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December 2, 2003

Jaclyn A. Brillling  
Acting Secretary to the Commission  
NYS Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223-1350

**Re: Case No. 03-C-1058  
Ordinary Tariff Filing of MCI Worldom Communications  
to Change Maximum Security Rate Plan for New York  
State Department of Corrections from a Mileage-Sensitive  
Structure for IntraLATA and InterLATA to a Flat Rate  
Structure**

Dear Secretary Brillling:

Enclosed please find the original and twenty-five copies of the New York State Department of Correctional Services (DOCS) comments in response to the requests for rehearing filed in the above-referenced matter. A copy has been served by regular mail on each party listed on the attached service list.

Thank you for your consideration in this matter.

Sincerely,

Jason D. Effman  
Assistant Counsel

Enclosures

cc: Secretary Brillling (via e-mail)  
Kathleen Burgess, Office of General Counsel (via e-mail)  
Attached Service List

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**Ordinary Tariff Filing of MCI Worldom  
Communications to Change Maximum  
Security Rate Plan for New York State  
Department of Corrections from a  
Mileage-Sensitive Structure for IntraLATA  
and InterLATA to a Flat  
Rate Structure**

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**Re: Case No. 03-C-1058**

**RESPONSE TO PETITION FOR REHEARING**

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Dated: December 2, 2003

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

**Ordinary Tariff Filing of MCI Worldom  
Communications to Change Maximum  
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Department of Corrections from a  
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Re: Case No. 03-C-1058

**RESPONSE TO PETITION FOR REHEARING**

**Preliminary Statement**

On November 25, 2003, the New York State Department of Correctional Services (DOCS) obtained a copy of the request for reconsideration submitted on behalf of Outside Connection, Inc., from PSC Staff Counsel. In addition, on December 1, 2003, DOCS received the petition for rehearing dated November 26, 2003, from the Public Utility Law Project of New York (PULP). DOCS hereby requests that Outside Connection's request for reconsideration and PULP's petition for rehearing be denied or, in the alternative, that the Commission approve as just and reasonable the tariff revisions to the Maximum Security Rate Plan as originally filed by MCI on August 15, 2003, without the need for bifurcation.

Outside Connection asserts a number of arguments with respect to the findings by the Commission and with respect to various factual matters. It also draws a number of inferences that are not supported by the record. DOCS asserts that each of these arguments is incorrect. Therefore, Outside Connection's request for reconsideration should be denied.

PULP asserts that, as a matter of law, the Commission has the authority to determine whether the whole rate as proposed by MCI is just and reasonable.<sup>1</sup> PULP's request for reconsideration should also be denied. In the alternative, DOCS respectfully submits that PULP's request for a further investigation should be denied and that, on the record before it, the Commission should find that the tariff revisions to the Maximum Security Rate Plan as originally filed by MCI on August 15, 2003, are just and reasonable as a whole.

### Argument

As a preliminary matter, DOCS concurs with the Commission's determination that it does not have jurisdiction over DOCS under the Public Service Law. Nevertheless, DOCS asserts that the Commission has the authority to determine that the rates filed by MCI are just and reasonable as a whole.

Outside Connection asserts that the Commission should reconsider several of its findings. Outside Connection focuses on the Commission's determination to compare the jurisdictional portion of the proposed rate to the rates for an analogous service, station-to-station calling from payphones. Outside Connection also questions the Commission's conclusion that the cost to MCI of providing inmate operator service is greater than the cost of providing station-to-station calling from payphones, and that the terms of the contract between MCI and DOCS were subject to the competitive bidding process.<sup>2</sup>

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<sup>1</sup> PULP argues that the Commission committed errors of law in its interpretation of the Public Service Law. Although PULP asserts that the rates "warrant a full and careful inquiry by the Commission into the reasonableness of all the rates and charges" (PULP November 26, 2003 Petition for Rehearing ("PULP Petition") at 7), it does not premise its argument on factual misstatements and unjustified inferences as does Outside Connection. Therefore, while DOCS' requests that PULP's petition be denied, it has not responded to the specific legal analysis. Nevertheless, DOCS disagrees with PULP's contention that the commission paid to DOCS by MCI results in an unreasonable rate.

<sup>2</sup> In its request for reconsideration, Outside Connection drew an inference from the

Outside Connection requests that the Commission reconsider several of its findings. There is a serious flaw in Outside Connection's argument. Outside Connection's argument is premised on the Commission's consideration of "MCI's new *local* inmate service pricing" (emphasis added).<sup>3</sup> However, the Commission has not been asked to determine whether the proposed tariff is just and reasonable with respect to inmate local collect calling. As the Commission noted, the tariff filing revises the rates for inmate operator services applicable to local, intraLATA and interLATA collect calls. Thus, while the revised rates will result in an increase in charges for the friends and families of 17% of the inmate population, the friends and families of 83% of the inmate population will see a reduction in rates. The Commission correctly considered whether the amended flat-rate with respect to all inmate collect calls placed from a DOCS correctional facility (local, intraLATA and interLATA), is just and reasonable, rather than examining only the increase in local calling rates.

Outside Connection asserts that the Commission should reconsider its analysis to the extent that it compared the jurisdictional portion of the rate to the entire rate charged for analogous station-to-station calling. DOCS recognizes that the Commission has a great deal of flexibility in rate-making determinations and furthermore, that the Commission is free to entertain or ignore any particular factor, or to assign whatever weight it deems appropriate in setting rates. *See New York Telephone Co. v. Public Service Com'n of the State of N.Y.*, 95 NY 2d 40. Thus, the Commission

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Commission's reference to the competitive bidding process that DOCS asserts is unwarranted. Outside Connection asserts that the Commission's point in mentioning this factor is that the process creates an incentive to keep the rates for inmate service "as low as reasonably possible." *Compare* October 30, 2003 Order ("Order") at 24 with OC November 7, 2003 Request for Reconsideration ("OC Request") at pages 2 and 4. DOCS' believes this inference is incorrect. Rather, it is DOCS' understanding that the reference to the competitive bidding process pertains to the Commission's recognition that it does not have jurisdiction over the manner in which DOCS, as a government agency, enters into contracts.

<sup>3</sup> See, e.g., OC Request at 2, Argument.

is entitled to make the comparison that it believes is most appropriate for determining whether the rate is just and reasonable.

Nevertheless, if the Commission chooses to consider an alternative rate comparison, DOCS suggests that the rates as a whole should be considered. The Commission recognized that MCI assesses a surcharge of \$1.80 per call and applies varying minutes-of-use rates based on time-of-day and distance, which range from a low of \$0.17 for the first minute and \$0.11 for each additional minute to a high of \$0.36 for the first minute to \$0.22 for each additional minute for its station-to-station calling service. AT&T assesses a surcharge of \$2.25 for station-to-station collect calls and charges a flat rate of \$0.30 per minute.<sup>4</sup> The average inmate call placed on the DOCS Call Home Program system is 19 minutes.<sup>5</sup> The cost of a 19 minute inmate collect call under the revised tariff is \$6.04.<sup>6</sup> Based upon the rates for station-to-station calling referenced by the Commission, an individual placing a 19 minute call from an MCI public payphone will be charged between \$3.95 and \$6.12, depending upon the time-of-day and distance of the call. The same call placed on an AT&T public payphone will cost \$7.95. Based upon this comparison of the whole revised tariff rate to the whole rates for an analogous service, it is clear that the rate charged under the revised tariff is comparable to, and in fact less than, the rate charged many users of public payphones.<sup>7</sup> Thus, the Commission may find that the revised tariff rate as a whole is just and reasonable.

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<sup>4</sup> Order at 24-25.

<sup>5</sup> See "Inmate Pay Phone Access Fosters Family Ties, Enhances Security for All," Page 5.

<sup>6</sup> This same rate is applicable whether the inmate calls locally, anywhere within New York State, anywhere in the continental United States, as well as to a number of U.S. Territories and Canada.

<sup>7</sup> At page 3 of their request for reconsideration, footnote 7, Outside Connection makes a similar comparison using 42.5% the MCI rate for a 19 minute station-to-station collect call. However, their comparison is based on the lowest possible MCI rate for such service. They fail to recognize that

Furthermore, the comparison to the rates for station-to-station calling does not even consider that the cost to MCI of providing inmate collect calling service is greater than the cost of providing station-to-station calling from a public payphone. The Commission noted that the rate includes costs to MCI of maintaining the security features associated with the service.<sup>8</sup> Outside Connection argues that there is no support for the conclusion that the costs associated with providing these security features are greater than the costs incurred in providing the analogous payphone service.<sup>9</sup> Contrary to Outside Connection's contention, DOCS does not believe that the Commission intended to conduct a direct comparison of the costs to MCI in providing analogous payphone service. Rather, the Commission recognized that MCI is contractually obligated to bear the costs of maintaining the security features associated with the DOCS Call Home Program service.

Nevertheless, there is ample evidence in the record to support a conclusion that the costs to MCI associated with maintaining the security features of the service are significant, even in comparison to the costs associated with providing the analogous payphone service. MCI is contractually required to provide and bear the cost of limiting each inmate by an assigned PIN to only those 15 telephone numbers active at any one time; to provide sophisticated call-blocking capabilities to ensure that inmates are not calling victims, witnesses, prosecutors, judges and others; to block automatically all toll-free "800" or pay-per-call "900" area code numbers; to pre-record the inmate name associated with each PIN for the collect-call announcement; to provide sophisticated monitoring and recording equipment that allows staff to monitor and record every call; and to integrate software into the system to help detect call forwarding and third party calling, both

42.5% of that station-to-station call could be as high as \$2.60 compared to \$2.57 for a similar inmate call.

<sup>8</sup> Order at 24.

<sup>9</sup> OC Request at 4.

of which are prohibited by DOCS' regulations. There are also a number of other security related features that MCI is required to provide as detailed in DOCS' September 9, 2003 comments.

Furthermore, the FCC has recognized that such security features associated with providing inmate telephone services contribute to the higher costs to the telephone service provider, and thus to higher rates. *See, e.g.,* Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 17 FCC Rcd 3248, at para. 72 (2002) ("We recognize that the provision of inmate calling services implicates important security concerns and, therefore, involves costs unique to the prison environment"); and In the Matter of Billed Party Preference for 0+ InterLATA Calls, 13 FCC Rcd 6122, para. 56 *et seq.*, (1998) (quoting 11 FCC Rcd 7274, 7301 (OSP Reform Notice)). Certainly the Commission is free to accept the FCC's recognition of these costs, especially in light of the substantial record detailing the security features integrated into DOCS' Call Home Program telephone system.

Finally, Outside Connection argues that the competitive bid process for the Call Home Program may result in higher rates rather than lower rates.<sup>10</sup> Although the FCC acknowledged this as a potential problem in bidding for inmate telephone service, this issue is not before the Commission. The Commission correctly recognized that it does not have jurisdiction over DOCS, nor over the manner in which it procures services for the Call Home Program.<sup>11</sup> Therefore, issues pertaining to the bidding process itself do not provide a basis for reconsideration.

Nevertheless, as Outside Connection asserts, the FCC has acknowledged that the rates for inmate calls 'may be partially attributable to the absence of market forces.'<sup>12</sup> The FCC sought

<sup>10</sup> OC Request at 4, citing Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 17 FCC Rcd 3248, at para. 12.

<sup>11</sup> Order at 23.

<sup>12</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions of the

comment on “whether and how any states have addressed the relationship between these commissions and inmate calling rates,...”<sup>13</sup> To date, the FCC has not taken any action in this area.

DOCS has effectively eliminated the potential for the bidding process to result in higher rates. Starting in 1991, each time DOCS has issued a Request for Proposal (RFP) seeking bids for the Call Home Program contract, the RFP has limited the telephone rates for the new contract to those of the tariff then in effect.<sup>14</sup> Thus, the responsive bidders were not permitted to increase the rates in order to offer a lower percentage but higher dollar value commission. This procurement method has essentially capped the amount that can be charged for inmate telephone service in DOCS’s facilities while allowing DOCS to more effectively evaluate the responsive bids.<sup>15</sup>

Although the commission paid by the provider to DOCS has changed with each new contract term, the last time the calling rates were changed was in late 1994, when VAC was the contract provider for the April 1, 1992 through March 31, 1996 contract.<sup>16</sup> Therefore, if the issue were before it, the

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Telecommunications Act of 1996, 17 FCC Rcd 3248 at para. 73 (emphasis added).

<sup>13</sup> Id.

<sup>14</sup> Prior to the 1991 RFP, local and long distance service was provided under separate contracts with the regional carriers at those carriers rates for operator assisted calling. Beginning in 1991 (for the April 1, 1992 through March 31, 1995 contract term), DOCS first entered into a contract combining local and long distance service for inmate calls. Annexed hereto are relevant portions of contract number X197735 for the Call Home Program. This contract had an initial term of three years, from April 1, 1992 through March 31, 1995, with the right to renew for two additional one year terms. The contract was awarded to Value-Added Communications, Inc. (“VAC”), and the contract was initially renewed for each term, but was subsequently canceled and the contract was rebid for service commencing on April 1, 1996. A copy of the December 6, 1995 notice letter is also attached. Under the RFP and resulting contract, the rates were capped at the then current AT&T and New York Telephone published interLATA, interstate, intraLATA rates for operator assisted calling. *See* section 2.11.

<sup>15</sup> *See* Contract No. X160812, Exhibit A, Attachment G (RFP), submitted to the Commission on September 18, 2003. Annexed hereto are relevant portions of the October 30, 1995 RFP, including section 2.12 and Attachment G establishing the rates to be charged.

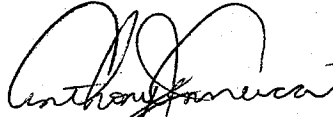
<sup>16</sup> Annexed is the January 12, 1995 letter from VAC confirming that the revised tariff was issued and filed on December 30, 1994, to be effective beginning in January 1995.

Commission could rightfully conclude that the bidding process does not result in higher rates for inmate operator service under the DOCS Call Home Program.

### CONCLUSION

Wherefore, the Commission should deny the requests for a rehearing and for a rate proceeding. In the alternative, the Commission should deny the request for a rate proceeding and approve as just and reasonable the tariff revisions to the Maximum Security Rate Plan as originally filed by MCI on August 15, 2003, without requiring bifurcation of the tariff.

Respectfully Submitted,



Anthony J. Annucci  
Deputy Commissioner  
and Counsel