BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Disposition of Property Tax Revenues for Taxable Year 1991 by Certain Affected Telecommunications Companies:	**Application Nos. C-931(53) C-931(62)**
MCI Telecommunications Corp., Telecomm USA RESPONDENTS.	**DENIED**
	Entered: June 7, 1994

APPEARANCE

Steven G. Seglin, Esq.
134 South 13th Suite 400
Lincoln, NE 68508 (402) 434-7300

BY THE COMMISSION

O P I N I O N A N D F I N D I N G S

Hearing on this matter was held March 22, 1994 in the Commission Hearing Room, Lincoln, Nebraska. Notice of the hearing was sent by the Commission's Executive Director to the Respondents, MCI Telecommunications Corporation and Telecomm USA, on March 1, 1994 through their Attorney of Record, Steven G. Seglin.

The Commission opened this docket May 14, 1992. A format was established to approve or disapprove plans submitted by certain affected telecommunications companies. Specifically, this docket sought whether to approve disposition of excess revenues to certain telecommunications companies resulting from decreases in personal property taxes for the 1991 tax year. Neb. Rev. Stat. Section 86-803(9) (1992 Cum. Supp.) governs our review. Subsection (9) states:

> *The commission shall approve the disposition of revenue resulting from decreases in federal or state income taxes or property taxes due to a tax law change that results in a reduction in the tax liability of a telecommunications company of twenty percent or more in any taxable year. Any telecommunications company so affected shall file a plan with the commission proposing the disposition of the revenue at the same time that it files its annual report with the commission. The commission shall schedule a public hearing within thirty days of the filing of the plan or the plan shall be deemed approved.*

Shortly after the Nebraska Supreme Court ruled in the Bahensky[1] and Jaksha[2] cases that the property tax scheme (upon which the Commission and the affected companies had relied in calculating the amount of revenue subject to disposition in 1991) was unconstitutional, the Commission's Communication Department (the Staff) moved that we hold the C-931 docket in abeyance while the Legislature reacted to the court's rulings and we did so August 4, 1992. The voters of the State subsequently approved an amendment to the State Constitution (AMENDMENT 1) and the Legislature, in special session, altered the State's personal property tax laws to adjust the State's tax policy to the Bahensky and Jaksha decisions (LB 1). This new legislation has since survived the court's scrutiny (MAPCO II[3]) and this required a new calculation of the 1991 revenues for disposition by the telecommunications carriers subject to this docket.

As a first step to our analysis, we note that Telecomm USA is a subsidiary of MCI and in calculating the amount of disposition for 1991, the calculation combines the "windfall" amount for both companies (parent and subsidiary) as a single figure. MCI and Telecomm USA do not challenge the Staff's analysis that the amount of revenue available for disposition for 1991 is $361,432.

At the hearing, MCI proposed to use the 1991 amount for disposition within the scope of the Commission's pre-approved options which were established in our original order opening this docket (Docket No. C-931, May 26, 1992). These options apply to such revenue as is:

(1) used to install equipment necessary to provide 911 or E-911 service;
(2) used to implement Phase II of the Frame Relay Project;
(3) used to install distance learning or other technology assisted educational systems for secondary and/or primary school districts;
(4) returned to the local governmental subdivision from which they came;
(5) refunded to the respondent's customers on a pro rata basis; or
(6) used to provide toll route diversity to improve network reliability.

Further, the company does not propose to forego or return any of its refund entitlement from Nebraska political subdivisions for tax year 1989 because of the various supreme court decisions affecting the company. This proposal is significantly different

---

[1]Jaksha v. State, 241 Neb. 106, 486 N.W.2d 858 (1992).

[2]Bahensy v. State, 241 Ne.b 147, 486 N.W.2d 883 (1992).

[3]MAPCO Ammonia Pipeline Co. v. State Board of Equalization, 242 Neb. 263, ____ N.W.2d ____ (1993).

from what other affected companies have done with the 1989 revenues. Because of the substantial difference in the MCI/Telecomm USA proposal, we briefly trace what was done by way of stipulation in the case of the other companies.

Based on proposed stipulations between Staff and Respondents US West Communications and Lincoln Telephone Company, we lifted the order of abeyance as it applied to those companies and reviewed modified plans for disposition offered by them. Hearing was held in the Commission Hearing Room, Lincoln, Nebraska on June 2, 1993. All Commissioners were present to hear testimony. Entered into the record of that proceeding as Exhibits 5 and 6 were letters from Governor Ben Nelson and the State Tax Commissioner praising the stipulations and urging their approval.

The stipulations we considered at that hearing re-calculated the amount of revenue for disposition for the 1991 tax year. In addition, the stipulations addressed tax years 1989, 1990, and 1992. After hearing, the Commission approved the Lincoln Telephone and US West dispositions as per the stipulations. This was done by an order entered June 16, 1993. Following the US West and Lincoln Telephone orders, the other local exchange carriers entered into similar arrangements. The result was that local subdivisions, meaning taxpayers, were relieved of the burden of repaying these companies nearly $15 million in property tax recovery.

Now we consider whether to accept a plan from MCI which does not provide any relief to taxpayers, but instead places all the revenue in the hands of MCI for reinvestment in the company. The Commission's May 26, 1992 order says that a plan matching the pre-approved alternatives *should* be approved. It does not say such a plan *must* be approved. We cannot accept the MCI plan after comparing it to the other plans offered by local exchange carriers. The MCI plan is inadequate and does not serve the people of Nebraska as well as the other plans have served them. It is this Commission's obligation to examine MCI's plan per the Legislature's direction as set forth in section 86-803(9). The Commission has substantial discretion to determine whether a plan is to be approved or disapproved. In the past, the State Supreme Court has held that the Commission has a broad authority granted to it in the regulation of common carriers and its decisions will not be disturbed on appeal where there is evidence to support its decision. In this case, we have before us evidence of a plan which does not benefit taxpayers in any way similar to what was done in previous cases by other companies. It would be inconsistent for us to approve the MCI plan.

The Commission, being fully advised, finds we should deny the MCI plan and order MCI to develop another plan for our consideration. We note that MCI cannot have spent or somehow have disposed of the 1991 revenue because it has not received an order of approval from this Commission.

Printed with soy ink on recycled paper

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the plan for distribution of property tax revenues proposed by MCI Telecommunications Corporation and Telecomm USA be and it is hereby denied.

IT IS FURTHER ORDERED that MCI Telecommunications Corporation and Telecomm USA offer a new plan to the Commission within sixty days of the date of this order for disposition of the revenues available for the 1991 tax year.

MADE AND ENTERED at Lincoln, Nebraska this 7th day of June, 1994.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING

Daniel G Urwiller
Duane D. Gay
//s//Frank E. Landis
//s//James F. Munnelly

Chairman

ATTEST:

Executive Director

Printed with soy ink on recycled paper