

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

RATES, TERMS AND CONDITIONS) ADMINISTRATIVE
FOR INMATE TELECOMMUNICATIONS) CASE NO. 368
SERVICES)

O R D E R

Three proceedings regarding inmate payphone service are pending Commission decision. One is a complaint about the rate charged for prison payphone service.¹ The other two deal with procedures used by MCI Telecommunications Corporation ("MCI") and InVision TeleCom, Inc. ("InVision") for advanced payments and blocking requirements.² To address the full range of issues surrounding inmate telephone service, the Commission merges these three proceedings into this new administrative case and incorporates their records by reference. This single administrative case will enable the Commission simultaneously to review all matters relating to prison payphone service and will provide an opportunity for a response from all telephone companies and other persons interested in inmate phone service.

¹ Case No. 96-454, Joanne Mikels v. MCI Telecommunications Corporation.

² Case No. 97-049, MCI Telecommunications Corporation's Petition for Waiver of Certain Regulations and Case No. 96-593, the Application of InVision TeleCom, Inc. to implement a Proactive Fraud Prevention Program with Respect to Customer-Owned Coin-Operated Telephone ("COCOT") Telecommunications Services Provided to Inmates of Confinement Facilities in the Commonwealth of Kentucky.

Whether Current Rates For Inmate Services
Are Fair, Just And Reasonable

Joanne Mikels filed a Complaint on April 4, 1996 against MCI alleging that MCI's prison rate was not justified, that she was charged six times the amount of a normal public payphone local call, and that MCI charged operator-assisted rates when no operator was involved in the call. In its answer, MCI countered that the rate charged is authorized and contained in its Inmate Services Contract with the Commonwealth of Kentucky. MCI won a competitive bid with the Commonwealth to serve state prisons.

The bid required that the rates and surcharges mirror the rates charged by the local exchange carrier at each facility for local and intraLATA calls and by AT&T Communications of the South Central States, Inc. ("AT&T") for interLATA calls. Additionally, the bid required that an automated operator system using recorded messages, synthesized-voices, and computer software be used rather than live operators.

According to MCI, its rates and services for inmate calling comply specifically with those mandated by the Kentucky Department of Corrections' ("Corrections") bid. Further, MCI filed its rates for inmate services with the Commission. Its tariff for inmate service with the Commonwealth of Kentucky was approved by the Commission on January 31, 1995 in Case No. 95-038.³

On April 25, 1997, there was an informal conference with MCI and representatives from Corrections. Joanne Mikels was invited but did not attend.

³ Case No. 95-038, Proposed Tariff of MCI Telecommunication Corporation for Inmate Calling Service.

MCI's rates mirror those charged in a non-prison setting for the same type of call. There is no accounting basis to find that operator service rates are too high or that live and automated calls should be priced differently. MCI, as a non-dominant carrier, has never been required to justify its rates based on cost, but its services are generally provided in a competitive market.

The inmate services contract between MCI and Corrections and the InVision tariff were reviewed by the Commission under the competitive standards for operator services and payphones contained in previous Commission Orders. However, based on customer complaints, it appears to the Commission that the inmate rates may not be reasonable, particularly because customer choice for telephone services is absent in the inmate environment. Inmates and their families and friends must choose between making collect calls or no calls. Additionally, they do not have the opportunity for live operator assistance. Availability of live operators is a major reason collect calls are priced higher than direct dial. Accordingly, pursuant to KRS 278.260, the Commission herein investigates the reasonableness of the telecommunications rates, terms and conditions applicable in Kentucky correctional facilities and other confinement facilities. The focus of this investigation is on the reasonableness of the rates and not on underlying costs to MCI, InVision or any other provider of inmate services.

Thus, the Commission will investigate whether it is reasonable to require all inmate service providers and service providers of confinement facilities to charge 50 percent less operator-assisted surcharge for inmate calls than the surcharge they impose in a non-inmate environment. The 50 percent surcharge discount appears reasonable given the total lack of customer choice in the correctional facilities and confinement

facilities environment. The Commission contemplates that this discount will be applied to all operator-assisted surcharges and that there will be no additional inmate-related surcharges on the calls. As this is a proposed change of the rate, KRS 278.260 requires a public hearing to be held prior to altering this inmate service rate.

Protection Against High Toll Fraud
Sought By MCI And InVision

MCI and InVision have applied for authority to institute programs to monitor their high toll fraud problem. Both utilities have procedures which require deposits to be placed with the utility prior to incurring third-party paid service. When prison inmates place collect calls, the third party receiving the call pays the bill. The emphasis of MCI's and InVision's programs is to fight the high toll fraud generated by the provision of inmate services.

A. MCI Request

On February 4, 1997, MCI filed a Petition for Waiver of Certain Regulations pursuant to KRS 278.512 and KRS 278.514, and 807 KAR 5:006, Section 27.⁴ MCI requests that the Commission grant it exemptions based on the statute or that it find that the high toll fraud is a special case for which the Commission may permit deviations from its regulations. MCI asserts that its procedures do not violate any of the Commission's regulations, but that the waivers are sought to "insure full consistency between MCI's high toll monitoring program and the Commission's regulations."⁵

⁴ Case No. 97-049, Petition.

⁵ Id. at 1.

MCI's risk management program is applied systemwide and implements procedures for toll fraud, theft and bad debt for all traffic not merely inmate services traffic. Sixty-five percent of all bills which are ultimately written-off as uncollectible come from customers who, according to MCI, never make a single payment. Thus MCI seeks to take "pre-invoice measures."⁶

MCI's high toll monitoring program consists of several steps. First, MCI identifies accounts that display usage patterns consistent with possible toll fraud. Second, MCI investigates the account to identify the customer's usage pattern and payment history. Third, MCI takes four potential actions as follows: (a) if customer verifies the calls and has good payment history, no action is taken; (b) if customer verifies the calls but has poor or nonexistent payment history, payment is requested from the customer and a block placed on the account until the payment is received; (c) if MCI is unable to contact the customer via phone and the customer has a neutral payment history, an overnight letter is sent requesting payment and indicating a service block will be placed on the account in 72 hours if payment is not forwarded; or (d) if MCI is unable to contact the customer and the customer has a poor or nonexistent payment history, an immediate block is placed on the account, then a letter is sent to the customer giving notification of the block and providing the 800 number for customer information.⁷

This high toll monitoring program does not initiate MCI's total service denial rights, nor does it restrict or disconnect the customer's local phone service. The blocking only affects the customer's MCI long-distance account or the customer's ability to receive

⁶ Id. at 4.

⁷ Id. at 6.

collect calls under the Inmate Services Contract.⁸ This program impacts very few customers but, according to MCI, has a "substantial impact on high risk bad debt."⁹

MCI requests waiver of 807 KAR 5:006, Sections 13(5) and 14, concerning notification for termination of service for nonpayment of bills. MCI believes that because the utility has authority over customer deposits pursuant to 807 KAR 5:006, Sections 7(3) and (5), its high toll monitoring program does not conflict with Commission regulations. MCI asserts that for its inmate services particularly, it has no means to obtain security deposits or proof of good credit history prior to the call being accepted. MCI requests that 807 KAR 5:006, Section 13(5), Section 14(1)(f), and Section 14(1)(f)(2), be waived in regard to its high toll monitoring program.

Thus, MCI is requesting that it be permitted to terminate or block a customer's account for nonpayment of bills without prior written notice and where written notice is given under the program, that no waiting period be required prior to termination or blocking. MCI also requests that blocking be permitted on a pre-invoiced basis if necessary and that the notice content requirement of 807 KAR 5:006, Section 13(5), be waived. Finally, MCI requests that in cases where a bill has been previously sent, no waiting period be required between the mailing of the original unpaid bill and the termination or blocking of service.¹⁰

Part of MCI's high toll monitoring program requires payment as a condition for continued service. MCI argues that its pre-invoice payment is not inconsistent with

⁸ Id. at 6, Note 4.

⁹ Id. at 6.

¹⁰ Id. at 10.

Section 7 of 807 KAR 5:006 regarding deposits. It cites subsection 3 which states in part, "if substantial change in usage has occurred, the utility may require that an additional deposit be made" and subsection 5 which states in part that "customer service may be refused or discontinued if payment of requested deposits is not made." Thus, MCI argues that where a customer "displays an unusually high usage pattern coupled with poor payment history" MCI should be permitted to require pre-invoice payments.¹¹

Finally, MCI argues that 807 KAR 5:006, Section 14(g), relating to the illegal use or theft of service is an insufficient solution to its high toll fraud problem because it requires MCI to prove that fraud or theft has occurred before it can take steps to limit its losses. MCI's high toll fraud prevention program has been tariffed by the FCC and is implemented on an interstate basis. Moreover, MCI filed a tariff on one day's notice on February 3, 1997 effective February 4, 1997 which addresses these same issues.

B. InVision

InVision seeks approval of a fraud prevention program for payphone services provided to regional and county jails in Kentucky. It furnishes inmate services to 550 facilities in 35 states. InVision's application was originally filed December 9, 1996. InVision argues that its fraud prevention program is required because of the 16 percent uncollectible rate. The uncollectible rate is extremely high when compared to 6 percent from non-inmate operator service. Like MCI, InVision argues that strict application of the Commission's regulations allows it only to react after fraud and the related revenue losses have occurred. Thus, according to InVision, it is forced either to raise rates for

¹¹ Id. at 14.

all subscribers, or to restrict the time inmates are permitted to call affecting even those inmates whose family and friends pay appropriately.

InVision filed an Amended Application on March 7, 1997 in which it described its request.¹² InVision contends that its fraud prevention program is not in any way inconsistent with the Commission's existing regulations. It requests an Order stating that its program does not constitute a termination of telephone service within the meaning of 807 KAR 5:006, Section 14 or, alternatively, that its program is not inconsistent with Sections 7, 13 and 14 of 807 KAR 5:006. If the Commission believes it is inconsistent, a waiver pursuant to Section 27 of 807 KAR 5:006 or an exemption pursuant to KRS 278.512 and KRS 278.514 is appropriate.

InVision's program assigns a line of credit to any telephone number of \$50 or some other amount. The called party is notified of the initial credit limit after accepting collect inmate calls. After contacting InVision's customer service toll free number, the called party is informed that if he wishes to exceed the initial credit limit, he must meet the following requirements: (1) provide a billing name and address to enable InVision to bill directly for its services; (2) the called party can charge up to 90 percent of the deposit posted. This allows called parties to determine the amount of the deposit and the threshold at which blocking further calls will occur until the outstanding balance is paid. The deposits bear interest and are returned if there are no InVision charges to the number during any 30-day period.¹³

¹² Case No. 96-593, Amended Application.

¹³ Id. at 6-8.

InVision contends that the blocking or suspending of collect inmate calls is not a termination of basic service for which the Commission's regulations regarding termination should apply. The block applies only to collect calls placed to the called number over InVision's network.¹⁴

C. Conclusions and Proposal

Inmate payphone services are specialized and largely directed by the authorities of the confinement facilities they serve. Both utilities supplied information regarding the high level of bad debt associated with the service. The programs are targeted to address the specific problems and not to require all customers to pay for the bad debt. As InVision asserted in its Amended Application, it would only be able to react to fraud after it has occurred and at a point where the billed party may have no incentive to pay charges that he accepted for services provided.¹⁵ The Commission has already provided exemptions for payphone service in Administrative Case No. 359.¹⁶ Tariffs for terms, conditions and rates are permitted to go into effect on one day's notice.¹⁷ Thus, in keeping with the changing regulatory environment the Commission has approved a lesser form of regulation for payphones, yet the Commission clearly regulates the terms and conditions of service. There have been many informal customer complaints against InVision and MCI for their blocking practices. The Commission rejects both plans as

¹⁴ Id. at 8 and 9.

¹⁵ Id. at 5.

¹⁶ Administrative Case No. 359, Exemptions For Interexchange Carriers, Long-Distance Resellers, Operator Service Providers And Customer-Owned, Coin-Operated Telephones.

¹⁷ Id. at 9.

proposed. Yet, the Commission will consider the following terms and conditions or other similar proposals:

a. Contact with a new "customer" is made within 24 hours following his or her identification on the utility's network. The initial contact is to be made by first class mail, addressed to the responsible adult member of the household. Should an address not be available to the utility, a telephone call to an adult member of the household may be permitted in order to obtain an address and/or explain the program details followed by a written explanation of the program.

b. The written explanation must provide a detailed explanation of the name of the utility, the service that is being provided, and a listing of the Kentucky facilities for which inmate services are provided by the utility.

c. The written explanation must provide a description of the rates charged for this service for local and long-distance, including an example of the charges for both a 1-minute call and a 15-minute call.

d. The customer is allowed an initial \$50 credit which is explained in the initial correspondence. When the credit has been exhausted, a detailed billing statement is delivered to the customer explaining the customer's obligation to pay and listing the dates for calls which have been applied to the customer's account.

e. The program provides a mechanism for the customer to prepay an amount determined by the customer to be established in an account for payment of future calls accepted by the customer.

f. The customer is provided an itemized statement of usage upon exhaustion of 80 percent of the prepaid amount with notice of blocking of service if additional prepayment is not received.

g. The customer is provided a refund of any unused amounts with a close-out account summary no later than 45 days from the date of the last account activity.

h. The program provides the customer with a contact name and toll-free number for the purpose of settling disputes and answering questions.

These terms and conditions balance the interests of MCI and InVision and their respective customers, by controlling bad debt and giving the customer the ability to control the volume of calls and the prepayments necessary to maintain service.

The Commission, having considered the complaint, the applications, and being otherwise sufficiently advised, HEREBY ORDERS that:

1. An investigation is established into whether it is reasonable to require all inmate service providers and providers to other confinement facilities to charge recipients of inmate calls an operator-assisted surcharge that is 50 percent less than the surcharge imposed in a non-inmate environment, because customer choice is absent for inmates.

2. The proposals of MCI and InVision for fraud control are hereby rejected.

3. InVision, MCI, and any other provider of inmate services or services to confinement facilities may opt to provide service pursuant to the terms and conditions proposed by the Commission herein.

4. Interested persons may file comments on this Order which will be considered prefiled testimony within 20 days of the date of this Order.

5. There shall be an informal conference to discuss these issues on Wednesday, December 9, 1997 at 9:00 a.m., Eastern Standard Time, in Conference Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky.

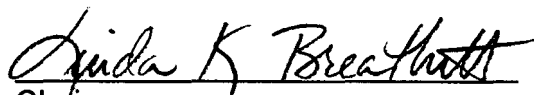
6. There shall be a hearing held on December 18, 1997 at 9:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky.

7. A copy of this Order shall be served on the Attorney General's Office of Rate Intervention, the Kentucky Department of Corrections, and all telecommunications carriers authorized to serve Kentucky.

8. Telecommunications carriers desiring to participate in this proceeding shall move to intervene within 20 days of the date of this Order.

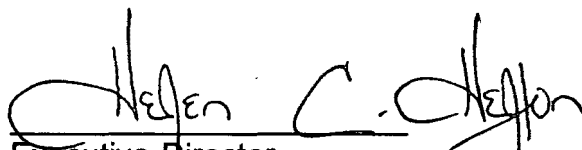
Done at Frankfort, Kentucky, this 10th day of November, 1997.

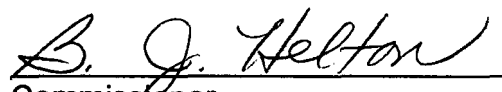
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