

P-443/EM-89-305 ORDER REJECTING REFUND PLAN AND REQUIRING FURTHER
FILINGS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson
Cynthia A. Kitlinski
Dee Knaak
Norma McKanna
Patrice M. Vick

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Tariff
Filing by MCI to Provide
Operator Assisted Calling to its
Dial "1", Prism III and Prism
Plus Customers, and to Introduce
Payphone Service, Institutional
Phone Service, and the LEC
Calling Card Service

ISSUE DATE: February 26, 1991
DOCKET NO. P-443/EM-89-305
ORDER REJECTING REFUND PLAN AND
REQUIRING FURTHER FILINGS

PROCEDURAL HISTORY

On May 4, 1989, MCI Telecommunications, Inc. (MCI) filed several changes in its price lists, including price lists for three new service offerings: Payphone Service, Institutional Phone Service, and LEC Calling Card Service. Price lists submitted for approval indicated that the new services proposed included operator assistance to calls from MCI presubscribed, semi-public and private payphones, MCI presubscribed institutional phones and MCI presubscribed phones using a calling card from a local exchange company (LEC).

On May 30, 1989, MCI filed a letter with the Department agreeing that the price lists would not become effective until the Commission issued an order in this matter. MCI indicated that it needed additional time to comply with the data requests of the Department regarding the docket.

On May 15, 1990, MCI filed textual revisions of its price lists regarding the provision of operator services and updated its rates to mirror the latest AT&T intrastate Minnesota rates.

On May 29, 1990, the Department filed its Report of Investigation and Recommendation in this matter. Among other things, the Department recommended that the Commission grant MCI interim authority to provide operator assistance service to MCI presubscribed phones and require the company to submit a plan for refunding all intrastate operator services revenues earned prior to Commission approval.

On June 5, 1990, MCI filed a response objecting to the Department's recommendation regarding a refund. MCI argued 1) that it did not have the capability to block intrastate operator services, 2) that it had provided intrastate operator

services at rates that never exceeded AT&T's interstate rates, and 3) that a refund would be costly and burdensome.

On June 13, 1990, the Department filed a response to MCI's June 5, 1990 filing. The Department supported its recommendation of a refund, noting that the company knew that its filing regarding the provision of intrastate operator services was not in effect but continued to provide the service.

On August 16, 1990, the Commission issued an ORDER GRANTING PERMANENT AUTHORITY FOR CERTAIN OPERATOR SERVICES, GRANTING INTERIM AUTHORITY FOR CERTAIN OPERATOR SERVICES, AND REQUIRING REFUND PLAN in this matter, Docket No. P-443/EM-89-305. In its Order, the Commission found that there was no reason to exempt MCI from providing refunds of charges collected prior to Commission authorization, as other companies in similar situations had been required to do. MCI, ORDER (August 16, 1990), page 3. The Commission directed MCI to submit a refund plan within 30 days.

On September 14, 1990, MCI submitted a refund plan in purported compliance with the Commission's August 16, 1990 Order. MCI stated by affidavit that it began providing operator services from transient locations in Minnesota on March 1, 1989 and indicated that it never stopped doing so. MCI also acknowledged that there were no approved Minnesota rates for this service for the time period in question. However, instead of identifying for refund the total intrastate revenue it collected during this period as required in the Commission's August 16, 1990 Order, MCI supplied the figure for its net intrastate revenue between March 1, 1989 and June 15, 1990 and indicated intent to refund this amount by reducing the transient operator service surcharges for the months of October through December, 1990.

On October 31, 1990, the Department filed comments on MCI's proposed refund plan, objecting to MCI's plan to refund net income earned from intrastate operator services from transient locations rather than total intrastate revenues collected by MCI prior to authorization as directed by the Commission in its August 16, 1990 Order.

On December 4, 1990, MCI submitted comments in support of its proposal to refund only net revenue.

On February 5, 1991, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

MCI Not Entitled to Reconsideration of August 16, 1990 Order

In its August 16, 1990 Order in this matter, the Commission authorized MCI to provide operator services to locations serving transient end-users on an interim basis and ordered MCI to refund

"charges collected [from the sale of intrastate operator services to locations serving transient customers] prior to Commission authorization". The Commission stated:

MCI has not disputed the fact that it has been providing operator services from transient locations without Commission authorization. MCI has sought to distinguish itself from the usual set of facts by raising three issues: MCI does not have the capability of blocking intrastate operator services; the operator services provided by MCI were provided at lower rates than those offered by AT&T; a refund procedure would be costly and burdensome for MCI.

The Commission has reviewed the Company's arguments and does not find them sufficiently compelling to justify an exemption from providing refunds. Other companies in similar situations have been required to provide refunds of charges collected prior to Commission authorization. The defenses raised by MCI do not persuade the Commission to treat MCI differently from other providers in previous dockets.

MCI, ORDER GRANTING PERMANENT AUTHORITY FOR CERTAIN OPERATOR SERVICES, GRANTING INTERIM AUTHORITY FOR CERTAIN OPERATOR SERVICES, AND REQUIRING REFUND PLAN, Docket No. P-443/EM-89-305 (August 16, 1990) at page 3.

The Commission ordered MCI to state by affidavit "the total intrastate revenue collected by MCI from its operator services during the [pre-authorization] period" and submit a plan for such a refund. Id at page 4. Bracketed material added.

If MCI disagreed with the Commission's Order or any finding or directive therein, it had a right to seek Commission reconsideration of its order pursuant to Minn. Rules, part 7830.4100 by filing a petition with the Commission for that purpose within 20 days from the date of the Order. MCI did not do so and therefore is not entitled to reconsideration of the Commission's August 16, 1990 Order. The Commission does not choose to reconsider the August 16, 1990 Order on its own motion.

Non-Compliance With the August 16, 1990 Order

MCI's refund plan filed September 4, 1990 does not comply with the Commission's August 16, 1990 Order. At variance with the Commission's Order, the plan provides for the refund of only the net income from the provision of the unauthorized service (rather than the total revenue) and does not include revenues received in the final two months prior to Commission authorization, June 15, 1990 to August 15, 1990.

Conclusion

The Commission's Order herein is not a reconsideration of and will not change the August 16, 1990 Order in any respect. The August 16 Order clearly delineates the basis and time period for which the refund amount is to be calculated, i.e. all revenue received by MCI for providing the unauthorized service prior to the date that the Commission authorized MCI to provide the service, August 16, 1990.

With respect to MCI's non-compliance with the August 16, 1990 Order, the Commission will extend the company thirty additional days from the date of this Order to file tariffs consistent with that Order. Pursuant to the August 16, 1990 Order, MCI's refund plan will provide for the refund of all the charges it collected when it provided operator services from locations that serve transient end-users prior to Commission authorization, i.e. between March 1, 1989 and August 15, 1990.

ORDER

1. Within 30 days of this Order, MCI shall file tariffs with reduced rates for intrastate operator services from locations that serve transient end-users that reflect the total amount to be refunded including all work papers supporting the rate reduction. As required by the Commission's August 16, 1990 Order in this matter, the amount to be refunded shall be all the charges that MCI collected when it provided operator services from locations that serve transient end-users between March 1, 1989 and August 15, 1990.
2. MCI shall complete the refund within twelve (12) months from the date the new tariff goes into effect.
3. Ten (10) days prior to the completion of the refund, MCI shall file a revised tariff that would reflect MCI's normal rates for operator services from locations that serve transient end-users.
4. Within 30 days after the completion of the refund, MCI shall file a refund compliance report with the Commission.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)