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Decision 01-11-017 November 8, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

George M. Sawaya, Complainant, vs. MCI Telecommunications Corp. (U-5011-C) a.k.a. MCI WorldCom and MCI WorldCom, Inc. Defendant.	Case 00-04-029 (Filed April 18, 2000)

George M. Sawaya, for complainant.
Maria L. Woodbridge, Attorney at Law, for MCI Telecommunications Corp., for defendant.

OPINION DISMISSING COMPLAINT

Summary

In this decision we find that sanctions against WorldCom are not warranted for paying an intervenor compensation award 67 days late, and this complaint is dismissed with prejudice.

Background

On April 18, 2000, George M. Sawaya filed this complaint seeking Commission enforcement of Decision (D.) 00-02-004. In that decision, we ordered WorldCom[1] to pay seven parties intervenor compensation for work in docket R.97-01-009. Sawaya's share was $1,036.13, plus interest from September 12, 1998. In the complaint, Sawaya stated that such payment had not been made. He sought a Commission order directing such payment, and sanctions against WorldCom.

On May 26, 2000, Sawaya received a check for the full amount, plus applicable interest. Hence, the only remaining issue is the imposition of sanctions.

On February 6, 2001, hearings were held on factual issues relating to the basis for any sanctions. The parties filed opening and closing briefs.

In his brief, Sawaya stated that WorldCom acted unreasonably by failing to make timely payment of the intervenor compensation award. He argued that the Commission should impose a fine in the upper reaches of its statutory authority because (1) WorldCom's delay in payment harmed the Commission's regulatory process by setting an undesirable precedent, (2) WorldCom did not take adequate steps to prevent, detect, or rectify the violation, and (3) WorldCom's financial resources would support a large fine.

WorldCom argued that sanctions were unwarranted. At hearing and in its brief, WorldCom provided exhaustive detail of its efforts to make timely payment of its intervenor compensation obligations. WorldCom explained that its accounts payable department is located in Arlington, Virginia, and that it submitted a request for checks to be issued promptly after it received D.00-02-004. Delay resulted from a subsequent request from the accounts

[1] The legal name of MCI Telecommunications Corporation is now MCI WorldCom Network Service, Inc. For purposes of this decision, we will refer to the defendant as WorldCom.

payable department for all recipients' tax identification numbers. Further delay resulted when a check issued by WorldCom was misdirected. When Sawaya informed WorldCom that he had not received the misdirected check, WorldCom stopped payment on that check, and re-issued a new check, recalculated to include up-to-date interest, for $1,142.75. Based on its detailed recitation of its efforts to pay Sawaya, WorldCom argued that its response to the Commission's order was reasonable, in good faith, and should not form the basis for a penalty.

Discussion

Pursuant to Pub. Util. Code §§ 2104 and 2107, the Commission may impose fines for violations of law or Commission orders. Such fines, payable to the State of California, must be between $500 and $20,000 per offense.

The complainant bears the burden of proving by a preponderance of the evidence that a fine is warranted under the circumstances of the case. Communications TeleSystems International, 72 CPUC 2d 621, 633 (1997).

The Commission has distilled the principles that it has historically relied upon in assessing fines and restated them so that they may form the basis for future decisions assessing fines. *See* Rulemaking to Establish Rules for Enforcement of the Standards of Conduct Governing Relationships between Energy Utilities and Their Affiliates Adopted by the Commission in Decision 97-12-088, D.98-12-075, App. B. In determining whether to impose a fine and, if so, at what level, the Commission will consider the severity of the offense, the utility's conduct, the financial resources of the utility, the totality of circumstances in furtherance of the public interest, and the role of precedent.

Turning to the factors for deciding whether to impose a fine and, if so, for what amount, the severity of the offense is the first factor. The severity of the offense includes consideration of the economic harm imposed as well as the economic benefit gained by the public utility. Here, because the decision provided for the payment of interest, Sawaya incurred no economic harm, and WorldCom accrued no gain. The severity of the offense also includes consideration of the effects of disregarding a Commission order because compliance is essential to the proper functioning of the regulatory process. Prompt payment of intervenor compensation awards is important to facilitate intervenor participation in Commission proceedings, so failure to comply with compensation orders harms the regulatory process. In this case, however, WorldCom attempted to comply, albeit belatedly. WorldCom used overnight mail to send requests for needed tax information to the intervenors, and had several of its personnel track the issuance of the checks. Severity can also be gauged from the scope of the violation. Here, WorldCom’s violation directly affected seven intervenors, a small number. To these intervenors, however, the delay in receiving payment could impose hardship and inconvenience. On balance, and in light of the overall circumstances of this violation, we find that it was not a severe violation.

The next factor is the utility’s efforts to prevent, detect, and rectify the violation. In this case, once WorldCom became aware of the violation, it took reasonable steps to rectify the violation, although it did not notify the Commission. The violation was brought to the Commission’s attention by Complainant.

The next factor is the financial resources of the utility. WorldCom is a large corporate conglomerate with substantial financial resources.

The role of precedent is also important in our consideration of imposing a fine. We have not, to date, imposed a fine for delay in making intervenor compensation payments.

The final factor is the totality of the circumstances in furtherance of the public interest. Timely compliance with Commission decisions is important, but we also realize that occasionally delays will occur.[2] Here, WorldCom has carefully explained its attempts to issue intervenor compensation checks in timely manner, and has documented the unforeseen problems it encountered in issuing its first intervenor compensation payments. Ultimately, WorldCom issued the check, with up-to-date interest, to Sawaya. In sum, the totality of the circumstances does not support imposing a fine on WorldCom.

Section 2107 allows this Commission discretion in determining whether to impose a fine. Guided by our consideration of the factors discussed above, we find that a fine is not warranted under the circumstances of this case. We admonish WorldCom, however, to comply with Commission decisions in a timely manner, or to seek an extension through Rule 48(b) of the Commission's Rules of Practice and Procedure. Failure to comply with intervenor compensation orders in a timely manner may, in the future, result in sanctions.

Motion for Sanctions for Violation of Rule 1

Sawaya also filed a motion for sanctions against WorldCom for stating in its answer that it had paid him twice. WorldCom explained that as of the date of the answer, its Arlington staff had informed its San Francisco staff that they had sent Sawaya two checks. The first check had been misdirected and was presumed lost. Therefore, WorldCom's Arlington staff issued a second check, and the San Francisco staff informed Sawaya they were issuing a stop payment on the first check. The first check, however, arrived at Sawaya's, who, perhaps thinking it was the second check, deposited it. The next day a second check arrived, which he also deposited. After making this deposit, he informed

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[2] As we noted in D.98-04-009, an isolated instance of noncompliance, as this was, is less severe than a series of violations.

WorldCom of receipt and deposit of the second check. These were the facts as WorldCom knew them when it filed its answer. The first check was subsequently returned to Sawaya by his bank due to WorldCom's stop payment request. Sawaya contended that WorldCom violated Rule 1.

Rule 1 prohibits every person appearing before the Commission or signing a pleading from misleading the Commission by an artifice or false statement of law or fact. WorldCom's answer, as of the date it was filed, reflected the facts of which WorldCom was aware at that time. However, WorldCom could reasonably have assumed, based on normal banking practices, that the bank would honor the stop payment request. Although as of the date the answer was filed, WorldCom's statement that it had paid Sawaya twice was not clearly false, it was at best unclear. WorldCom has since acknowledged that Sawaya received only one payment. Under these circumstances, we will not impose sanctions against WorldCom pursuant to Rule 1 based on its statement in the answer that Sawaya had been paid twice. WorldCom is advised, however, to ensure that statements in future pleadings are clear and not misleading in order to avoid the imposition of sanctions under Rule 1.

Appeal of Presiding Officer's Decision

On May 2, 2001, the Presiding Officer mailed her Presiding Officer's Decision (POD). On May 18, 2001, Sawaya filed an appeal of the POD, to which Worldcom filed a response on June 4, 2001.

In his appeal of the POD, Sawaya alleges ten "critical errors" in the POD. We have carefully considered each of these alleged errors, and revised the POD to clarify certain points. These minor textual changes, however, have not resulted in any substantive revision of the POD.

Each of Sawaya's claims of error is set out in italics below, followed by, in regular text, our resolution of the claim:

1. *The POD creates the erroneous impression that WorldCom detected the nonpayment.* Sawaya points out that WorldCom only became aware of the nonpayment upon his and another intervenor's complaints to WorldCom. We have modified the decision to clarify this point.

2. *The POD erroneously concluded that WorldCom used its best efforts to rectify the violation once it became aware of it.* We have revised Finding of Fact 4 and the corresponding discussion in the decision to state that WorldCom used "reasonable efforts" to rectify the violation.

3. *The POD erred by overlooking by the fact that WorldCom failed to report its noncompliance with D.00-02-044 to the Commission.* The POD has been modified to note that WorldCom did not notify the Commission.

4. *The POD does not explain the apparent departure from Commission precedent refusing to condone a "learning period" for public utilities that have no prior experience with particular subjects or standards.* In support of this contention, Sawaya cites to <u>Communications TeleSystems International</u>, (1997) 72 CPUC 2d 621, 629. In the cited decision, we imposed a fine of $19.6 million on a long distance telephone company that had transferred 56,000 customers to its service without authorization. Here, however, the scope and severity of WorldCom's actions are not comparable to the widespread and long-term consumer deception at issue in the cited decision.

5. *The POD failed to contain a finding of fact that WorldCom violated the terms of D.00-02-044.* This fact is contained in Finding of Fact 1, and also addressed by Finding of Fact 4, discussed next.

6. *Finding of Fact 4, which stated that "WorldCom did not disregard a Commission directive" is erroneous.* Sawaya contends that WorldCom indeed

failed to comply with Commission instructions to prevent, detect, and report its violations of D.00-02-044. We have corrected Finding of Fact 4 to state that WorldCom "did not timely comply with a Commission directive."

7. *Finding of Fact 6, which stated that "WorldCom did not prevent the violation but once it had detected the violation, used its best efforts to rectify the violation," is erroneous because WorldCom did not detect the error.* Sawaya also disputes whether WorldCom used its best efforts. We have modified Finding of Fact 6 to state that WorldCom "became aware of" rather than "detected" the violation, and to replace "best efforts" with "reasonable efforts," which we believe better characterizes WorldCom's actions. We have also modified the corresponding discussion in the decision accordingly.

8. *Finding of Fact 8, which concluded that the totality of the circumstances did not warrant a fine is erroneous.* Sawaya contends that this is an extreme position that would set a dangerous precedent of allowing noncompliance with Commission directives, and he recommended that the finding be modified to state the that totality of the circumstances did not merit imposing a large fine. As discussed in the body of the decision, we have carefully considered all the facts of this matter, and conclude that the totality of the circumstances do not warrant a fine.

9. *Finding of Fact 10 is "misleading and inferentially and unjustly prejudicial" because it does not indicate the "whole truth."* Finding of Fact 10 has been modified, and Findings of Fact 11 and 12 have been added to reflect additional facts contained in the record.

10. *The POD erroneously concluded that sanctions are not warranted.* Sawaya stated that after making the corrections discussed above, the Commission should conclude that a modest fine is warranted. Notwithstanding the modifications

noted above, we disagree. Therefore, we have not changed the conclusion in the POD.

Findings of Fact

1. WorldCom was 67 days late in making the intervenor compensation payment to Sawaya ordered in D.00-02-004.

2. Sawaya received the full amount, with correct interest, that he was due.

3. The payment of interest prevented Sawaya from incurring economic harm, and WorldCom from accruing gain.

4. WorldCom did not timely comply with a Commission directive.

5. WorldCom's offense is not severe.

6. Once WorldCom became aware of the violation, it took reasonable steps to rectify the violation.

7. WorldCom has substantial financial resources.

8. The totality of the circumstances does not support imposing a fine.

9. At the time it filed its answer, WorldCom had issued two checks to Sawaya for payment of intervenor compensation, because it believed the first check had been misdirected.

10. WorldCom directed its bank to stop payment on the first check.

11. Sawaya, however, received and deposited both checks.

12. WorldCom's bank subsequently refused to honor the first check because of the stop payment request, and Sawaya's account was adjusted accordingly.

Conclusions of Law

1. A fine is not warranted in this case.

2. Sawaya has not met his burden of proving that WorldCom violated Rule 1 of the Commission's Rules of Practice and Procedure.

3. Sawaya's motion for sanctions should be denied, but WorldCom is cautioned to ensure that statements in future pleadings not be misleading in order to avoid sanctions under Rule 1.

4. This complaint should be dismissed.

O R D E R

THEREFORE, IT IS ORDERED that:

1. George M. Sawaya's motion for sanctions is denied.
2. This complaint is dismissed with prejudice.
3. Case 00-04-029 is closed.

This order is effective today.

Dated November 8, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

Commissioner Henry M. Duque, being necessarily absent, did not participate.