

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



June 7, 2004

Agenda ID #3589

TO: PARTIES OF RECORD IN CASE 04-02-024

Enclosed is the draft decision of Administrative Law Judge Bushey. The decision will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ Angela K. Minkin
Angela K. Minkin, Chief
Administrative Law Judge

ANG: avs

Decision **DRAFT DECISION OF ALJ BUSHEY** (Mailed 6/7/2004)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Wayne Ricky Elson Rudder, and Myrtle Rudder
Johnson, his Mother, and others similarly
situated,

Complainant,

vs.

MCI WorldCom Communications, Inc.
(U 5378 C),

Defendant.

Case 04-02-024
(Filed February 27, 2004)

OPINION GRANTING MOTION TO DISMISS

Summary

This decision dismisses the complaint for failure to show a violation of law or order upon which the Commission can grant relief.

Background

On February 27, 2004, Wayne Ricky Elson Rudder (Rudder or complainant) filed this complaint stating that he is an inmate at Solano State Prison and that MCI WorldCom Communications (MCI) is the sole provider of pay telephone service to inmates of the California Department of Corrections. Complainant alleges that MCI placed a “block” on his mother’s telephone line in New York state for “billing issues.” Because of the “block,” complainant is unable to complete a telephone call to his mother.

Complainant alleges that MCI's actions violate the following provisions of state and federal law and the United States Constitution:

- First Amendment right to association
- Fourteenth Amendment rights to equal protection and due process
- extortion statutes, by attempting to force customers to prepay for calls
- racketeering statutes
- Public Utilities Code Section 2106¹

The complainant also alleges that these violations have deliberately inflicted emotional distress on him and his family. Based on these alleged violations, complainant seeks damages of \$650,000 and an injunction ordering MCI to cease all such violations.

On April 30, 2004, MCI filed its answer and stated that it has contracted with the State of California Department of General Services (DGS) to provide payphone services to state and local government agencies, and that it provides such services at the Solano State Prison on a collect call basis. MCI's contract incorporates by reference MCI's "Service Publication and Price Guide" (the Guide), which is publicly available. The Guide allows MCI to make changes effective 15 days after posting.

¹ "Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done, either by the Constitution, any law of this State, or any order or decision of the commission, shall be liable to the persons or corporations affected thereby or resulting therefrom. . . . An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person." (Emphasis added.)

MCI explained that it can only bill collect calls under three circumstances: (1) where the called number is a MCI customer, (2) where MCI has a billing contract with the local exchange carrier for the called number, or (3) where the customer has established a direct billing arrangement with MCI. In September 2002, MCI modified the Guide² to require that customers who are not direct MCI customers or customers of a local exchange carrier with which MCI has a contract must establish a Maximum Security Collect account with MCI. Such an account requires a \$50.00 deposit or a credit card number. MCI stated that after February 11, 2003, calls to numbers that did not have one of the three billing methods in place were not connected.

MCI stated that in 2002 it provided the Department of Corrections with copies of written notices for posting for inmates and distribution to visitors describing the new billing rules. The notice provided a toll free telephone number for inmates and family members to call for answers to questions.

After MCI implemented the direct billing requirement, when an inmate placed a call to an unbillable number (which would not be connected), MCI's automated calling system would place a telephone call to the called number. A recording would explain that an inmate had tried to call, and would give instructions on how to make billing arrangements. The automated system would place up to three such calls.

MCI's records show that complainant's mother is not a direct MCI customer, and that MCI does not have a billing contract with her local exchange carrier. The records also show that MCI's automated calling system placed calls

² MCI incorporated the direct billing requirement into its California tariffs by advice letter filed in November 2002.

to complainant's mother's telephone number on three occasions, and that the person answering the telephone terminated each call before completion. MCI also stated that on April 12, 2004, one of its representatives called complainant's mother and left a voice mail message but the call was not returned. MCI noted that its Maximum Security Call Center has no record of complainant's mother seeking assistance.

MCI moved to dismiss the complaint on the following grounds:

1. lack of jurisdiction to adjudicate claims for monetary damages, or violations of the U.S. Constitution;
2. lack of jurisdiction to adjudicate the legality of terms and conditions governing interstate telecommunications services; and,
3. failure to state a claim upon which relief can be granted.

Discussion

Pursuant to §1702,³ this Commission may entertain any complaint that sets "forth any act or thing done or omitted to be done by any public utility, . . . in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission." The complaint fails to meet this standard and we therefore dismiss it. (*See AC Farms Sherwood vs. Southern California Edison Company*, Decision (D.) 02-11-003.)

MCI's actions are consistent with its contract with the Department of General Services and its tariffs. Complainant has not alleged that MCI has refused his mother's request to make billing arrangements.⁴

³ All statutory citations are to the Public Utilities Code unless otherwise indicated.

⁴ We have previously considered and ordered reparations from MCI for violations of its DGS contract and tariff. (*See D.01-05-030.*)

Moreover, this Commission has no jurisdiction to award monetary damages for the torts alleged by complainant. Our jurisdiction is limited to reparations and cancellation of improper charges. (Goncharov v. Southern California Gas Company (1993) D.93-04-003; L.T.J. Industries v. Pac Tel (1976) 80 CPUC 836; Blincoe v. Pac Tel (1963) 60 CPUC 432.) Complainant cites to § 2106 as providing for damages. That section, however, applies to actions “brought in a court of competent jurisdiction” and not before the Commission.

This Commission also lacks jurisdiction to adjudicate state or federal criminal allegations such as RICO⁵ or extortion laws.

In sum, complainant has not shown any violation of law or Commission rule over which we have jurisdiction, and we dismiss the complaint accordingly.

Need for Hearing

There are no disputed issues of material fact necessary to decide this motion to dismiss. Consequently, no evidentiary hearings are necessary and Article 2.5 of the Commission’s Rules of Practice and Procedure ceases to apply to this proceeding, with the exception of the ex parte prohibition in Rule 7.

Assignment of Proceeding

Loretta Lynch is the Assigned Commissioner in this proceeding and Maribeth Bushey is the assigned Administrative Law Judge.

Comments on Draft Decision

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7

⁵ We infer that complainant is referring to the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968.

of the Rules of Practice and Procedure. Comments were filed on _____,
and reply comments were filed on _____.

Findings of Fact

1. MCI's billing arrangement requirement is in its published tariffs, as well as its contract with DGS, and MCI has acted in conformity with its tariffs.
2. Complainant seeks damages and an injunction.
3. The facts necessary to rule on the motion to dismiss are not disputed.

Conclusions of Law

1. Complainant has not shown any violation of law or rule over which this Commission has jurisdiction.
2. No hearing is necessary.
3. The Complaint should be dismissed for failure to state a claim under § 1702, effective immediately.

O R D E R

IT IS ORDERED that:

1. The complaint in Case (C.) 04-02-024 is dismissed.
2. C.04-02-024 is closed.

This order is effective today.

Dated _____, at San Francisco, California.