

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

MCI Telecommunications
Corporation

File No.
ENF-96-01
NAL/Acct. No. 616EF001

Apparent Liability for Forfeiture

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 19, 1996; Released: January 23, 1996

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. By this Notice of Apparent Liability for Forfeiture ("NAL"), we initiate enforcement action against MCI Telecommunications Corporation ("MCI").¹ For the reasons discussed below, we find that MCI apparently willfully or repeatedly violated Commission rules and orders² by changing the primary interexchange carrier ("PIC") designated by Sandy Russo ("Russo") of Los Angeles, California, and Casimiro and Connie C. Gonzales ("the Gonzaleses") of Sylmar, California, without Russo's or the Gonzaleses' authorization. Based upon our review of the facts and circumstances surrounding the violations, we find that MCI is apparently liable for a forfeiture in the amount of eighty thousand dollars (\$80,000).

II. THE COMMISSION'S PIC CHANGE RULES AND ORDERS

2. In its *Allocation Order* and subsequent *Reconsideration Order* and *Waiver Order*,³ the Commission set forth rules and procedures for implementing equal access⁴ and cus-

tomers' presubscription⁵ to an interexchange carrier ("IXC").⁶ The Commission's original allocation plan required IXCs to have on file a letter of agency ("LOA") signed by the customer before submitting PIC change orders to the local exchange carrier ("LEC") on behalf of the customer.⁷ After considering claims by certain IXCs that this requirement would stifle competition because consumers would not be inclined to execute the LOAs even though they agreed to change their PIC, the Commission modified the requirement to allow IXCs to initiate PIC changes if they had "instituted steps to obtain signed LOAs."⁸ In 1992, the Commission again revised its rules because it continued to receive complaints about unauthorized PIC changes.⁹ Specifically, while the Commission recognized the benefits of permitting a telephone-based industry to rely on telemarketing to solicit new business, it required IXCs to institute one of the following four confirmation procedures before submitting PIC change orders generated by telemarketing: (1) obtain the consumer's written authorization; (2) obtain the consumer's electronic authorization by use of an 800 number; (3) have the consumer's oral authorization verified by an independent third party; or (4) send an information package, including a prepaid, return postcard, within three days of the consumer's request for a PIC change, and wait 14 days before submitting the consumer's order to the LEC, so that the consumer has sufficient time to return the postcard denying, cancelling or confirming the change order.¹⁰ Hence, the Commission's rules and orders require that IXCs either obtain a signed LOA or, in the case of telemarketing solicitations, complete one of the four telemarketing verification procedures before submitting PIC change requests to LECs on behalf of consumers.

3. Because of its continued concern over unauthorized PIC changes, the Commission recently prescribed the general form and content of the LOA used to authorize a change in a customer's primary long distance carrier.¹¹ The Commission's recent rules prohibit the potentially deceptive or confusing practice of combining the LOA with promotional materials in the same document.¹² The rules also prescribe the minimum information required to be included in the LOA and require that the LOA be written

¹ MCI Telecommunications Corporation is a Delaware corporation with headquarters located at 1801 Pennsylvania Avenue, N.W., Washington, D.C.

² 47 C.F.R. § 64.1100; Investigation of Access and Divestiture Related Tariffs, CC Docket 83-1145, Phase 1, 101 FCC 2d 911 (1985) (*Allocation Order*); *recon. denied*, 102 FCC 2d 503 (1985) (*Reconsideration Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket 83-1145, Phase 1, 101 FCC 2d 935 (1985) (*Waiver Order*).

³ See *supra* proceedings cited at note 2.

⁴ Equal access for interexchange carriers ("IXCs") is that which is equal in type, quality and price to the access to local exchange facilities provided to AT&T and its affiliates. *United States v. American Tel. & Tel.*, 552 F. Supp. 131, 227 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) (*Modification of Final Judgment* or "MFJ"). "Equal access allows end users to access facilities of a designated [IXC] by dialing '1' only." *Allocation Order*, 101 FCC 2d at 911.

⁵ Presubscription is the process by which each customer selects one primary interexchange carrier ("PIC"), from among several available carriers, for the customer's phone line(s). *Allocation Order*, 101 FCC 2d at 911, 928. Thus, when a customer dials

"1," only the customer accesses the primary IXC's services. An end user can also access other IXCs by dialing a five-digit access code (10XXX). *Id.* at 911.

⁶ Pursuant to the MFJ, the Bell Operating Companies (BOCs) were ordered to provide, where technically feasible, equal access to their customers by September 1986. *Id.*

⁷ An LOA is a document, signed by the customer, which states that the customer has selected a particular carrier as that customer's primary long distance carrier. *Allocation Order*, 101 FCC 2d at 929.

⁸ *Waiver Order*, 101 FCC 2d at 942.

⁹ *Policies and Rules Concerning Changing Long Distance Carriers*, 7 FCC Rcd 1038-39 (1992) (*PIC Change Order*).

¹⁰ See 47 C.F.R. § 64.1100; *PIC Change Order*, 7 FCC Rcd at 1045.

¹¹ *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 10 FCC Rcd 9560 (1995).

¹² See *id.* at 9574-75. Checks that serve as an LOA are excepted from the "separate or severable" requirement so long as the check contains certain information clearly indicating that endorsement of the check authorizes a PIC change and otherwise complies with the Commission's LOA requirements. *Id.* at 9573.

in clear and unambiguous language.¹³ The rules prohibit all "negative option" LOAs¹⁴ and require that LOAs and any accompanying promotional materials contain complete translations if they employ more than one language.¹⁵

III. THE RUSSO AND GONZALES COMPLAINTS

A. The Russo Complaint

4. On August 10, 1995, the Commission received a written complaint from Russo alleging that MCI had converted her presubscribed long distance service provider from AT&T Corporation ("AT&T") to MCI without her authorization.¹⁶ Russo states that after she received a card in Spanish from MCI, she had it translated and discovered that it thanked her for picking MCI as her long distance carrier. Russo then contacted her local telephone company, Pacific Bell, who confirmed that her long distance carrier had been changed to MCI.¹⁷ In investigating the reason her long distance carrier was switched, Russo was apparently directed to Amway Corporation ("Amway"), a marketing agent for MCI, and received from the Amway/MCI Service Department a faxed copy of a LOA purporting to bear her signature. Russo states that the signature on the LOA is not hers and that the signature does not reflect the correct spelling of her name. Russo further points out that the LOA purportedly bearing her signature is written entirely in Spanish, a language she does not speak, read, or write. Russo attached to her complaint a chronology of her dispute with MCI, a copy of the LOA she received from Amway, and samples of her handwriting offered as evidence that the signature on the LOA is not hers.¹⁸

5. On December 1, 1995, the Common Carrier Bureau's Consumer Protection Branch¹⁹ directed MCI to provide specific information regarding the conversion of Russo's telephone service.²⁰ In its response, MCI states that Russo's service was changed to MCI on the basis of a LOA submitted by Amway.²¹ MCI does not deny that Russo's signature on the LOA is a forgery and offers no explanation for how it was obtained. Rather, MCI states that Amway currently reviews LOAs for completeness and that MCI and Amway will be implementing a more stringent verification process in the future.

B. The Gonzales Complaint

6. On September 6, 1995, the Gonzaleses filed a written complaint with the Commission alleging that MCI had converted their prescribed long distance service provider from AT&T to MCI without their authorization.²² The Gonzaleses state that in August they received a letter, written entirely in Spanish, thanking them for making MCI

their long distance carrier. According to the Gonzaleses, neither of them read Spanish. Upon contacting MCI regarding the change in their long distance service, Mrs. Gonzales was told by an MCI representative that the switch was made on the basis of their purchase of an Amway product. The Gonzaleses state, however, that they had not made any Amway purchases. Mrs. Gonzales then contacted Amway, who forwarded to the Gonzaleses a copy of the LOA relied on by MCI as the basis for requesting Pacific Bell to change the Gonzaleses' primary long distance carrier. According to the Gonzaleses, the signature is a forgery and, further, their surname is misspelled.²³ The Gonzaleses submitted a copy of this LOA with their complaint.

7. On December 1, 1995, the Common Carrier Bureau's Consumer Protection Branch directed MCI to provide specific information regarding the conversion of the Gonzaleses' telephone service.²⁴ In its response, MCI states that the Gonzaleses' service was changed to MCI on the basis of a LOA submitted by Amway.²⁵ MCI does not deny that Mr. Gonzales' signature on the LOA is a forgery and offers no explanation for how it was obtained. Rather, MCI states that Amway currently reviews LOAs for completeness and that MCI and Amway will be implementing a more stringent verification process in the future.

IV. DISCUSSION

8. We have carefully evaluated the information submitted in connection with Russo's and the Gonzaleses' informal complaints and conclude that MCI is apparently liable for forfeiture for willful or repeated violation of the Commission's rules and PIC change requirements. We find MCI's apparent actions particularly egregious. It appears that on or about July 20, 1995, and August 3, 1995, MCI submitted PIC change requests to GTE California, Inc. ("GTE") and Pacific Bell, both based on apparently forged LOAs. These actions resulted in the unauthorized conversion of Russo's and the Gonzaleses' long distance telephone service from AT&T to MCI. The statements and information provided by Russo and the Gonzaleses leave virtually no doubt that the LOAs were not executed by the complainants and that MCI lacked the requisite authorization to request a PIC change to either Russo or the Gonzaleses' long distance service. With regard to Russo's complaint, her name is misspelled on the LOA form that MCI used as the basis for the PIC change submitted to Pacific Bell and there is no similarity between the signatures provided by Russo and her purported signature on the LOA.²⁶ With respect to the Gonzaleses' complaint, their name is also misspelled on the LOA that MCI used as the basis for the PIC change submitted to GTE and there is no similarity between the

¹³ See *id.* at 9564-65.

¹⁴ See *id.* at 9565-66. "Negative option" LOAs require consumers to take some action to avoid having their long distance telephone service changed.

¹⁵ See *id.* at 9581.

¹⁶ Sandy D. Russo, Informal Complaint No. IC-95-22370 (August 10, 1995).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Formerly known as the Informal Complaints and Public Inquiries Branch.

²⁰ Notice of Informal Complaint No. IC-95-22370 (December 1,

1995).

²¹ MCI Response to Informal Complaint No. IC-95-22370 (January 18, 1996).

²² Casimiro and Connie C. Gonzales, Informal Complaint No. IC-95-23743 (September 6, 1995).

²³ *Id.* The signature on the LOA reads "Gonzalez," not "Gonzales," as used by the complainants.

²⁴ Notice of Informal Complaint No. IC-95-23743 (December 1, 1995).

²⁵ MCI Response to Informal Complaint No. IC-95-23743 (January 18, 1996).

²⁶ See Attachment 1.

signature on the LOA and that provided by Mr. Gonzales.²⁷ In addition, the LOA at issue in the Russo complaint was written entirely in Spanish and has a box checked indicating a preference for Spanish. Russo has represented that she does not speak, read, or understand the Spanish language. The LOA at issue in the Gonzales complaint also has a box checked indicating a preference for Spanish. The Gonzaleses have represented that they do not read the Spanish language. Under these circumstances, we conclude that MCI's apparent actions were in willful or repeated violation of the Commission's PIC change rules and orders and that a substantial forfeiture penalty is appropriate.

9. We also note that with regard to PIC changes, the actions of Amway, MCI's marketing agent, do not relieve MCI of its independent obligation to ensure compliance with our rules, nor do they otherwise mitigate MCI's role in the apparent violations. The Communications Act deems the acts or omissions of an agent or other person acting for a common carrier to be the acts or omissions of the carrier itself.²⁸ Hence, the Act expressly prohibits a carrier from evading the requirements of the Act or the Commission's rules or orders by hiring someone else who then engages in conduct that contravenes these requirements.

10. As a general matter, the unauthorized conversion of a customer's presubscribed long distance carrier continues to be a wide-spread problem in the industry.²⁹ We are particularly troubled by what appears to be a common practice by some IXC's of relying on unverified LOAs, which turn out to be falsified or forged, to effect changes in consumers' long distance service. The pervasiveness of the problem suggests that our current administration of the law has not produced sufficient deterrence to non-compliance and the carriers have little incentive to curtail practices that lead to consumer complaints. Furthermore, as a practical matter, the carriers' responses to alleged unauthorized conversion complaints rarely provide a detailed explanation or justification of the carrier's actions. Therefore, to draw industry's attention to the seriousness of the problem and to provide incentives to comply with the Commission's rules and orders, we intend to scrutinize consumer complaints and to take prompt enforcement action, including the imposition of substantial monetary fines, when the facts indicate that a carrier has failed to take the necessary steps to ensure that LOAs are valid and duly authorized. If carriers intend to rely on a LOA to request a PIC change, they will be responsible for ensuring its validity.

11. Section 503(b)(2)(B) of the Communications Act authorizes the Commission to assess a forfeiture of up to one hundred thousand dollars (\$100,000) for each violation, or each day of a continuing violation, up to a statutory maximum of one million dollars (\$1,000,000) for a single act or failure to act.³⁰ In exercising such authority, the Commis-

sion is required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."³¹ For purposes of determining an appropriate forfeiture penalty in this case, we regard the conversion of the Russo and the Gonzaleses' telephone lines as two violations. After weighing the circumstances surrounding each violation, we find that MCI is apparently liable for a forfeiture of forty thousand dollars (\$40,000) for the unauthorized conversion of the Russo line and forty thousand dollars (\$40,000) for the conversion of the Gonzaleses line, resulting in a total forfeiture of eighty thousand dollars (\$80,000). MCI will have the opportunity to submit evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.³² In this regard, we note that the Commission has previously held that a licensee's gross revenues are the best indicator of its ability to pay a forfeiture and that use of gross revenues to determine a party's ability to pay is reasonable, appropriate, and a useful yardstick in helping to analyze a company's financial condition for forfeiture purposes.³³ We will give full consideration to any financial information provided by MCI before assessing a final forfeiture amount.

V. CONCLUSIONS AND ORDERING CLAUSES

12. We have carefully reviewed the information submitted in connection with Casimiro and Connie C. Gonzales and Sandy Russo's informal complaints and conclude that on or about July 20, 1995, and August 3, 1995, MCI apparently converted or caused a local exchange carrier to convert the Gonzaleses' and Russo's telephone lines without either the Gonzaleses' or Russo's authorization through the use of apparently forged LOAs. We further conclude that MCI thereby apparently willfully or repeatedly violated Commission rules governing primary interexchange carrier conversions, and that its conduct warrants a forfeiture in the amount of eighty thousand dollars (\$80,000).

13. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of Communications Act of 1934, as amended, 47 U.S.C. § 503(b), and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that MCI Telecommunications Corporation IS HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of eighty thousand dollars (\$80,000) for its willful or repeated violation of the Commission's PIC change rules and orders, 47 C.F.R. § 64.1100; *PIC Change Order*, 7 FCC Rcd 1038 (1992); *Allocation Order*, 101 FCC 2d 911 (1985); *Waiver Order*, 101 FCC 2d 935 (1985).

14. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty days of the release of this Notice, MCI Tele-

²⁷ See Attachment 2.

²⁸ See 47 U.S.C. § 217.

²⁹ From June 1994 to June 1995, of the 28,773 informal complaints filed, 7,960 were for alleged unauthorized conversions of the customer's presubscribed long distance carrier.

³⁰ 47 U.S.C. § 503(b)(2)(B).

³¹ *Id.* § 503(b)(2)(D).

³² See 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

³³ PJB Communications of Virginia, 7 FCC Rcd 2088, 2089 (1992) (finding that forfeitures of \$5,000 and \$3,000 assessed against two jointly owned and operated paging companies were

not excessive because the total forfeiture amount (\$8,000) represented approximately 2.02 percent of the companies' combined gross revenues of \$395,469); see also David L. Hollingsworth d/b/a Worland Services, 7 FCC Rcd 6640 (Com. Car. Bur. 1992) (\$6,000 forfeiture representing approximately 1.21 percent of licensee's 1991 gross revenues and approximately 1.34 percent of projected 1992 gross revenues not found to be excessive); Afton Communications Corp., 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (\$6,000 forfeiture representing approximately 3.91 percent of 1990 gross revenues and 2.75 percent of projected 1992 gross revenues not found to be excessive).

communications Corporation SHALL PAY the full amount of the proposed forfeiture³⁴ OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

15. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to Mr. Bert C. Roberts, MCI Telecommunications Corporation, 1801 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Regina M. Keeney
Chief, Common Carrier Bureau

³⁴ The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. Reference should be made on MCI Telecommunications Corporation's check or money order to "NAL/Acct. No.

616EF001." Such remittances must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box. 73482, Chicago, Illinois 60673-7482.