

Decision 99-03-037 March 18, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Lynda Dabrowski,

Complainant,

v.

MCI Telecommunications Corp.

Defendant.

**ORIGINAL**

Case 97-08-036  
(Filed August 15, 1997)

Kathy Richards for Lynda Dabrowski, complainant;  
Nikayla K. Nail, Regulatory Manager, for MCI, defendant.

**O P I N I O N**

Lynda Dabrowski, complainant, complains that she received no notice of the \$3 surcharge on collect intrastate telephone calls originating from payphones in California Correctional Institutions. Dabrowski alleges that this surcharge is discriminatory because the surcharge for other public telephones is \$1.05. Dabrowski contends that the commissions paid by defendant, MCI Telecommunications Corp. (MCI), to the Department of General Services under its Master Service Agreement for payphone service should not be paid to the General Fund of the State of California, but to the Prisoner's Welfare Fund. Complainant requests a refund of alleged overcharges and that a penalty be imposed for these excessive charges without notice.

MCI denies that its increase in the surcharge lacked adequate notice or is excessive.

MCI alleges this increase in surcharge was duly noticed in 1995 under applicable Commission advice letter procedures prior to its implementation.

MCI filed Advice Letter (AL) 212 with the Commission on December 28, 1994. This advice letter changed MCI's tariff for operator dialed surcharge of station-to-station collect calls from \$1.05 to \$3.00. Since collect calls affect an unknown and transient customer base, MCI relied on the notice in the Commission Daily Calendar of the advice letter filing, rather than providing bill insert notice, which it alleges complies with General Order (GO) 96-A requirements. No party protested the change and the increase went into effect on January 27, 1995.

MCI asserts that it met all notification and filing requirements when it increased the surcharge on collect calls from California Prisons and that the Commission and its staff have the discretion to reject tariff changes that are unreasonable.

In addition, the amount of the increased surcharge mirrors that of the dominant telephone carrier (AT&T) as authorized by the new regulatory framework Category 3 pricing and requires no separate cost justification. (D.89-10-031 and D.98-10-026.)

Portions of the surcharge are paid to the Department of General Services pursuant to a Master Service Agreement. MCI alleges it has no control over these revenues after they are received by the state agency.

### **Procedural History**

MCI filed a motion to dismiss the complaint for failure to comply with Rule 9 of the Commission's Rules of Practice and Procedure. This motion was denied with the proviso that complainant amend the complaint to include the required additional signatures. Dabrowski provided the signatures of 25 actual customers who were also charged the disputed surcharge.

Senate Bill 960 rules were applied to the proceeding and it was determined that a hearing should be held. Prehearing Conference (PHC) statements were filed by both parties as ordered by the assigned Commissioner.

A PHC was held in Sacramento, CA. on June 30, 1998. However, because complainant's representative, Kathy Richards indicated she would not be comfortable participating in a hearing on rates and preferred that this matter be investigated by the Commission staff, no hearing was scheduled. Thus, no scoping memo was issued.

#### **Motion To Dismiss**

At the PHC, MCI explained that notice of this surcharge was provided in AL 212 in 1995. MCI contends that a bill insert was not required, nor did MCI believe one was possible since the identity of customers receiving operator-assisted collect calls from payphones in prisons was not known.

At the PHC, MCI addressed its second motion to dismiss which was filed several days prior to the PHC. The motion alleged that the complaint does not state a cause of action and MCI contends that valid notice was given prior to the implementation of this surcharge.

Richards, at the PHC, and in her response to the motion to dismiss, argued that the notice was inadequate and the surcharge is unreasonable. She asserts that Public Utilities Code § 729.5 authorizes the Commission to investigate and decrease an inappropriate rate whenever it is increased 10% or more.

#### **Discussion**

We agree that that the complaint does not state sufficient facts upon which relief is granted since the increase in the surcharge is allowed as a fully competitive service subject to the maximum pricing flexibility under the new regulatory framework, and the notice given was that required by GO 96-A. Therefore, MCI's motion to dismiss is granted.

### **Comments on Draft Decision**

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311(g) and Rule 77.1 of the Rules of Practice and Procedure. No comments were filed.

### **Findings of Fact**

1. Complainant alleges that defendant, MCI, instituted a \$3.00 surcharge on collect calls from prison payphones in 1995 without adequate notice and that the surcharge is unreasonable and discriminatory.

2. Defendant denies all allegations of unreasonable and discriminatory rates and indicates that notice under the applicable advice letter procedures was provided upon the filing of AL 212 in 1995.

3. The manner of increase used by MCI is allowed by a nondominant competing interLATA telephone carrier under the new regulatory framework. (D.89-10-031, D.90-08-032, D.91-12-013, D.92-06-034 and D.98-10-026.)

4. In 1995 when MCI increased the surcharge in dispute, AT&T was a dominant carrier.

5. At the PHC on June 30, 1998, complainant, represented by Kathy Richards, indicated on the record that she will not participate in a hearing in this proceeding to attempt to prove her contentions or carry her burden of proof. She prefers to refer these issues to the Commission staff for investigation.

### **Conclusion of Law**

The complaint does not state a cause of action, and should be dismissed.

**O R D E R**

**IT IS ORDERED that:**

1. MCI Telecommunications Corp's. motion to dismiss for failure to state a cause of action is granted.
2. The complaint in this proceeding is dismissed.
3. This proceeding is closed.

**This order is effective today.**

**Dated March 18, 1999, San Francisco, California.**

**RICHARD A. BILAS**  
President  
**HENRY M. DUQUE**  
**JOSIAH L. NEEPER**  
Commissioners