

L/ice

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations and practices of MCI, WorldCom, or MCI WorldCom, (U-5011, U-5378, U-5253, U-5278), to determine whether it has violated the laws, rules and regulations governing the way in which consumers are billed for products or services, by billing its former customers for a monthly service charge without authorization.

FILED
PUBLIC UTILITIES COMMISSION
APRIL 21, 2005
SAN FRANCISCO
L05-04-018

ORDER INSTITUTING INVESTIGATION INTO THE OPERATIONS
OF MCI, WORLDCOM, OR MCI WORLDCOM; ORDER TO SHOW
CAUSE AND NOTICE OF OPPORTUNITY FOR HEARING

I. INTRODUCTION

From 2002 to the present, the Commission has received hundreds of consumer complaints regarding MCI, WorldCom, or MCI WorldCom's, (U-5011, U-5378, U-5253, U-5278 – hereinafter, "MCI"¹) practice of billing non-customers for a type of monthly service charge that MCI refers to as a "minimum usage fee" (MUF)². The MUF charge is imposed as part of a basic default calling plan that MCI erroneously establishes for consumers, even though these consumers have not requested to be

¹ On April 1, 2003 MCI notified the Commission that it would conduct business under the brand name "MCI".

² Staff has reviewed approximately 200 MUF complaints, interviewed 115 of these consumers, and obtained 77 declarations from consumers documenting their experiences. The declarations are included with Staff's report for this investigation.

switched to MCI nor have they chosen to create a new account with MCI. The Consumer Protection and Safety Division's (CPSD) Enforcement Branch (Staff) began its investigation after noting the high number of MUF-related consumer complaints received by the Commission's Consumer Affairs Branch (CAB).

Staff reviewed the consumer complaints received by CAB and found that MCI billed consumers a monthly service charge after the consumers requested that MCI terminate their long distance service, or in instances when the consumers were never MCI customers. Staff discovered that MCI's practice began on June 1, 2002 and continues to date. Staff has determined that MCI relies upon certain codes that it receives from the Local Exchange Carriers (LECs), although Staff has good reason to believe that MCI is misusing the codes that it requests and receives. The codes MCI relies upon are not the proper codes to indicate that a subscriber intends to establish a new account. Nevertheless, MCI proceeds to establish accounts and bill non-customers for an MUF without: 1) first attempting to contact the customer to verify that the customer intends to subscribe to MCI; 2) checking its own records to determine whether the customer is no longer a customer because he or she previously terminated their service with MCI. Staff has determined that MCI continues this practice to the present day, in spite of Staff's March 2004 directive to cease, desist, and/or mitigate the harm caused by the practice.

Public Utilities Code section 2890(a) states "A telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized." This practice is commonly referred to as "cramming". Staff believes MCI's assessment of an MUF on non-customers may constitute an unauthorized charge on the consumer's phone bill, in violation of section 2890(a). Public Utilities Code section 2889.5 requires a telephone company to obtain confirmation from the prospective subscriber that he or she intends to switch telephone companies; any change in service provider that is accomplished without complying with the steps described in section 2889.5 constitutes a "slam". Staff believes that MCI may be engaging in "slamming" by switching service providers or establishing a new account for a consumer without confirming the consumer's intent to switch to MCI or establish a new account with MCI.

In addition, Staff has determined that it often takes several months for MCI to respond to consumer complaints and issue MUF refunds, and that consumers express a great deal of frustration with the time and effort it takes to contact an MCI service representative to have these charges removed from their phone bill. Staff has also determined that MCI has a practice of sending consumers to collection when they do not pay the MUF. Staff is deeply concerned by MCI's apparent disregard for the welfare of California consumers and by MCI's disregard of Staff's March 2004 directive to cease and desist, or to mitigate the harm caused by MCI's policies.

We hereby initiate this investigation to determine: 1) whether MCI has violated Public Utilities Code section 2890 by placing unauthorized charges on non-customers phone bills; 2) whether MCI has violated Public Utilities Code section 2889.5 by failing to confirm the consumer's intent to change service providers or establish a new account prior to placing the charge on the consumer's bill; 3) whether MCI should issue credits or refunds to consumers who have been billed for products or services they did not authorize; 4) whether MCI should be fined and/or sanctioned for engaging in a business practice that Staff alleges results in widespread "cramming" and/or "slamming"; and 5) whether, pursuant to Public Utilities Code section 761, MCI should change or modify its business practices that result in unjust, unreasonable, or improper charges being placed on a consumer's phone bill. We hereby order MCI to appear and show cause why it should not be ordered to cease its practice of billing minimum usage fees to non-customers.

II. SUMMARY OF STAFF ALLEGATIONS

Staff has prepared a report documenting its investigation to date, including declarations from victims documenting their experiences with MCI and documents obtained from MCI. The report is released today and shall be placed in the Commission's public formal file for this proceeding. The following is a summary of Staff's allegations to date.

A. MCI's Minimum Usage Fee Program

Beginning in June 2002 and continuing to date, MCI began a policy of imposing a type of monthly service charge, which MCI refers to as an MUF, on previously inactive or closed accounts. Staff has determined that MCI's harvests information from two sources in order to identify inactive accounts and start billing. One method of harvesting inactive account information is when MCI regularly engages in an activity referred to as the "LEC Reconciliation Process". In this process, MCI first determines the identity of telephone numbers that are still assigned to MCI in the LEC's system, and then identifies those that it is not actively billing. Once MCI identifies the inactive telephone numbers, it creates a new account for these telephone numbers and begins billing an MUF.

A second method of harvesting inactive account billing information is when MCI obtains information regarding which telephone numbers are assigned to MCI through the transmittal of "Transaction Code Status Indicators" (TCSIs). TCSIs are electronic codes that telecommunications carriers routinely use to transmit subscriber assignment information to each other. In some cases, the codes inaccurately indicate that a customer has designated MCI as their long distance provider. Staff has determined that MCI knowingly takes advantage of these "coding errors" by billing inactive or closed accounts for an MUF, despite the fact that the LECs provide the TCSI codes "for information only" and do not intend that the codes be used to establish a new subscriber account for that particular customer³. Staff believes that MCI is knowingly misusing the TCSI codes to inappropriately establish new accounts.

³ MCI requests the 2414 TCSI code from the LECs. The 2414 code is officially defined as "End Users Selected To Requesting AC For Post conversion Equal Access End Office(s)." Typically, this Transaction Code is used to provide end user information to the Access Carrier (AC) – in this case, MCI. It is intended to be used as information only and should not be confused with a TC 20 - subscription order install, or TC 28 - pending subscription order.

Through either the LEC Reconciliation Process or through TCSI codes, MCI creates a new account (which it calls the Basic Dial-1 plan⁴) and imposes the MUF without first contacting the customer to verify the customer's intent to switch, or first checking its records to determine if the customer previously cancelled the account with MCI. Essentially, MCI is acting on the subscriber information (TCSI codes) it receives from other carriers without checking to make sure that the subscriber has actually chosen MCI to be its long distance provider, and despite the fact that the TCSI code used by MCI is designated as "for information only" and is not the correct TCSI code to establish a new subscriber account.

MCI reports that between June 2002 and June 2004, approximately 500,000 California consumers have been billed a MUF pursuant to the Basic Dial-1 default calling plan. Prior to June 2002, consumers did not complain because MCI did not have an MUF associated with the default calling plan.

Staff has found that the process of calling MCI, removing the charges, and canceling the account often takes several months. Consumers who are billed an MUF typically call MCI repeatedly over several months, experience difficulty getting through to an MCI customer service representative and experience difficulty in having the charges reversed. Consumers complain that MCI refused to honor the initial request for cancellation and forced the consumers to go to great lengths to have the charges reversed, even though the charges were improper to begin with. Consumers state that MCI did in fact (eventually) cancel the account and discontinue billing, but some consumers express outrage because MCI sent the consumer's unpaid charges to a collection agency. The sections below describe different situations in which MCI billed consumers for an MUF.

⁴ At the present, the Basic Dial-1 plan includes a \$3.95 "minimum usage fee". The Basic Dial-1 plan is not advertised to the public, is not an option for prospective customers, and appears to be solely the default plan used when MCI has not contacted the prospective consumer to determine which MCI calling plan the consumer has chosen.

B. Some Customers Switched From MCI To Another Long Distance Carrier, Yet MCI Billed an MUF to This Non-Customer

In some cases, Staff's investigation reveals that MCI imposed MUFs on MCI customers who switched away from MCI to another long distance carrier. Consumers complain that after switching away from MCI the former MCI customer receives a bill (in many cases after several years have passed) from MCI for an MUF. MCI imposed this charge even though the consumer used a different long distance carrier and no longer had any contractual relationship with MCI.

MCI refuses to change its behavior in these sorts of circumstances. MCI alleges that it imposes these charges because the consumer's new carrier fails to notify MCI of the switch. However, Staff believes that the consumer should not be held responsible because MCI refuses to honor the request for cancellation directly from the consumer, which means that the consumer has no control over whether MCI is notified of the switch request.⁵ Staff believes it is MCI's responsibility to take the steps necessary to ensure that it is not sending out bills to customers who have chosen another carrier.

C. Some Customers Cancelled Their MCI Service With No New Carrier Selection, Yet Are Billed By MCI For An MUF

Consumers in California have many different options for making long distance calls, such as the Internet, cellular phones, dial-around, calling cards, etc. Increasingly, consumers are choosing to cancel their long distance carrier and are using one of these other methods to make long distance calls. In the past, MCI did not bill consumers for an MUF when the consumer cancelled his or her long distance service with MCI.

Beginning on June 1, 2002, customers who had cancelled their MCI service, sometimes years ago, began to receive MCI bills for the MUF. If MCI had checked its

⁵ MCI only recognizes the notification of a PIC change if it is received from the LEC or the new carrier, not the consumer.

internal records prior to billing these customers, MCI's records would show that these former customers cancelled their long distance service with MCI. However, as described above, even though MCI is aware that there may be a need to check on the accuracy of industry records MCI chooses not to check its existing customer records prior to creating a new account and imposing an MUF on the former customer.

Former MCI customers also complain that MCI bills an MUF when the customer cancels service because they are moving to a new home, a different area, out-of-state, etc. In those cases, MCI did not receive a switch notification for that account because the customer was not switching, but was simply canceling their service. In some cases, MCI alleges that it has failed to receive (or perhaps acknowledge) the notification code from the LEC. However, Staff believes that consumers are not at fault for any discrepancies that might occur as a result of infirmities in the providers' notification systems which MCI is aware of and which MCI is capable of mitigating. Staff believes that consumers should not be required to pay an MUF to a provider when the consumer has cancelled its subscription for that service.

D. Some Consumers Never Had MCI Service on a Primary or Secondary Telephone Line, Yet Are Billed By MCI for an MUF

Consumers often have a second line dedicated to a fax machine, Internet service, etc. On initiating service, they do not select a long distance carrier for the second line because they do not plan on making any long distance calls on that line. The consumers' primary line is used for making long distance calls, while their secondary line is used for fax or Internet service. These consumers have the option to select no long distance company on the secondary line.

In cases reviewed by Staff, consumers report that MCI began billing the secondary line for an MUF, even though MCI was never the long distance carrier on that line. The consumer never requested MCI's service on the secondary line and made no long distance calls, nonetheless, MCI billed these consumers an MUF.

In some cases, consumers report that they had never selected MCI on their primary line, yet were billed by MCI for an MUF on the secondary line. Staff believes these are clearly violations of the law that should not occur.

E. Directive to Cease and Desist

On March 3, 2004 Staff informed MCI that its practice of imposing monthly charges on non-customers, whether they were inactive accounts or customers who had not affirmatively selected MCI as their provider, is unlawful. Staff ordered MCI to cease and desist. Staff informed MCI that the practice results in charges being imposed for products or services that were never authorized or requested by the consumer, in violation of Public Utilities Code section 2890. On September 15, 2004, Staff met with MCI to direct the company to discontinue its practice of imposing MUFs, to discuss mitigating the harm to consumers caused by this practice and to discuss other technical issues related to how the MUFs are imposed. Staff believes that, to date, MCI has not stopped or modified its practice.

III. DISCUSSION

A. Violation of Public Utilities Code section 2890(a) – Cramming

Public Utilities Code section 2890(a) states “A telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized.” Staff may recommend, and the Commission may consider, penalties pursuant to Public Utilities Code section 2107 and 2108 in the amount of \$500 to \$20,000 per offense per day. In each of the situations described in the summary of Staff’s allegations, MCI may have imposed a monthly charge for long distance service that was not requested or authorized by the consumer, in violation of section 2890.

B. Violation of Public Utilities Code section 2889.5 – Slamming

Public Utilities Code section 2889.5 states that telephone companies must follow the requirements of that section prior to making any change or switch in service provider. Among other things, section 2889.5 requires telephone companies to

thoroughly describe the nature and extent of the service being offered, to specifically establish whether the subscriber intends to make any change in his or her service provider, and to obtain and record confirmation by the subscriber of his or her intent to make any changes or switches. In the situations described above, MCI may be making changes to the subscriber's service without the subscriber's authorization, in violation of section 2889.5.

**C. Monthly Minimum Fees on Inactive Accounts Found
Illegal in Other Jurisdictions**

We find that the above-described business practices may result in widespread violations of Public Utilities Code sections 2889.5 and 2890. According to Staff, these same monthly fees have been found to be illegal in other jurisdictions.

1. State of New York

In June 2004, the Attorney General of the State of New York and AT&T Communications of New York, Inc. (AT&T) entered into an agreement ending AT&T's practice of imposing monthly recurring charges (MRC) on non-customers. AT&T's MRC was essentially the same type of charge as MCI's MUF.

In that case, the Attorney General received complaints alleging that AT&T had erroneously billed consumers who were not AT&T customers. The erroneously billed customers fell into two groups (i) those who previously had notified AT&T that they wished to cancel their AT&T long distance service; and (ii) those who had not had a billing history with AT&T for an extended period of time. Residential customers who had previously been assigned to or had chosen AT&T as their long distance carrier, but had not selected one of AT&T's optional calling plans were assigned by default to AT&T's "Basic Rate Plan". Until January 1, 2004, customers assigned to AT&T's Basic Rate Plan were billed only for long distance calls actually made and incurred no monthly recurring or minimum charges. Beginning January 1, 2004 AT&T began imposing a monthly recurring charge on bills received by customers assigned to its Basic Rate Plan, regardless of whether the customer made any long distance calls. A number of consumers apparently were not aware that they were assigned to AT&T, thought they had

canceled AT&T as their long distance provider and/or had not used AT&T or received bills from AT&T for months or even years prior to January 2004.

In that case, AT&T relied on the Primary Interexchange Carrier (PIC) status as reflected in AT&T's records and did not reconfirm the consumers' status by contacting the consumer and obtaining their authorization to institute the monthly recurring charge. Thus, AT&T billed an MRC to consumers who were unaware that they were assigned to AT&T or believed they had canceled their AT&T accounts. When consumers complained to AT&T that they were not AT&T customers and were improperly billed for the MRC, AT&T responded with letters that advised these consumers that AT&T was selected as their long distance carrier during some portion of the billing cycle. A number of these consumers were actually not assigned to AT&T during any portion of the billing cycle. Some consumers also advised the Attorney General that even after receiving confirmation numbers and assurances from AT&T representatives that their billing problems had been corrected, AT&T continued to send them bills and past due notices for the MRC and related charges.

AT&T agreed to immediately make its best efforts to mitigate the harm caused by the practice, by taking various steps to ensure the problem did not occur. The agreement also required AT&T to immediately amend its basic rate plan customer list to exclude consumers who are not AT&T customers, immediately cease collection efforts of the MRC plus related charges, and take steps to remove such charges from New York consumers who have not paid the MRC and have had no long distance direct dial usage on the AT&T network.

2. Federal Communications Commission

On November 30, 2004, the Federal Communications Commission (FCC) and AT&T Corp. (AT&T) entered into a Consent Decree concerning whether AT&T violated section 201(b) of the Communications Act of 1934 by erroneously charging a monthly recurring charge to non-AT&T customers.

AT&T acknowledges in the Consent Decree that after January 1, 2004 due to coding and systems processing issues, it inadvertently billed the basic MRC to a total of

1,267,032 consumers, which included AT&T customers who were not on the basic rate state-to-state direct-dialed plan as well as non-AT&T customers in 50 states and the District of Columbia.

AT&T agreed, among many things, to verify the accuracy of its records for customer PIC status, compare its records for its basic schedule long distance customers in all 50 states to the records of certain local exchange carriers, and to make a voluntary payment of \$500,000 to the United States Treasury.

3. MCI Has No Mandate to Collect Minimum Usage Fees from Non-Customers

MCI has informed Staff that federal law requires telephone companies to maintain account records of former customers for three years, but has provided Staff with no law that mandates that this expense be collected from non-customers. Staff has found no federal or state law that allows MCI to bill non-customers for this minimal cost. Staff believes that MCI has no contractual relationship with these consumers – the consumer is not an MCI customer nor receives any long distance service from MCI. Staff concludes that the consumer is not under an obligation to pay MCI's costs to maintain records.

Staff believes the consumer is being illegally charged by MCI for no usage on a calling plan the consumer did not request nor authorize. Despite the lack of a contract between the customer and MCI, the customer must engage in protracted negotiations with MCI in order to remove the charges. The consumer is not empowered to stop the billing because MCI will only recognize a PIC change request processed by the LEC or the new carrier, not the consumer. Moreover, MCI is inappropriately using TCSI codes that are “for information only” and not intended to be used to establish new subscriber accounts. Therefore, Staff believes the consumer is not responsible for the charges, and that the practice should cease.

Therefore **IT IS ORDERED** that:

1. An investigation on the Commission's own motion is hereby instituted into the operations of MCI, Worldcom, and MCI Worldcom (Respondents), to determine:

- a. whether Respondents violated P.U. Code section 2890 by imposing charges on consumers' bills for products or services which the consumer did not request or authorize;
- b. whether MCI has violated P.U. Code section 2889.5 by failing to confirm the consumer's intent to change service providers or establish a new account prior to establishing a new account for that consumer;
- c. whether Respondents should be ordered to pay reparations pursuant to P.U. Code section 734;
- d. whether Respondents should be ordered to cease and desist from any unlawful operations and practices, or have special conditions and restrictions imposed on it, pursuant to P.U. Code section 761;
- e. whether Respondents should be fined pursuant to P.U. Code sections 2107 and 2108 for violations of the P.U. Code or other order, decision, rule, direction, demand or requirement of the Commission.

2. Respondents are directed not to impose any monthly recurring service charges on customer accounts ("minimum usage fees" is the terminology used by Respondents) where the consumer has: a) contacted Respondents and requested cancellation, disconnection, termination, or otherwise requested that his or her service be discontinued; b) switched to another long distance carrier; c) never had Respondents as the selected long distance carrier.

3. Respondents are hereby ordered to appear and show cause why the Commission should not order Respondents to permanently cease and desist the practice of imposing any type of monthly recurring service charges without first obtaining authorization from the prospective customer, on a date to be set at the Commission's hearing room, 505 Van Ness Avenue, San Francisco, 94102.

4. To facilitate the completion of this investigation, and consistent with the provisions of section 314, Respondents are ordered to preserve until further order by the Commission all consumer account records, verification tapes, PIC dispute records, and consumer complaints involving California consumers who have complained to either

CAB or to MCI regarding minimum usage fees, and to respond in a timely fashion to all of Staff's data requests.

5. Staff's report includes information for Respondents that SBC has identified as proprietary pursuant to P.U. Code section 583. Staff's report also includes documents obtained from MCI, which MCI has designated proprietary information. The public interest in disclosure outweighs any need for confidentiality; thus any confidential information included with Staff's report is hereby made public.

6. Staff shall continue discovery and continue to investigate the operations of Respondents. Any additional information that Staff wishes to introduce shall be provided to the Respondents in advance of any hearings in accordance with the schedule directed by the assigned Administrative Law Judge. Staff need only respond to discovery requests directed at Staff's investigation of the Respondents and Staff's prepared testimony offered in this proceeding.

7. Staff shall monitor consumer complaints made against Respondents. We expect Staff to bring additional evidence of any alleged harmful business practices by Respondents to our attention (e.g. new types of violations). Staff may propose to amend the OII to add additional respondents or to raise additional charges. Any such proposal shall be presented to the Commission in the form of a motion to amend the OII and shall be supported by a Staff declaration supporting the proposed amendments or additional named respondents.

8. This ordering paragraph suffices for the "preliminary scoping memo" required by Rule 6 (c) of the Commission's Rules of Practice and Procedure. This proceeding is categorized as an adjudicatory proceeding and will be set for hearing. The issues of this proceeding are framed in the above order. A prehearing conference shall be scheduled for the purpose of setting a schedule for this proceeding including dates for the exchange of written testimony, determining which of the Staff's witnesses will need to testify, and addressing discovery issues. This order, as to categorization of this proceeding, can be appealed under the procedures in Rule 6.4. Any person filing a response to this order instituting investigation shall state in the response any objections to

the order regarding the need for hearings, issues to be considered, or proposed schedule. However, objections must be confined to jurisdictional issues that could nullify any eventual Commission decision on the merits of the alleged violations, and not on factual assertions that are the subject of evidentiary hearings.

Service of this order on Respondents will be effectuated by personally serving a copy of the order and Staff's report on the Respondents' designated agent for service in California: The Prentice-Hall Corporation System, Inc., 2730 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833.

This order is effective today.

Dated April 21, 2005 at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN GRUENEICH
Commissioners