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Decision 89-05-066 May 26, 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of MCI Telecommunications Corporation (U5011C) for a Certificate of Public Convenience and Necessity to Provide High Speed Digital Private Line Service for the Purpose of IntraLATA Transmission at Speeds of 1.544 mbps or Higher Throughout the State of California.	Application 88-10-053 (Filed October 31, 1988)

OPINION MODIFYING DECISION 89-02-025

On February 27, 1989 MCI Telecommunications Corporation (U-5011-C) (MCI) filed a petition for modification (petition) of Decision (D.) 89-02-025 dated February 8, 1989. MCI in its petition seeks modification of D.89-02-025 in the following three respects:

1. Deletion of Ordering Paragraph 1.e., which requires that MCI must establish its rates and charges above costs;

2. Deletion of Ordering Paragraphs 7 and 8 which directed MCI to file certain semiannual reports for a two-year period, on the development of this new service; and

3. Allowance of an additional 30 days following the issuance of this order for filing its acceptance of the certificate of public convenience and necessity (CPCN) granted by D.89-02-025.

MCI's Position Regarding Cost Based Rates

In its petition, MCI asserts that the imposition of a cost requirement in setting rates is inconsistent with the modified settlement agreement adopted in Phase I of Order Instituting Investigation (I.) 87-11-033 by D.88-09-059. MCI further contends that the reasons for such a requirement are not set forth in

D.89-02-025, and while the Division of Ratepayer Advocates (DRA) did advocate such a requirement in its protest and comments on MCI's application (A.) 88-10-053 the decision discusses neither DRA's position nor MCI's opposition. Further, MCI argues that it has been held to be a non-dominant provider of telecommunication services and therefore the setting of its rates relative to costs is not consistent with sound regulatory principles.

Protests and Comments Received Relative to MCI's Position on Cost Based Rates

DRA and Pacific Bell (Pacific) filed timely protests to MCI's petition. DRA contends that MCI's petition flies in the face of established Commission precedent, and that the Commission must consider the antitrust implications of its activities.[1]

DRA also challenges as inappropriate MCI's reference to D.84-06-113, relative to its position as a non-dominant interLATA carrier. DRA asserts that D.84-06-113 clearly deals with dominance in the well-established interLATA and interstate long-distance market. D.89-02-025 dealt with the new, changing market for intraLATA high speed digital private line service, and until D.89-02-025 and its companion decisions were issued on February 8, 1989, no competition was permitted for such service in the intraLATA market. DRA opines that it is too early to consider dominance, or lack of it, for this high speed digital service in the intraLATA market.

DRA also maintains from its review of D.84-06-113 and the settlement agreement of D.88-09-059 that neither order "limits the Commission's power to impose terms and conditions on applicants for Certificates of Public Convenience and Necessity (CPCNs) beyond the express language of the settlement agreement and D.88-09-059." DRA

1 DRA cites Northern California Power Agency v. Public Util. Comm., 5 Cal. 3d 370 at 379, 380, 96 Cal. Rptr. 18, 486 P 2d 1218 (1971).

bolsters its position by pointing out that MCI's gross revenues for 1987 were $3.939 billion and is a well-capitalized, profitable corporation with sufficient resources to enable it to engage in below cost pricing, particularly for a small segment of its market.

Lastly, DRA comments that it is ironic for MCI to petition for a change to eliminate a restriction on its ability to price below cost, when it was among those vociferous opponents of below cost pricing by Pacific, AT&T Communicates of California, Inc. (AT&T-C) and GTE California Incorporated (GTEC).

In its protest, Pacific agreed that D.88-09-059 approving the modified settlement does not require MCI to price its intraLATA high speed digital services above cost. However, Pacific contends that MCI fails to point out any terms from the modified settlement which would support its argument that pricing of services above cost is inconsistent with the modified settlement.

Pacific notes that nothing in D.88-09-059 suggests that requiring MCI's intraLATA high speed digital private line service to be priced above cost is inequitable. Pacific asserts that such requirement in D.89-02-025 is reasonable and in the public interest, and the imposition of that requirement in addition to those set out in D.88-09-059 is not improper.

Pacific states that the compelling reason for requiring MCI to price its intraLATA private line services above cost is to ensure that competition takes place on a level playing field. Pacific and other local exchange companies (LEC) are required to set their rates and charges for intraLATA high speed digital private line services above the cost of providing the service. Therefore, Pacific argues that without requiring MCI to price above its cost, there is no way for the Commission to ensure that MCI is not engaging in below cost pricing to the detriment of other providers of these services.

Pacific urges that whatever costing convention and requirements are applied to one carrier also be applied to that

carrier's competitors. Pacific then challenges MCI's argument that D.89-02-025 does not discuss the requirement that MCI's price be set above the cost of furnishing the service. Pacific refers to page 6 of D.89-02-025 where the Commission determined that the monitoring and reporting information requested by the DRA in its protest is needed by the Commission to protect competitors against anticompetitive behavior e.g., below cost pricing.

GTEC also replied to MCI's petition and asserted that indeed there should be a requirement that competitors such as MCI have their rates and charges set above costs of providing the service. GTEC explains that this requirement will protect the LEC from being disadvantaged by "loss leader" offerings by new competitors, until such time as the LECs are granted further flexibility in setting their rates. GTEC believes this requirement is especially appropriate because this service is invariably sold to sophisticated businesses who will shop around for the best deal, and pay little, if any attention, to the supposed "dominance" or other mystique of the incumbent local exchange carriers.

GTEC then suggests that if the Commission wishes to grant MCI's petition, it should do so only on the condition that all competitors for this service, including the LECs, may file tariffs for this service without cost support.

On March 13, 1989 AT&T-C replied to MCI's petition and concurred with MCI's arguments, except that AT&T-C disagreed to the extent that MCI would consider AT&T-C as a dominant carrier in this new intraLATA market. AT&T-C asserts that it cannot be considered a "dominant carrier" in this intraLATA high speed digital market because as yet it has no customers to this new service.

In supporting MCI's proposed modifications of D.89-02-025 AT&T-C further requested that such modifications apply to all interexchange carriers authorized to provide intraLATA high speed digital private line service.

Discussion Regarding Cost Based Rates

When we added this requirement to MCI's CPCN in D.89-02-025 we did not anticipate any controversy. We were mistaken in that expectation.

The settlement agreement in Phase I of I.87-11-033 contained a requirement that Pacific Bell and GTEC offer cost justifications to establish the lower bound of their pricing flexibility in this market. No such requirement was prescribed for new entrants. Given that Pacific Bell and GTEC were starting in this newly-competitive market from a near-monopoly position with monopoly local service as a potential source of cross-subsidy, the cost-justified price floors were an appropriate measure to help assure that the market would develop fairly. We believe that the parties had precisely these concerns in mind in drafting the specific terms of the settlement on this issue.

As a new entrant in this market, MCI has neither market share nor potential recourse to any source of monopoly revenues to cross-subsidize prices for anticompetitive reasons. Further, it is difficult to anticipate how MCI could make such anticompetitive conduct pay, as it would need to become dominant in the market and determine a means to exclude others (in particular, Pacific Bell or GTEC) before becoming able to sustain prices high enough above cost for long enough to recoup its losses from initial predatory pricing. Such a scenario may be theoretically possible, but from this vantage it is certainly far-fetched and there is no evidence in its favor. As described later in this order and elsewhere, we will continue to monitor the development of this market closely to assure that it develops fully and fairly. Also, we retain our full investigative authority to respond to evidence of anticompetitive conduct on the part of MCI or others, whether brought to our attention through our own formal monitoring or by aggrieved parties.

We are therefore left with no good policy rationale to support this requirement, and a good argument that its imposition would disturb the integrity of the settlement's implementation. We will grant MCI's motion to delete Ordering Paragraph 1.e. from D.89-02-025, and will entertain similar motions from other new entrants similarly situated.

MCI's Position on Reporting Requirements

MCI asserts that the imposition of reporting requirements on MCI was not discussed or contemplated by the parties to the settlement agreement in Phase I of I.87-11-033 or D.88-09-059. MCI opines that if DRA wishes to advocate imposition of such requirements, it is free to do so in later phases of I.87-11-033, and the Commission should explore reasons for such reporting requirements at hearings before ordering the reports to be filed by MCI.

Protests and Comments of Interested Parties Relative to Reporting Requirements of D.89-02-025

Pacific opines that the need for these reports is apparent, because the reports will allow the Commission to assess the impact of allowing competition for intraLATA high speed digital private line services. These monitoring and reporting requirements will also provide the Commission with information it needs to oversee the effects of competition. Therefore, Pacific contends that the monitoring and reporting requirements of D.89-02-025 are reasonable and should not be modified.

GTEC does not take issue with the reporting requirement of D.89-02-025 for MCI. AT&T-C supports the position and requested modification filed by MCI. DRA first asked for more stringent reporting requirements in its December 2, 1988 protest of MCI's A.88-10-053. Now, DRA takes strong exception to MCI's request to be exempted from the less onerous reporting requirements of Ordering Paragraphs 7 and 8 of D.89-02-025, stating that these requirements are entirely consistent with recent Commission actions

to monitor the development of competition in markets where competition was formerly prohibited.

DRA also notes that MCI is not the sole applicant that is subject to the reporting requirements. Identical reporting requirements were imposed on U.S. Sprint Communications, AT&T-C, Cable and Wireless, Wang Communications and Bay Area Teleport by decisions issued contemporaneously with D.89-02-025 on February 8, 1989.

DRA also notes that these reporting requirements will "sunset," since the Commission only requires that the reports be filed for a two-year period through year end 1990.

Discussion of Reporting Requirements for MCI's IntraLATA High Speed Digital Service

The issue of reporting requirements, while not advanced by the parties to the Phase I settlement agreement in I.87-11-033 or in D.88-09-059, was properly addressed in D.89-02-025 and in other contemporaneous orders issued on February 8, 1989. We also substantially reduced the burden and sensitivity of these reports for this emerging competitive industry, as compared to the content and timing initially recommended for these reports by DRA.

First we asked that the reports be filed semiannually rather than quarterly; more significantly, we deleted the requirement that these utilities compute their costs on a monthly basis for each rate offering.

The remaining reporting requirement is not an onerous one since we are only asking for monthly service volumes, monthly inward movement volumes, and monthly recurring and non-recurring billings by tariff rate elements.

This information does not reveal who the customers are, how they were solicited, or their specific level of business activity with MCI. Thus, the question of propriety of the reported information is largely moot.

The calendar year 1990 sunset provision for these reports was inserted in the hope that competition will truly emerge for this high speed digital private line service, and this industry can be left to compete without need for reporting thereafter. We agree with DRA and Pacific that the reporting requirements of D.89-02-025 are reasonable and necessary. Therefore, we see no reason to make any change in the modest reporting requirements adopted for MCI in D.89-02-025 at this time.

Findings of Fact

1. The Phase I settlement in I.87-11-033 included cost-justification requirements only for the intraLATA high-capacity private line prices of Pacific Bell and GTEC.

2. The integrity of the Commission's implementation of the Phase I settlement would be better preserved if the requirement to price above cost were deleted from MCI's CPCN granted in D.89-02-025.

3. MCI has no monopoly markets from which cross-subsidies could be extracted to support predatory pricing in the high-capacity intraLATA private line market.

4. MCI has no apparent means to exclude other competitors from any segment of the intraLATA high-capacity private line market.

5. It is extremely unlikely that MCI is now or will foreseeably be in a position to profitably pursue anticompetitive conduct in the competitive intraLATA high-capacity private line market.

6. The better preservation of the integrity of the Commission's implementation of the Phase I settlement and the inability of MCI to profitably pursue anticompetitive conduct are good cause to delete the requirement to price above cost from MCI's intraLATA high-capacity private line CPCN.

7. The semi-annual reports required by Ordering Paragraphs 7 and 8 of D.89-02-025 are reasonable and necessary to inform the

commission of the development of emerging competition for these intraLATA high speed digital private line services.

8. The reporting requirements discussed in D.89-02-025 and in 6. above do not contain references to specific customers or the marketing practices of MCI; and, therefore, any question of propriety of such information is largely moot.

9. A calendar year 1990 sunset provision has been incorporated in the reporting requirements of D.89-02-025 so that these reports may be terminated as and when competition fully develops.

10. There is no compelling reason to make any changes in the modest reporting requirements adopted for MCI in D.89-02-025.

11. The allowance of an additional 30 days after the effective date of this order for MCI to file its acceptance of the CPCN authorized by D.89-02-025 is a reasonable and necessary request.

Conclusions of Law

1. Good cause having been shown, Ordering Paragraph 1.e. should be deleted from D.89-02-025.

2. Applicant's request for an additional 30 days from the date of this order to file its acceptance of the CPCN authorized by D.89-02-025 is reasonable and should be granted.

3. Except to the extent set forth in conclusions of Law 1. and 2. above, MCI's petition for modification of D.89-02-025 should be denied.

O R D E R

IT IS ORDERED that:

1. The following changes are made to the ordering paragraphs of Decision 89-02-025 issued February 8, 1989:

   a. Ordering Paragraph 1.e. is deleted.

   b. Ordering Paragraph 5 is modified to apply within 30 days after the effective date of this order instead of D.89-02-025.

2. The ordering paragraphs and other provisions and requirements of D.89-02-025 dated February 8, 1989, except as expressly modified here, continue to apply to MCI after the effective date of this order.

3. All other relief requested by MCI in its petition for modification of D.89-02-025 is denied.

This order is effective today.

Dated May 26, 1989, at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

I abstain.

/s/ FREDERICK R. DUDA
Commissioner

I CERTIFY THAT THIS DECISION WAS APPROVED BY THE ABOVE COMMISSIONERS TODAY.

Victor Weisser, Executive Director

ALJ/GAA/btr

Decision 89 05 066 MAY 26 1989

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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OPINION MODIFYING DECISION 89-02-025

On February 27, 1989 MCI Telecommunications Corporation (U-5011-C) (MCI) filed a petition for modification (petition) of Decision (D.) 89-02-025 dated February 8, 1989. MCI in its petition seeks modification of D.89-02-025 in the following three respects:

1. Deletion of Ordering Paragraph (O.P.) 1.e., which requires that MCI must establish its rates and charges above costs;

2. Deletion of O.P.7. and O.P.8. which directed MCI to file certain semiannual reports for a two-year period, on the development of this new service; and

3. Allowance of an additional 30 days following the issuance of this order for filing its acceptance of the certificate of public convenience and necessity (CPCN) granted by D.89-02-025.

MCI's Position Regarding Cost Based Rates

In its petition, MCI asserts that the imposition of a cost requirement in setting rates is inconsistent with the modified settlement agreement adopted in Phase I of Order Instituting Investigation (I.) 87-11-033 by D.88-09-059. MCI further contends that the reasons for such a requirement are not set forth in

Discussion Regarding Cost Based Rates

When we added this requirement to MCI's CPCN in D.89-02-025 we did not anticipate any controversy. We were mistaken in that expectation.

The settlement agreement in Phase I of I.87-11-033 contained a requirement that Pacific Bell and GTEC offer cost justifications to establish the lower bound of their pricing flexibility in this market. No such requirement was prescribed for new entrants. Given that Pacific Bell and GTEC were starting in this newly-competitive market from a near-monopoly position with monopoly local service as a potential source of cross-subsidy, the cost-justified price floors were an appropriate measure to help assure that the market would develop fairly. We believe that the parties had precisely these concerns in mind in drafting the specific terms of the settlement on this issue.

As a new entrant in this market, MCI has neither market share nor potential recourse to any source of monopoly revenues to cross-subsidize prices for anticompetitive reasons. Further, it is difficult to anticipate how MCI could make such anticompetitive conduct pay, as it would need to become dominant in the market and determine a means to exclude others (in particular, Pacific Bell or GTEC) before becoming able to sustain prices high enough above cost for long enough to recoup its losses from initial predatory pricing. Such a scenario may be theoretically possible, but from this vantage it is certainly far-fetched and there is no evidence in its favor. As described later in this order and elsewhere, we will continue to monitor the development of this market closely to assure that it develops fully and fairly. Also, we retain our full investigative authority to respond to evidence of anticompetitive conduct on the part of MCI or others, whether brought to our attention through our own formal monitoring or by aggrieved parties.

Discussion Regarding Cost Based Rates

There is a serious question of fairness raised by DRA, Pacific and GTEC. DRA addresses it as a requirement that rates and charges be cost based to avoid the possibility of anticompetitive pricing practices. Pacific asserts that without requiring that MCI's rates be set above its costs, there would be no way to ensure fair competition and a level playing field. GTEC argues that if MCI is allowed to offer rates and charges that are not cost based, the LECs should have this same opportunity to compete, without cost justification for their rates.

As long as GTEC, Pacific Bell, and the other LECs must abide by a settlement agreement that requires that their competitive rates "will be set at fully allocated or direct embedded cost," fairness requires that all other competitors should file cost based rates as well.

In opening up the intraLATA high speed digital service market to competition, we were urged by MCI and others, not to permit the LECs to lower their rates to a point where they would exercise dominant anticompetitive impact. Now certain carriers other than the LECs want the very opportunities for aggressive competition that they would deny to the LECs. While there may be some reasonable cause to allow introductory offers and promotional rates for brief periods of time for the non-LEC carriers, in fairness we cannot condone sustained patterns of below cost rates and charges. In reaching this conclusion, it is not our desire to require these non-LEC carriers to be burdened with unreasonable studies and routine submissions of extensive cost data supporting their tariff revisions.

We will therefore allow MCI to make tariff revisions with a statement in the accompanying advice letter that the rates and charges therein are based on the costs of furnishing the service. We will only require documented justification that the revised rates are cost based, in the event of bonafide and timely protests

of such tariff filings. In the event of a bonafide protest of a permanent rate or charge in a new tariff filing, MCI will have the opportunity to either provide the necessary cost support or to withdraw the new rate and revert to its previously existing rate or charge.

We will waive the cost based requirement for introductory or promotional rates for periods of 30 days or less, for good cause such as the availability of crew labor during slack seasons to accomplish necessary installations of new service at less than regular non-recurring charges. We will not welcome introductory or promotional rate filings by MCI more frequently than once in any 12-month period.

Other than as discussed above, we will continue to require all intraLATA rates of MCI to be cost based until we have an opportunity to further review and revisit the issue of intraLATA competition and the applicability of cost based rates for private line services to the LECs and other telecommunications utilities in further proceedings in I.87-11-033.

MCI's Position on Reporting Requirements

MCI asserts that the imposition of reporting requirements on MCI was not discussed or contemplated by the parties to the settlement agreement in Phase I of I.87-11-033 or D.88-09-059. MCI opines that if DRA wishes to advocate imposition of such requirements, it is free to do so in later phases of I.87-11-033, and the Commission should explore reasons for such reporting requirements at hearings before ordering the reports to be filed by MCI.

Protests and Comments of Interested Parties Relative to Reporting Requirements of D.89-02-025

Pacific opines that the need for these reports is apparent, because the reports will allow the Commission to assess the impact of allowing competition for intraLATA high speed digital private line services. These monitoring and reporting requirements

We are therefore left with no good policy rationale to support this requirement, and a good argument that its imposition would disturb the integrity of the settlement's implementation. We will grant MCI's motion to delete Ordering Paragraph 1.e. from D.89-02-025, and will entertain similar motions from other new entrants similarly situated.

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GTEC does not take issue with the reporting requirement of D.89-02-025 for MCI. AT&T-C supports the position and requested modification filed by MCI. DRA first asked for more stringent reporting requirements in its December 2, 1988 protest of MCI's A.88-10-053. Now, DRA takes strong exception to MCI's request to be exempted from the less onerous reporting requirements of Ordering Paragraphs 7 and 8 of D.89-02-025, stating that these requirements are entirely consistent with recent Commission

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GTEC does not take issue with the reporting requirement of D.89-02-025 for MCI. AT&T-C supports the position and requested modification filed by MCI. DRA first asked for more stringent reporting requirements in its December 2, 1988 protest of MCI's A.88-10-053. Now, DRA takes strong exception to MCI's request to be exempted from the less onerous reporting requirements of Ordering Paragraphs 7 and 8 of D.89-02-025, stating that these requirements are entirely consistent with recent Commission actions to monitor the development of competition in markets where competition was formerly prohibited.

DRA also notes that MCI is not the sole applicant that is subject to the reporting requirements. Identical reporting requirements were imposed on U.S. Sprint Communications, AT&T-C, Cable and Wireless, Wang Communications and Bay Area Teleport by decisions issued contemporaneously with D.89-02-025 on February 8, 1989.

DRA also notes that these reporting requirements will "sunset," since the Commission only requires that the reports be filed for a two-year period through year end 1990.

Discussion of Reporting Requirements for MCI's IntraLATA High Speed Digital Service

The issue of reporting requirements, while not advanced by the parties to the Phase I settlement agreement in I.87-11-033 or in D.88-09-059, was properly addressed in D.89-02-025 and in other contemporaneous orders issued on February 8, 1989. We also substantially reduced the burden and sensitivity of these reports for this emerging competitive industry, as compared to the content and timing initially recommended for these reports by DRA.

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DRA also notes that MCI is not the sole applicant that is subject to the reporting requirements. Identical reporting requirements were imposed on U.S. Sprint Communications, AT&T-C, Cable and Wireless, Wang Communications and Bay Area Teleport by decisions issued contemporaneously with D.89-02-025 on February 8, 1989.

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First we asked that the reports be filed semiannually rather than quarterly; more significantly, we deleted the requirement that these utilities compute their costs on a monthly basis for each rate offering.

The remaining reporting requirement is not an onerous one since we are only asking for monthly service volumes, monthly inward movement volumes, and monthly recurring and non-recurring billings by tariff rate elements.

This information does not reveal who the customers are, how they were solicited, or their specific level of business activity with MCI. Thus, the question of propriety of the reported information is largely moot.

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The remaining reporting requirement is not an onerous one since we are only asking for monthly service volumes, monthly inward movement volumes, and monthly recurring and non-recurring billings by tariff rate elements.

This information does not reveal who the customers are, how they were solicited, or their specific level of business activity with MCI. Thus, the question of propriety of the reported information is largely moot.

The calendar year 1990 sunset provision for these reports was inserted in the hope that competition will truly emerge for this high speed digital private line service, and this industry can be left to compete without need for reporting thereafter. We agree with DRA and Pacific that the reporting requirements of D.89-02-025 are reasonable and necessary. Therefore, we see no reason to make any change in the modest reporting requirements adopted for MCI in D.89-02-025 at this time.

Findings of Fact

1. At the urging of MCI and others, Section IV. A.2. of Appendix A of D.88-09-059 required Pacific and GTEC to set their respective rates for competitive private line services at fully allocated or direct embedded costs.

2. Without a requirement that MCI and other competitors also set their rates for private line services at or above costs, there would be no way to ensure fair competition and a level playing field with Pacific, GTEC and/or the other LECs.

3. There is reasonable cause to waive the cost-based requirement, to allow MCI to provide temporary introductory offers and promotional rates and charges for brief periods of time (30 days or less) to improve productivity during slack periods of

The calendar year 1990 sunset provision for these reports was inserted in the hope that competition will truly emerge for this high speed digital private line service, and this industry can be left to compete without need for reporting thereafter. We agree with DRA and Pacific that the reporting requirements of D.89-02-025 are reasonable and necessary. Therefore, we see no reason to make any change in the modest reporting requirements adopted for MCI in D.89-02-025 at this time.

Findings of Fact

1. The Phase I settlement in I.87-11-033 included cost-justification requirements only for the intraLATA high-capacity private line prices of Pacific Bell and GTEC.

2. The integrity of the Commission's implementation of the Phase I settlement would be better preserved if the requirement to price above cost were deleted from MCI's CPCN granted in D.89-02-025.

3. MCI has no monopoly markets from which cross-subsidies could be extracted to support predatory pricing in the high-capacity intraLATA private line market.

4. MCI has no apparent means to exclude other competitors from any segment of the intraLATA high-capacity private line market.

5. It is extremely unlikely that MCI is now or will foreseeably be in a position to profitably pursue anticompetitive conduct in the competitive intraLATA high-capacity private line market.

6. The better preservation of the integrity of the Commission's implementation of the Phase I settlement and the inability of MCI to profitably pursue anticompetitive conduct are good cause to delete the requirement to price above cost from MCI's intraLATA high-capacity private line CPCN.

7. The semi-annual reports required by Ordering Paragraphs 7 and 8 of D.89-02-025 are reasonable and necessary to inform the

worker availability; however the Commission does not expect to entertain such introductory or promotional rate filings by MCI more than once in any 12-month period.

4. While there is a need to require that all permanent rates for intraLATA high speed digital private line service be cost based, it is reasonable to allow MCI to file rate revisions for this service without the contemporaneous filing of full cost supporting data.

5. It is also reasonable to allow MCI at its own election to withdraw any protested tariff filing (rate revision) if it wishes to do so, in lieu of providing the necessary cost data.

6. I.87-11-033 is the appropriate formal proceeding for MCI to again present its request to be authorized to offer private line service rates which may not be cost based. A review of this issue in I.87-11-033 will also permit the LECs to respond formally to MCI's proposal.

7. The semi-annual reports required by Ordering Paragraphs 7 and 8 of D.89-02-025 are reasonable and necessary to inform the Commission of the development of emerging competition for these intraLATA high speed digital private line services.

8. The reporting requirements discussed in D.89-02-025 and in 6. above do not contain references to specific customers or the marketing practices of MCI; and, therefore, any question of propriety of such information is largely moot.

9. A calendar year 1990 sunset provision has been incorporated in the reporting requirements of D.89-02-025 so that these reports may be terminated as and when competition fully develops.

10. There is no compelling reason to make any changes in the modest reporting requirements adopted for MCI in D.89-02-025.

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8. The reporting requirements discussed in D.89-02-025 and in 6. above do not contain references to specific customers or the marketing practices of MCI; and, therefore, any question of propriety of such information is largely moot.

9. A calendar year 1990 sunset provision has been incorporated in the reporting requirements of D.89-02-025 so that these reports may be terminated as and when competition fully develops.

10. There is no compelling reason to make any changes in the modest reporting requirements adopted for MCI in D.89-02-025.

11. The allowance of an additional 30 days after the effective date of this order for MCI to file its acceptance of the CPCN authorized by D.89-02-025 is a reasonable and necessary request.

Conclusions of Law

1. Good cause having been shown, Ordering Paragraph 1.e. should be deleted from D.89-02-025.

2. Applicant's request for an additional 30 days from the date of this order to file its acceptance of the CPCN authorized by D.89-02-025 is reasonable and should be granted.

3. Except to the extent set forth in conclusions of Law 1. and 2. above, MCI's petition for modification of D.89-02-025 should be denied.

O R D E R

IT IS ORDERED that:

1. The following changes are made to the ordering paragraphs of Decision 89-02-025 issued February 8, 1989:

   a. Ordering Paragraph (O.P.) 1.e. is deleted.

   b. O.P. 5 is modified to apply within 30 days after the effective date of this order instead of D.89-02-025.

11. The allowance of an additional 30 days after the effective date of this order for MCI to file its acceptance of the CPCN authorized by D.89-02-025 is a reasonable and necessary request.

Conclusions of Law

1. MCI should be required to maintain its rates for intraLATA high speed digital service on a cost basis to maintain a level playing field with other providers of this competitive service.

2. A change to Ordering Paragraph 1.e. of D.89-02-025 should be granted in response to MCI's petition, namely that MCI may file tariff revisions for introductory and/or promotional rates or charges for temporary periods of 30 days or less without cost support therefor, consistent with the proceeding discussion and findings. In addition cost support for any permanent rate revisions by MCI need only be provided in the event of a bonafide protest of such rate changes.

3. Applicant's request for an additional 30 days from the date of this order to file its acceptance of the CPCN authorized by D.89-02-025 is reasonable and should be granted.

4. Except to the extent set forth in conclusions of Law 2. and 3. above, MCI's petition for modification of D.89-02-025 should be denied.

O R D E R

IT IS ORDERED that:

1. The following changes are made to the ordering paragraphs of Decision 89-02-025 issued February 8, 1989:

a. Ordering Paragraph (O.P.) 1.e. is modified to read:

> MCI Telecommunications Corporation (MCI) shall establish permanent rates and charges for its high speed digital private line service above its cost of providing such

service. In doing so, MCI need not file full cost supporting data contemporaneously with its tariff revisions, but it shall provide such supporting data in the event of a bonafide protest(s) of such rate changes.

b. O.P. 1.h. is added as follows:

1.h. MCI may file tariff revisions for introductory and/or promotional rates or charges for temporary periods of less than 30 days without the need of cost support therefor. Such introductory and/or promotional offerings shall not occur more frequently than once a year.

c. O.P. 5 is modified to apply within 30 days after the effective date of this order instead of D.89-02-025.

2. The ordering paragraphs and other provisions and requirements of D.89-02-025 dated February 8, 1989, except as expressly modified here, continue to apply to MCI after the effective date of this order.

3. All other relief requested by MCI in its petition for modification of D.89-02-025 is denied.

This order is effective today.

Dated MAY 26 1989, at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

I abstain.

/s/ FREDERICK R. DUDA
Commissioner

2. The ordering paragraphs and other provisions and requirements of D.89-02-025 dated February 8, 1989, except as expressly modified here, continue to apply to MCI after the effective date of this order.

3. All other relief requested by MCI in its petition for modification of D.89-02-025 is denied.

This order is effective today.

Dated _____, at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

I abstain.

/s/ FREDERICK R. DUDA
Commissioner