

VIRGINIA:

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*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Friday *the* 28th *day of* February, 2003.

MCI WorldCom Network Services, Inc.,
MCI WorldCom Communications of
Virginia, Inc., and Virginia
Department of Corrections, Appellants,

against Record Nos. 021262 and 021247
S.C.C. Case No. PUC990157

Robert E. Lee Jones, Jr., Citizens
United for the Rehabilitation of
Errants - Virginia, Special Consumer
Counsel, and State Corporation
Commission, Appellees.

And

Robert E. Lee Jones, Jr., Appellant,

against Record No. 020859
S.C.C. Case No. PUC990157

Citizens United for the Rehabilitation
of Errants - Virginia, Virginia Department
of Corrections, MCI WorldCom Network
Services, Inc., MCI WorldCom Communications
of Virginia, Inc., and State
Corporation Commission, Appellees.

Upon appeals of right from
an order entered by the State
Corporation Commission on the
22nd day of August, 2001.

Upon consideration of the record, briefs, and argument of
counsel, the Court is of opinion that there is error in the order
of the State Corporation Commission.

On September 17, 1999, Robert E. Lee Jones, Jr. ("Jones"), an inmate in the custody of the Virginia Department of Corrections ("VDOC"), filed a complaint with the State Corporation Commission ("Commission") alleging, inter alia, that "M.C.I. Tele-Communications Corporation" ("MCI") and VDOC charged excessive rates for telephone service in the Commonwealth's correctional facilities. After several filings and the inclusion of other parties, including Citizens United for Rehabilitation of Errants ("CURE") and Special Consumer Counsel, the parties presented evidence to the Commission on February 14-15, 2001.

On August 22, 2001, the Commission entered a Final Order in Jones' favor. The Commission ruled that it had jurisdiction to hear the case pursuant to Code § 56-234; the service provided by MCI was not provided on a competitive basis; MCI must account for all its charges that are inconsistent with its filed tariffs; and, Code § 56-481.1 permitted the Commission to re-impose rate regulation on services not found to be provided on a competitive basis.

In separate appeals, MCI Worldcom Network Services, Inc. and MCI Worldcom Communications of Virginia, Inc. (collectively, "MCI") and VDOC appealed the adverse judgment. Both MCI and VDOC named

Jones, CURE, Special Consumer Counsel, and the Commission as Appellees. In addition, curiously, Jones appealed the judgment in his favor, naming CURE, VDOC, MCI, and the Commission as Appellees. Subsequently, the three appeals were consolidated.

This appeal involves VDOC's contract with MCI to provide intrastate interexchange telephone service ("ITS") to the Commonwealth's correctional facilities. ITS allowed inmates to make local and long-distance collect calls to callers on a pre-determined list. In addition to telephone service, the contract also provided that MCI supply monitoring equipment used to record and monitor each call made for security purposes. MCI was responsible for the administration of the security features and for repair and maintenance of the system. MCI was required to meet reporting and auditing requirements imposed by VDOC. Finally, MCI trained both inmates and VDOC personnel in the use of the system.

MCI and VDOC set forth several assignments of error. However, our resolution of this appeal only requires examination of the Commission's jurisdiction to adjudicate this matter. MCI and VDOC argue that because Code § 56-234 prevents the Commission from exercising jurisdiction over "contracts for service rendered by any telephone company to the state government," the Commission does not

have jurisdiction over the MCI/VDOC contract. In response, the Commission, Jones, CURE, and Special Consumer Counsel maintain that the MCI/VDOC contract includes the public as a "user" of ITS provided by MCI to VDOC because the public ultimately receives and pays for the collect calls made by inmates. Therefore, because the public is a "user" of the services, the Commission, etc. argue that Code § 56-234 does not abrogate the Commission's jurisdiction over this case. We agree with MCI and VDOC.

The provisions of Code § 56-234 applicable to this controversy require "every public utility to furnish reasonably adequate service and facilities at reasonable and just rates to any person, firm or corporation" and that "[t]he charge for such service shall be at the lowest rate applicable with schedules filed with the Commission pursuant to § 56-236." However, the text of § 56-234, prior to a 2002 Amendment, specifically exempted from this requirement "schedules of rates, or contracts for service rendered by any telephone company to the state government" The Inmate Telephone System contract is an agreement between MCI and a state agency. That the inmates and the recipients of their calls may be users of the system created by the contract does not eliminate the exception pursuant to § 56-234 for "contracts for

service rendered . . . to the state government." The Inmate Telephone System contract not only provides the system itself, but includes specific security provisions and training of inmates and VDOC staff. Inmates and the persons they call certainly receive some benefits from the system created by the contract, but the contract itself is between MCI and VDOC, an agency of state government. As such, it falls squarely within the exception from Commission regulations in the applicable version of § 56-234.

The Commission did not have jurisdiction over this controversy. Accordingly, the order of the Commission is reversed and the complaint is dismissed.

This order shall be certified to the State Corporation Commission.

JUSTICE LACY, with whom SENIOR JUSTICE COMPTON joins, dissenting.

I respectfully dissent. The Code section in effect at the time of this dispute stated, in pertinent part, that the Commission did not have jurisdiction over "contracts for service rendered by any telephone company to the state government." Code § 56-234 (Repl. Vol. 1995). The service at issue in this case is the rates

charged by MCI to the recipients of collect calls placed by inmates from the Department of Corrections.

Try as one might, it is factually inaccurate to say that the telephone service at issue is provided by the telephone company "to the state government." The state government may authorize the placement of these calls or provide the facilities for placing these calls, but unlike telephone service used by the state government and its employees to conduct the business of the state, no entity or person in state government pays for, initiates, participates in, or receives these telephone calls. On this basis alone, I conclude that the rates charged for inmates' collect telephone calls were not exempt from Commission jurisdiction. Burying such rates in a multi-faceted contract with a state agency does not, and should not, defeat the Commission's jurisdiction over and responsibility to insure that such rates are just and reasonable.


The amendment of the statute in 2002 further supports this conclusion. That amendment specifically addresses the Commission's jurisdiction in those instances in which telephone service is provided not only to the state but also to the public through a contract between the state government and the public utility. Code

§ 56-234 (Cum. Supp. 2002). The amendment also specifically differentiates between contracts containing a schedule of rates for the provision of telecommunication services and any services provided through a contract between the utility and the state. As a general rule, the 2002 amendment would give rise to the presumption that a change in the substantive law was intended.

For the above reasons, I would affirm the decision of the State Corporation Commission.

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Teste:



Clerk