

IN THE SUPREME COURT OF FLORIDA

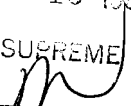
MCI TELECOMMUNICATIONS CORP.,)
)
Appellant,)
)
v.)
)
FLORIDA PUBLIC SERVICE COMMISSION,)
)
Appellee.)
_____)

Case No. 66,945

FILED
SID J. WHITE

AUG 16 1995

CLERK, SUPREME COURT

By 
Chief Deputy Clerk

On Appeal from the Florida Public Service Commission

REPLY BRIEF OF APPELLANT
MCI TELECOMMUNICATIONS CORPORATION

Pamela J. Wisne
MCI Telecommunications Corp.
400 Perimeter Center Terraces, N.E.
Suite 400
Atlanta, Georgia 30345
(404) 668-6324

Richard D. Melson
Hopping Boyd Green & Sams
420 Lewis State Bank Bldg.
P.O. Box 6526
Tallahassee, Florida 32314
(904) 222-7500

Attorneys for Appellant

TABLE OF CONTENTS

Page

TABLE OF CITATIONS.....	ii
INTRODUCTION.....	1
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.....	2
II. MCI IS NOT PRECLUDED BY ANY STIPULATION FROM CHALLENGING THE BILLING AND COLLECTION RATE REDUCTION.....	5
CONCLUSION.....	7
CERTIFICATE OF SERVICE.....	8

TABLE OF CITATIONS

Page

Cases

International Minerals & Chemical Corp. v. Mayo,
336 So.2d 548 (Fla. 1976) 2, 3

Occidental Chemical Co. v. Mayo,
351 So.2d 336 (Fla. 1977) 2, 3

Florida Statutes

§ 364.10 Fla. Stat. (1983) 2

§ 364.14(1) Fla. Stat. (1983) 2

IN THE FLORIDA SUPREME COURT

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

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.

HOPPING BOYD GREEN & SAMS

By Richard D. Melson
Richard D. Melson
420 Lewis State Bank Bldg.
Post Office Box 6526
Tallahassee, Florida 32314
(904) 222-7500

and

PAMELA J. WISNE
MCI Telecommunications Corporation
400 Perimeter Center Terraces, N.E.
Suite 400
Atlanta, Georgia 30345
(404) 668-6000

Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Reply Brief of Appellant of MCI Telecommunications Corporation have been served by U.S. mail this 16th day of August, 1985, on the following:

Lee Willis, Jr.
Ausley, McMullen, McGehee,
Carothers & Proctor
P.O. Box 391
Tallahassee, FL 32302

Jack Shreve
Charles Beck
Office of Public Counsel
624 Crown Building
202 Blount Street
Tallahassee, FL 32301

Phyllis Whitten
GTE Sprint Communications Corp.
Suite 500
1828 L Street, N.W.
Washington, D.C. 20036

Robert M. Peak
Susan Coleman
Reboul MacMurray Hewitt Maynard
& Kristol
45 Rockefeller Plaza
New York, NY 10111

David B. Erwin
Mason, Erwin & Horton, P.A.
Suite 202
1020 East Lafayette Street
Tallahassee, FL 32301

James V. Carideo
Thomas Parker
General Telephone Company
of Florida
P.O. Box 110, MC 717
Tampa, FL 33601

Stephen H. Watts, II
McGuire, Woods & Battle
1400 Ross Building
Richmond, VA 23219

Joe Landi, Esq.
Microtel, Inc.
7100 W. Camino Real
Suite 311
Boca Raton, FL 33433
Orlando, FL 32801

W. D. Lines
Lines Hinson & Lines
P.O. Box 550
Quincy, FL 32351

Kevin H. Cassidy
J. Manning Lee
Savery Gradoville
Satellite Business Systems
8283 Greensboro Drive
McLean, VA 22101

William B. Barfield
Attn: Mr. Frank Meiners
Southern Bell Telephone and
Telegraph Company
311 S. Calhoun Street, Suite 204
Tallahassee, FL 32301

J. Lloyd Nault
Southern Bell Telephone and
Telegraph Company
4300 Southern Bell Center
675 West Peachtree Street, N.E.
Atlanta, GA 30375

Mark J. Bryn
Reisman and Bryn
Suite 800
1200 Brickell Avenue
Miami, Florida 33131

Irwin M. Frost
Suite 123 Dadeland Towers
9400 South Dadeland Boulevard
Miami, FL 33156

Randall B. Lowe
67 Broad Street
New York, NY 10004

Jerry M. Johns
Alan N. Berg
P.O. Box 5000
Altamonte Springs, FL 32701

Winston Pierce
Division of Communications
651 Larson Building
Tallahassee, FL 32301

Joseph Pardo
Pardo & Pardo, P.A.
5963 Biscayne Boulevard
Miami, Florida 33137-2222

Robert J. McKee, Jr.
P.O. Box 7800
1200 Peachtree Street, N.E.
Atlanta, GA 30357

Noreen Davis
Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

Daniel R. Loftus
Watkins, McGugin, McNeilly &
Rowan
18th Floor, First American Center
Nashville, TN 37238

Barrett G. Johnson
Suite 346, Barnett Bank
Building
P.O. Box 1308
Tallahassee, FL 32302

Thomas F. Woods
Woods & Carlson
Suite 112
1030 E. Lafayette Street
Tallahassee, FL 32301

David Smith
Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

Dellon E. Coker
Chief Regulatory Law Office
U.S. Army Legal Services Agency
ATTN: JALS-RL 3208
5611 Columbia Pike
Falls Church, VA 22041

Brian R. Giloman
100 S. Wacker Drive
7th Floor
Chicago, IL 60606

Bruce Renard
Messer Vickers Caparello
& French
701 Lewis State Bank Building
Tallahassee, FL 32301

Wallace S. Townsend
ALLTEL Florida, Inc.
P.O. Box 550
Live Oak, FL 32060

Sam Wahlen
Central Telephone Company
of Florida
P.O. Box 2214
Tallahassee, FL 32304

James W. Tyler
Vista-United Telecommunications
P.O. Box 1161
Lake Buena Vista, FL 32830

Marie Cox Lyons
Gulf Telephone Company
P.O. Box 1120
Perry, FL 32347

Ben Johnson Associates, Inc.
1234 Timberlane Road
Tallahassee, FL 32312

Dick Fletcher
344 Barnett Bank Building
315 S. Calhoun Street
Tallahassee, FL 32301

John P. Fons
Robert L. Hinkle
Aurell, Fons, Radey & Hinkle
P.O. Box 10154
101 North Monroe Street
Suite 1000, Monroe-Park Tower
Tallahassee, FL 32302

Stephen J. Kubik, Esq.
William P. Beck, Esq.
Office of General Counsel
Department of General Services
Room 452, Larson Building
Tallahassee, FL 32301

Albert H. Kramer, Esq.
Wood, Lucksinger & Epstein
2000 M Street, N.W.
Suite 500
Washington, D.C. 20036

William Bilenky
Public Service Commission
101 East Gaines Street
Tallahassee, FL 32301

Richard D. Mese

Attorney