IN THE SUPREME COURT OF FLORIDA

MCI TELECOMMUNICATIONS CORP.,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 66,945
	)	
FLORIDA PUBLIC SERVICE COMMISSION,	)	
	)	
Appellee.	)	
	)	

On Appeal from the Florida Public Service Commission

REPLY BRIEF OF APPELLANT MCI TELECOMMUNICATIONS CORPORATION

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REPLY BRIEF OF APPELLANT
MCI TELECOMMUNICATIONS CORPORATION

Introduction

This Reply Brief of MCI Telecommunications Corporation (MCI) responds to the arguments presented by the Florida Public Service Commission (Commission) in Points I and II of its Answer Brief. The issue regarding competent, substantial evidence (Point III of the Answer Brief) is adequately dealt with in Part II of MCI's Initial Brief.

ARGUMENT

I. THE COMMISSION IMPROPERLY EXERCISED ITS RATEMAKING AUTHORITY WHEN IT REDUCED THE RATES FOR BILLING AND COLLECTION SERVICE BY $6.15 MILLION TO OFFSET A GROSS RECEIPTS TAX LAW CHANGE THAT RELATED TO ALL ACCESS SERVICES, NOT JUST BILLING AND COLLECTION.

MCI recognizes that in a general rate case, the Commission has the discretion to consider a wide range of factors in establishing the rates for various classes of customers. International Minerals & Chemical Corp. v. Mayo, 336 So.2d 548 (Fla. 1976); Occidental Chemical Co. v. Mayo, 351 So.2d 336 (Fla. 1977). Even in such cases, the Commission's decision must not unjustly discriminate among customers, and must be supported by competent, substantial evidence. Occidental Chemical Co. v. Mayo, supra, at 340; see, §§ 364.10, 364.14(1), Fla. Stat. (1983).

The case before the Commission differed from a general rate case in two important respects. First, it was a limited proceeding that related solely to access charges -- the charges paid by long distance companies to local telephone companies (LECs) for access services. 1/ In this

1/ Access services include several distinct services provided by the LECs, including several forms of basic access that allow a customer to reach a long distance company from his telephone, billing and collection service, and access to long distance directory assistance service.

limited proceeding, the Commission was not required to balance the needs of multiple classes of customers, as in the International Minerals and Occidental cases, or in a typical telephone rate case. It was dealing with a single class of customers, the long distance companies.

Second, the Commission did not establish an overall revenue requirement for access services, as it would have done in a general rate case. It merely adjusted the existing (1984) access charge rates to compensate for two known changes applicable to 1985:

(i) a $13.2 million overcharge to AT&T during 1984; and

(ii) a $6.15 million impact of amendments to the gross receipts tax law.

The order being appealed combined these two separate and distinct adjustments into a single $19.35 million reduction to rates for billing and collection service. (A. 4, 19)

The reasonableness of the Commission's exercise of its ratemaking authority must be reviewed in light of the limited nature of the case before it, and the underlying reasons for the specific rate adjustments it made.

The $13.2 million adjustment for the 1984 overcharge was properly applied to billing and collection service, a service used almost exclusively by AT&T. This adjustment had its genesis in overcharges to a single long distance

carrier, AT&T. Had the Commission eliminated the $13.2 million LEC windfall resulting from this overcharge to AT&T by reducing all access rates to all long distance companies, AT&T would have been aggrieved by having had to share its refund pro rata with other carriers. 2/

Conversely, the $6.15 million adjustment relating to gross receipts tax law changes was improperly applied to billing and collection service, a service used almost exclusively by AT&T. This adjustment had its genesis in a statutory amendment that shifted gross receipts tax liability from the LECs to all long distance carriers, pro rata according to the access services they purchase. When the Commission eliminated the $6.15 million LEC windfall resulting from this amendment by reducing rates for one specific access service used predominantly by one long distance carrier, it denied the other long distance companies (including MCI) their pro rata share of that adjustment.

By ignoring the underlying reason for the $6.15 million adjustment, the Commission has unreasonably exercised its authority and unjustly discriminated between one customer (AT&T) that uses billing and collection service and a second

2/ Under the Commission's method, AT&T will receive slightly less than 100% of this adjustment, since other long distance companies may purchase some minor amount of billing and collection service during 1985. However, AT&T has not appealed the Commission's order.

class of customers (all other long distance companies) that generally do not, and in many instances cannot, use billing and collection service.

The only factor the Commission relied on in giving a disproportionate share of this adjustment to AT&T was its concern about the possible impact on LECs if AT&T ceased to purchase their billing and collection service. (A. 4-5) As discussed in Part II of MCI's Initial Brief, there was no competent, substantial evidence on which this decision could rest.

II. MCI IS NOT PRECLUDED BY ANY STIPULATION FROM CHALLENGING THE BILLING AND COLLECTION RATE REDUCTION.

As the Commission states in its Answer Brief:

> The substance of the stipulation, that access charges should be effectively reduced by 1.5 percent, was presented by AT&T's expert accounting witness, William H. Neal, Jr. (Tr. 3513-3521)
>
> * * *
>
> Following Mr. Neal's presentation, the Commission certainly had reasonable grounds to believe that the parties had agreed that the LEC's access charge revenues should be reduced by approximately 1.5 percent.
>
> (Answer Brief, pp. 15-16)

MCI agrees that the stipulation presented by Mr. Neal clearly contemplated that the LECs' access charges would be reduced, in total, by 1.5% to reflect tax law changes.

Just as clearly, the stipulation did not contemplate that the overall adjustment would be applied as a 17% rate reduction for billing and collection services and no rate reduction for any other access service. Witness Neal's presentation made absolutely no reference to billing and collection service, nor to the possibility of singling out one portion of access service for a disproportionate rate reduction.

Although admittedly unclear, the stipulation, if anything, contemplated that rates for all access services would be reduced pro rata. At a minimum, the parties were entitled to presume that the Commission's discretion as to the allocation of this rate reduction would be exercised in a lawful manner, supported by the record before it.

CONCLUSION

The Commission's method of implementing the $6.15 million reduction in access charges was an improper exercise of its ratemaking authority. The case should be remanded to the Commission with directions that the $6.15 million reduction resulting from the gross receipts tax law amendment must be applied across-the-board to all access services offered by the local companies.

Respectfully submitted this 16th day of August, 1985.

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