr. Jeff Moss of MCI's High Performance center investigated your concerns.

- 1) Vanguard Schools is being billed for Features - Calling Station Id Charge of \$25.00 set up fee and \$50.00 monthly fee. You are requesting this to be canceled. MCI does not have a Calling Station Id Feature. The \$25.00 set up fee and \$50.00 monthly fee are for verified accounting codes. Please contact me at 800-624-0533 or fax to me a letter requesting this feature be disconnected. You may fax this request to my attention at 800-854-7960.
- 2) You indicated the school is being charged for taxes. Please fax a copy of the school's tax-exempt forms to my attention to fax number 800-854-7690, so they can be forwarded for approval.
- 3) Vanguard Schools is being charged for all additional charges excluding being charged \$250.00 for the T-1 as agreed. Mr. Moss submitted a request to have the Access Promotion installed. Once this promotion is installed Vanguard School's billing will be correct. In addition, Mr. Moss issued a credit in the amount of \$1042.24 for the overbilling of the T-1 access from December 1997 to March 1998.
- 4) The T-1 service was not to start until December 18, 1997; however, it started on November 20, 1997. You are requesting a credit. The T-1 bill dated November 20, 1998 was pro-rated since it was only a partial month. Therefore, no credit has been issued.
- 5) Vanguard school is being billed for their local calling area as if they are long distance. Please contact the local telephone company and have them explain the difference in the intrastate calling and local calling area. They will be able to provide a map for you.



MCI Telecommunications  
Corporation

PO Box 4661  
Iowa City, IA 52240-4661

Ms. Odom  
Page 2  
March 27, 1998

MCI regrets any frustration caused by this matter. If I can be of further assistance in this matter, please contact me at 800-624-0533.

Sincerely,

Mary Kennedy  
MCI External Agency Escalations

cc: Mr. Muselwhite, Florida Public Service Commission



**MCI Telecommunications Corporation**

Law & Public Policy  
780 Johnson Ferry Road  
Suite 700  
Atlanta, GA 30342  
404 267 6391  
Fax 404 267 5992

98 OCT -1 PM 3:05

September 30, 1998

**VIA AIRBORNE EXPRESS**

David E. Smith  
Director, Division of Appeals  
Florida Public Service Commission  
Capital Circle Office Center  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0862

RE: Informal Conference - Complaint of Vanguard School of Lake Wales (Sandra Odom)

Dear Mr. Smith:

Thank you again for the opportunity to attend the informal conference and present the position of MCI Telecommunications Corporation ("MCI") with respect to this complaint. Thank you also for the opportunity to present additional evidence and comments. All statements made herein are for purposes of settlement and may not be construed as admissions against interest; nor shall any statement be admissible as evidence for any purpose in any proceeding.

With respect to the issues:

1) Taxes - MCI, in late August, 1998, issued a credit for taxes in the amount of \$6,775.54. For the sake of settling this complaint, we would credit an additional \$1,766.07. This would result in a total of \$8,541.61 in credits for taxes, which is close to the \$8,549.06 in credits claimed by the customer for taxes.

2) "Access" charges - The customer claims that MCI should have charged no more than \$250.00 per month for installation and "access," namely, local loop, access coordination and central office connection charges. In June 1998, MCI issued \$1,724.24 in credits to reflect the difference between \$250.00 and these charges for the period through March 1998. The customer at the conference produced a one (1) page faxed document, purportedly signed on behalf of MCI, which referenced T1 long distance access service for \$250.00 per month. Although I have not verified the authenticity of this

Mr. David E. Smith  
September 30, 1998  
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document, to settle this complaint MCI would credit an additional \$725.91, which is determined by the following: \$3,768.15 (the total of all charges for local loop, access coordination and central office connection, not including taxes) minus \$1,042.24 (the credit previously given, as indicated in the statements of account enclosed), minus \$2,000.00 (the amount the customer would have been charged, at \$250.00 per month multiplied by eight (8) months).

3) Charges for "local" phone calls - Although the customer repeatedly references the oral statements of an MCI sales representative as establishing a contract to offer local phone service, that representative no longer works for MCI and his whereabouts are unknown. Therefore, as a witness he is at least equally available to the customer, and his absence cannot be construed against MCI. Neither he nor the customer's vendor - whose principal allegedly witnessed the representative's statements - was produced at the informal hearing. Instead, four (4) documents that refer to the service ordered by the customer were produced. These are the only documents that appear to refer to the type of service ordered. None of these documents refers to local phone service. Three (3) of these documents refer to long distance service and/or usage charges.

The first document, referenced in paragraph (2) above, was produced by the customer for the first time at the conference. The "product selected" is stated to be "long distance". The other documents have been in the possession of the Commission and are, respectively: the "proposal," which refers to per minute rates for both "in-state" and "out of state," as well as international, calls; an "agency" letter, typed on the stationery of the customer and signed by Ms. Odom, which refers to the "specific service" as "Long Distance Service with T1"; and a letter from the customer's vendor to the Commission. The letter is as interesting for what it does not state as for what it does state: in stating that "Vanguard was told by MCI that the T1 could be engineered to require dialing only a seven (7) digit number for a local call," the vendor does not indicate who was supposed to engineer the customer's equipment.

Thus, despite the customer's efforts to characterize the type of service ordered as "ambiguous," the available documentation - including the hearsay allegations of the vendor's letter - refers to long distance service and per minute charges for "in-state" calls. Moreover, at least two (2) of the documents were made by the customer or at its request: the "agency" letter and the vendor's letter. Thus, the service selected was not at all

ambiguous, nor is this a situation in which, as the customer argues, the intent of documents is to be construed against MCI.

The customer speculated at the conference that MCI's formal, written customer contracts state, when offering only long distance service, that MCI is not providing local service. I reviewed customer contracts after the conference and assure you there is no such additional language in these agreements. A formal, written document would not have "disclaimed" the provision of local service.

What is particularly disturbing is that the customer, certainly as early as December 1997, according to MCI's records, knew that "local" calls were being forced through the T1 and were being assessed usage fees, but, nonetheless, refused to mitigate the charges that were being assessed. Indeed, from the beginning "local" calls were being placed through the T1 using "1+" dialing (just as one can place a call to a number within his or her local calling area using an IXC's network; by dialing "1+", the call is recognized as a long distance call, even though it is being placed to a number within the local calling area). As Ms. Odom stated at the conference, the customer insisted on continuing to make "local" calls using the T1. Even under the customer's theory of the "contract" here for services, the customer always has the duty to mitigate its "damages." The customer refused to mitigate, however, and continued to use the T1 service while refusing to pay any part of the phone bill, even for long distance charges the customer now admits were undisputed.

MCI does not provide engineering or configuration of customers' equipment for the type of service that was provided here. The customer and its vendor bear that responsibility. As a common carrier, MCI is constrained to offer only such service as has been authorized. Although MCI accepts, for discussion purposes here, that the customer's figure of \$22,116.97 approximates the total charged for "local" calls, we cannot credit the customer for "local" calls, other than the \$137.56 credited in August, 1998 for these calls.

4) Long Distance Calls - The customer claims that \$391.00 should be credited for certain international calls. Given the low dollar amount of this proposed credit, to remove this as an issue MCI would credit this amount.

The Commission must at a minimum now determine the amounts that are not legitimately disputed by the customer, and order the total of those charges paid pending further disposition of this complaint. By determining the amounts that are not legitimately disputed by the customer, moreover, issues other than the charges for "local"

Mr. David E. Smith  
September 30, 1998  
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phone calls can be removed, in effect, from these negotiations. Accordingly, the amount that is not disputed by Vanguard School, and which should be paid immediately, is (as of the invoice dated July 25, 1998):

\$58,060.59
- <u>8,541.61</u> (credit for taxes)
49,518.98
- <u>725.91</u> (credit for access)
48,793.07
- <u>22,116.97</u> (the customer's determination of charges for "local" calls, including the \$137.56 credited)
26,676.10
- <u>391.00</u> (credit for long distance calls)
\$26,285.10

This amount does not take into account invoices after July 25, 1998; nor is it an offer of settlement or a statement of account indicating the total amount due from this customer. MCI understands that the customer is demanding that all of the "local" calls be credited. Moreover, the credits indicated above that MCI would provide are contingent on settlement of all issues. Consequently, this complaint cannot be settled at this time. Also, until MCI receives a written request from the customer for termination of services, MCI will continue to bill the customer's account, per our tariff (MCI has thirty (30) days following written notice of termination to disconnect service).

Obviously, any settlement must include dismissal of the complaint, appropriate covenants that there will be no further proceedings before the Commission or any other regulatory body or court against MCI concerning the allegations raised by the complainant, and a release of MCI by Vanguard School, its agents, servants and employees, including Ms. Odom. Services that are not in dispute must be paid for immediately.

My direct dial is (800) 525-5406. Thanking you for your assistance, I remain

Mr. David E. Smith  
September 30, 1998  
Page 5

Yours truly,



Kennard B. Woods  
Attorney

KBW/

Enclosures

cc: Norman White, Esq. (without enclosures)  
Robert D. Vandiver, Esq.  
Kevin Gallagher, Esq.  
Marsha Ward, Esq.  
Mary Kennedy  
Cheryl Mackey  
Alan Probst

BJ

BRADLEY JOHNSON LAW FIRM, P.A.

225 EAST PARK AVENUE • POST OFFICE BOX 1284 • LAKE WALES, FLORIDA 33859-1260  
 TELEPHONE 941/676-1423 • FAX 941/676-3695 • bjlw@worldnet.att.net

CLAY A. TERRY  
 JOHN F. LAURENT  
 NORMAN WHITE  
 ROBERT L. WILLIAMS, JR.  
 D. ANDREW HUNT  
 MARK H. SMITH  
 ALBERT C. GALLOWAY, JR.

October 7, 1998

David E. Smith  
 Director, Division of Appeals  
 Florida Public Service Commission  
 Capital Circle Office Center  
 2540 Shumard Oak Boulevard  
 Tallahassee, FL 32399-0862

**RE: Informal Conference - Complaint of Vanguard School  
 of Lake Wales (Sandra Odom)**

Dear Mr. Smith:

This is in response to the letter written by the MCI attorney dated September 30, 1998.

At the conclusion of the informal conference, it was my understanding that Mr. Woods had been given the opportunity to review certain calculations and seek settlement authority from his client. Since his letter contains arguments directed to you, I am compelled to file a response to it.

Here is the key to this disagreement: Should MCI charge for "local" calls made on the T1 access?

The answer to this question is very clearly "no". Prior to entering into the contractual relationship with each other, MCI assured Vanguard that local calls could be made on the T1 access at no additional charge. This assurance was made by the MCI sales representative in the presence of a Vanguard employee, Sandra Odom, and a third party. This fact is uncontroverted. Mr. Woods makes reference to the fact that his company's sales representative "no longer works for MCI and his whereabouts are unknown." Vanguard doesn't really need this witness. It has the testimony of Sandra Odom and the third party witness. There is absolutely no controversy of fact here. It does not even rise to the level of a swearing match. Here is a fact that MCI cannot dispute: MCI, through its sales representative, promised that local calls could be made on the T1 access without additional charge. This promise was an inducement for Vanguard to enter into its contractual relationship with MCI and MCI is bound to honor that promise.



Page Two  
David E. Smith  
October 7, 1998

Accordingly, the proposed settlement offered by Vanguard at the informal conference is a reasonable resolution of this matter. At the informal conference, Vanguard offered to make a lump sum payment based on its figures in exchange for a release from MCI. That offer still stands. However, I believe MCI's letter of September 30, 1998, rejects that offer.

Sincerely,

A handwritten signature in black ink, appearing to be 'Norman White', written over the word 'Sincerely,'.

Norman White

NW/fsa

xc: Kennard B. Woods, Esquire  
Sandra Odom