

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Disposition) Application No. C-931(53)
of Property Tax Revenues for Tax) C-931(62)
Year 1991 and Certain Other Tax)
Years by Certain Affected Tele-) ORDER APPROVING
communications Companies:) DISPOSITION FOR TAX YEARS
) 1989, 1990, 1991, 1992,
MCI Telecommunications Corp.,) 1993, 1994 and 1995
and Telecom*USA,)
RESPONDENTS.) Entered: November 10, 1994

BY THE COMMISSION

OPINION AND FINDINGS

In this order, the Commission considers whether to approve a proposed stipulation between the Communications Department (the Staff) and MCI Telecommunications Corp., (MCI) and Telecom*USA (Telecom). 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 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.

In the summer of 1992, after the commencement of this docket, the Nebraska Supreme Court ruled in the Bahensky and Jaksha cases that the personal property tax scheme (upon which the Commission and the various companies relied in calculating the amount of revenue subject to disposition in 1991) was unconstitutional. The Staff then moved that we hold docket C-931 in abeyance pending legislative action by the Nebraska Unicameral. This was motion was approved August 4, 1992.

Nebraska voters 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 its tax policy to the Bahensky and Jaksha decisions (LB 1). This new legislation has since survived the court's scrutiny (MAPCO II) and this requires a new calculation of the 1991 revenues for disposition by the telecommunications carriers subject to this docket.

Based on proposed stipulations between the Staff and Respondents US West Communications (US West) and the Lincoln Telephone Company (LT&T), we lifted the order of abeyance as its applied to those companies and reviewed modified plans for disposition offered by them. A hearing was held in the Commis

Application No. C-931(53)
C-931(62)

PAGE TWO

sion hearing room, Lincoln, Nebraska on June 2, 1993. All Commissioners were present to hear testimony. Entered into the record as Exhibits 5 and 6 were letters from Governor E. Benjamin Nelson and State Tax Commissioner M. Berri Balka in support of the stipulations and urging the Commission to look favorably upon them.

Briefly, 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 the hearing, the Commission approved the US West and LT&T dispositions as per the stipulations. This was done by an order entered June 16, 1993.

With this in mind, we now consider the MCI/Telecom*USA stipulation. The filed stipulation reflects that the revenues subject to disposition by each company will be used in one or more of the following ways:

- (1) used to install equipment necessary to provide 911 or E911 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 net work reliability.

The available revenue from the 1991 taxable year for disposition is:

MCI - \$361,432.00

The Communication Department's staff and the company concur with the figure calculated for the company. There being no dispute as to the amount of the revenue for disposition and MCI agreeing to disposition by one or more of the pre-approved methods, an order should be entered approving the disposition and vacating the previously issued Order. Further, the revenue subject to this order should be maintained in an interest-bearing account pending its actual disposition. Finally, disposition should be made as soon as practicable for the alternatives selected.

Application No. C-931(53)
C-931(62)

PAGE THREE

The Commission, being fully advised finds: the proposed stipulation between MCI/Telecom*USA and the Staff should be adopted and incorporated by reference into this order as Exhibit 1 and should be made the findings and final determination of the Commission.

We also take judicial notice of the fact that a new docket (C-992) was opened to consider the application of Section 86-803(9) to the 1992 tax year. This docket applies to all telecommunications companies, including MCI/Telecom*USA, just as the C-931 docket does. Because the stipulation and order apply to MCI/Telecom*USA for the 1992 tax year, this order also concludes their participation in the C-992 docket.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the proposed stipulation be and it is hereby adopted and incorporated by reference into this order as Exhibit 1 and made the findings and final determination of the Commission as applied to MCI Communications Corp., and Telecom*USA.

IT IS FURTHER ORDERED that the proposed plan offered by the Respondent disposing of revenues from decreased personal property taxes for the 1991 tax year as re-calculated in Exhibit 1 be, and it is hereby, approved pursuant to this order.

IT IS FURTHER ORDERED that the Commission Order entered June 7, 1994 denying MCI's plan for distribution of property tax revenues be and it is hereby vacated.

IT IS FINALLY ORDERED that this order concludes MCI and Telecom*USA's participation in the C-992 docket.

MADE AND ENTERED at Lincoln, Nebraska this 10th day of November, 1994.

COMMISSIONERS CONCURRING:

Daniel G. Unwille

//s//Duane D. Gay
//s//Rod Johnson
//s//Frank Landis, Jr.
//s//James F. Munnelly

NEBRASKA PUBLIC SERVICE COMMISSION

Harold J. Jarek
Chairman

ATTEST:

John Burdette
Deputy Executive Director