

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6437

Investigation into Access Charge Flow-through)
Compliance Obligations of MCI)
Telecommunications Corporation, and Sprint)
Communications Company, L.P.)

Order entered: 5/15/2001

I. BACKGROUND

The Public Service Board ("Board") opened this Docket to investigate whether MCI Telecommunications Corporation ("MCI") and Sprint Communications Company, L.P. ("Sprint") had complied with the Board's March 24, 2000, Order in Dockets 6167/6189 (referred to as the "Docket 6167 Order") by reducing their toll rates to flow through to their retail customers savings from reduced access charges.¹ In this Proposal for Decision, I recommend that the Board conclude that both MCI and Sprint have flowed-through the access charge reduction as required. However, neither company complied with the Board's direction that the company demonstrate to the Board that it had reduced its rates consistent with the flow-through obligation. Because of MCI's efforts subsequent to the initiation of this Docket, I do not recommend that the Board impose any penalties upon MCI for that failure. As to Sprint, I recommend that the Board accept the Stipulation filed by Sprint and the Vermont Department of Public Service ("Department") in which those parties agreed that the Board should impose a penalty of \$14,910 on Sprint.

II. PROCEDURAL HISTORY

The Board opened this proceeding pursuant to 30 V.S.A. Sections 30 and 227(b) on October 11, 2000. On October 23, 2000, a prehearing conference was convened in Montpelier, Vermont, and a schedule was established for this proceeding.

1. Verizon New England Inc. d/b/a Verizon Vermont ("Verizon") reduced the access charges for interexchange carriers in February, 2000, and again on April 23, 2000.

Evidentiary hearings on MCI's compliance occurred on February 12, 2001. Subsequent to the hearings, the Department and MCI filed a joint proposal for decision, which these parties request that I adopt. I convened continued evidentiary hearings on Sprint's compliance with the Docket 6167 Order on March 14 and April 18. Just prior to the March 14 hearing, Sprint and the Department entered into a Stipulation (the "Stipulation"), accompanied by a Proposed Order, resolving issues between them. Sprint and the Department introduced the Stipulation at the March 14 evidentiary hearing.²

Based upon the evidence of record, I report the following findings and conclusions to the Board in accordance with 30 V.S.A. § 8.

III. FINDINGS

A. MCI

1. MCI filed tariffs to reduce certain toll rates on June 23, 2000. The Board approved the proposed tariff revisions on July 6, 2000. Sayles 1/8/01 pf. at 4.
2. In addition, MCI introduced three new calling plans in July, 2000, providing customers lower rates than existed under existing plans. Dunbar 11/30/00 pf. at 1.
3. MCI flowed through to retail customers over 100% of access charge rate reductions that it realized as a result of Verizon's April 23, 2000, access charge rate reductions. Dunbar 11/30/00 pf. at 1; Sayles 1/8/01 pf. at 6.
4. MCI's implementation of the flow-through of the access charge rate reductions occurred within the ninety-day time period specified by the Board in Dockets 6167/6189. Dunbar 11/30/00 pf. at 1; Sayles 1/8/01 pf. at 6.
5. The largest portion of MCI's rate reductions went to residential customers in Vermont. For example, MCI reduced rates for customers on its most popular residential calling plan rate reductions from .12 cents per minute to .05 cents per minute. Dunbar 11/17/00 pf. at 3; exh. WCOM-1.

2. Sprint and the Department agreed that the Stipulation would be a part of the evidentiary record upon which I could rely under 3 V.S.A. § 809. Tr. 3/14/01 at 7-8.

6. As a result of MCI's timely compliance with the Board's flow-through requirements, no MCI Vermont customers were denied the benefits of the access charge rate reductions. Sayles 1/8/01 pf. at 7.

7. MCI did not file the documentation of its rate reductions with the Board as required by the Docket 6167 Order and as required by the Board's July 6, 2000, notice of approval of tariff changes (Tariff No. 3977) which required MCI to file the report by July 20, 2000. Sayles 1/8/01 pf. at 4.

8. MCI has acknowledged that it failed to file the documentation demonstrating its compliance with the Docket 6167 Order. MCI has assured the Board that it has taken measures to ensure the error is not repeated. Letter from William Lehman (WorldCom) to Susan Hudson, Clerk of the Board, dated 11/30/00.³

9. MCI's failure to file the necessary documentation demonstrating compliance was inadvertent. Letter from Robert Lopardo (WorldCom) to Susan Hudson, Clerk of the Board, dated 10/20/00.⁴

10. MCI's Vermont customers were not harmed by MCI's failure to make its compliance filing. Sayles 1/8/01 pf. at 7.

11. MCI has fully cooperated with the Board and Department in the current docket. Sayles 1/8/01 pf. at 4-6.

B. Sprint

12. Between mid-1998 and December, 2000, Sprint reduced its retail rates for toll services by almost the same amount as the savings Sprint realized from Verizon's February, 2000, and April 23, 2000, reductions in access charges. A refund of \$29,730 to retail customers would fully compensate them for the difference. Stipulation ¶ 1 at 2.

13. Due to rate reductions in 1999 and the first quarter of 2000 (achieved through the introduction of new calling plans and reduced rates for other plans), Sprint's average rate per

3. This letter was not introduced into the record during evidentiary hearings. However, both the Department and MCI, through their Joint Proposal for Decision, have asked the Board to rely upon the letter. Accordingly, I will include this letter, and the one referenced in Finding 9, in the evidentiary record.

4. See fn. 3.

minute was substantially below the price of the access charges that Sprint had to pay Verizon. Exh. Sprint-1; exh. DPS-1.

14. If the Board used Sprint's first quarter 2000 rates as the starting point for the flow-through analysis, Sprint would be required to set its retail toll rates more than three cents below the access charges it pays Verizon. Exh. DPS-1.

15. Sprint made additional rate reductions in January, 2001, so that since mid-1998, Sprint's retail rate reductions have matched the changes to access charges. Stipulation ¶ 2 at 2; tr. 3/14/01 at 23-25 (Sayles).

16. Sprint did not demonstrate that it had achieved the mandated flow-through within the ninety-day time period specified by the Board's March 24, 2000, Order in Dockets 6167/6189 (i.e., by July 22, 2000). Stipulation ¶¶ 1 and 2 at 2.

17. Sprint did not file a timely report demonstrating it had achieved the flow-through by July 22, 2000. Stipulation ¶ 4 at 2.

18. Sprint filed a report on August 18, 2000, with information relating to the access charge flow-through. Letter from Edna Dorrell to Susan M. Hudson dated August 17, 2000.⁵

19. Sprint has committed to demonstrate its continued compliance with the Board's Order by timely filing its second report when it is due. Stipulation ¶ 2 at 2.

20. Sprint will provide a one-time credit/refund of \$29,730 to Sprint's residential and business customers in Vermont to complete the access charge rate reduction flow-through for the period July through December, 2000. Stipulation ¶ 3 at 2.

21. Sprint agrees to pay a penalty pursuant to 30 V.S.A. § 30 to the State of Vermont in the amount of \$14,910 for its failure to file a report demonstrating it had achieved the flow-through as mandated by the Docket 6167 Order and for any action or inaction that may have disrupted the procedural flow of the proceeding. Stipulation ¶ 4 at 2; tr. 3/14/01 at 26 (Mullett).

22. Sprint agrees to pay an additional sum of \$29,820, as a one-time credit to Sprint's residential and business customers in Vermont, in recognition of the Board's and the Department's

5. This letter was not introduced into the record during evidentiary hearings. However, both the Department and Sprint, through their Joint Proposed Order and Stipulation, have asked the Board to rely upon the letter. Accordingly, I will include this letter in the evidentiary record.

time and effort spent to ensure that Sprint is in compliance with its access flow-through mandate. Stipulation ¶ 5 at 2.

23. Sprint will implement the bill credits by first allocating the credit amounts between the residential and business customer classes based upon each class' minutes of use. Within each class, Sprint will provide equal credit to each customer (i.e., allocate the credit on a per customer, rather than per minute of use, basis). Tr. 3/14/01 at 27-28 (Dorrell).

24. Sprint has committed to fully complying with all directives of the Board and to work cooperatively with the Department. Stipulation ¶ 6 at 3.

IV. DISCUSSION

On March 24, 2000, in Dockets 6167/6189, the Board issued an Order directing Verizon to reduce its switched access charges significantly. In fact, when combined with access charge reductions ordered in Dockets 5940/5670/5702, which took effect earlier in the year 2000, Verizon effectively reduced its access charges from almost 11 cents per minute to 4 cents per minute. The Board recognized that these large reductions in access charges would benefit competition, bringing the price of access closer to its economic costs and reducing the largest component of the interexchange carriers' costs of providing service. The Board, however, also made clear that it intended to benefit Vermont consumers of intrastate toll services as well through the access charge reduction. Therefore, the Board directed the three largest carriers to reduce their intrastate toll rates to pass the access charge reductions on to customers within 90 days of Verizon's access rate reductions (April 23, 2000).⁶ As the Board stated:

Unless the rate reductions set out herein are flowed through to customers, the profitability of interexchange carriers will be enhanced, but ratepayers will not see the full benefit of the rate reductions we adopt here, thus failing to achieve one of our two goals. Therefore, we will require the three largest competitive interexchange carriers offering intrastate services, which consist of AT&T, Sprint, and MCI, to decrease their intrastate toll rates by the amount necessary to return the benefits of Bell Atlantic's access charge reduction to that

6. Dockets 6167/6189, Order of 3/24/00 at 90.

provider's customers (application of the flow-through requirement to Bell Atlantic is discussed below).⁷

The Board directed that the rate reductions must apply to all customer classes, with residential customers to receive benefits at least proportionate to their share of the minutes of use. Finally, the Board also required these carriers to file a demonstration with the Board that they had complied with the flow-through directive, to file a second report a year later and to keep data relevant to the flow-through for a period of two years.⁸

A. MCI

On June 23, 2000, MCI filed tariff revisions reducing various rates. MCI did not, however, file supporting material demonstrating that these rate reductions were sufficient to comply with the Docket 6167 Order. Accordingly, the Board approved the proposed tariff revisions in a letter dated July 6, 2000,⁹ but directed MCI to file a report by July 20, 2000, documenting that the access charge reduction flow-through had been achieved. MCI did not file this report. Because MCI (and Sprint) had not demonstrated compliance with the flow-through requirement, the Board opened this Docket on October 11, 2000.

MCI and the Department both take the position that MCI fully complied with the Board's flow-through requirement before the July 22, 2000, deadline. In fact, they maintain, MCI has reduced its rates in excess of what would be required to comply with the flow-through mandate.¹⁰ These parties also state that MCI did not submit the required documentation. The Department, for example, characterizes the failure as substantive and extremely serious.¹¹ However, both parties recommend that the Board not impose sanctions upon MCI for this failure. The Department bases this recommendation on several factors, including the following: 1) MCI achieved the actual rate reductions within the time frame designated by the Board, and therefore,

7. The Board expects that mandated rate reductions from the largest interexchange carriers will force their smaller competitors to reduce toll rates or lose market shares. Thus, rather than requiring all interexchange carriers to submit reports demonstrating the flow-through of access reductions, the Board has focused on the major carriers. (Footnote in original). Dockets 6167/6189, Order of 3/24/00 at 89-90.

8. Dockets 6167/6189, Order of 3/24/00 at 90.

9. Letter of Susan Hudson, Clerk of the Board, to Diane Crockett, Tariff Administrator, July 6, 2000.

10. Sayles 1/8/00 pf. at 6.

11. Tr. 2/12/01 at 24.

Vermont customers received the benefits of the access charge rate reductions; 2) MCI, immediately following the opening of this Docket, recognized that it had not filed documentation demonstrating compliance, and expressed its regret; and 3) MCI has provided assurance to the Board that it has taken steps to ensure timely responses to future requests made by either the Board or the Department.¹²

The evidence in this proceeding demonstrates that MCI reduced its intrastate toll rates by July 22, 2000, as required by the Docket 6167 Order. MCI accomplished this goal by reducing many existing toll rates in early July of 2000. In addition, MCI introduced three new calling plans with rates lower than the plans then in existence, which permitted customers to see reduced costs by switching plans.¹³ Collectively, these rate changes and new calling plans reduced the average intrastate toll rates for MCI's Vermont consumers by at least as much as Verizon reduced access charges in February and April, 2000.¹⁴ In fact, the evidence suggests that MCI's rate reductions may have exceeded the amount required to comply with the Docket 6167 Order.¹⁵ Thus, I conclude that MCI has fully complied with the flow-through mandate. Accordingly, I find no basis for imposing sanctions or penalties upon MCI for non-compliance with the rate reduction mandates.

The record also shows that, although MCI reduced its rates as required, MCI did not comply with either the requirement in the Docket 6167 Order to file a report demonstrating compliance with the flow-through requirement or with the Board's similar directive to MCI issued at the time the Board approved the rate reductions. I do not, however, recommend that the Board impose a penalty upon MCI for this failure. MCI moved promptly to demonstrate compliance once the Board opened this Docket. MCI has also taken steps to alter its internal processes to avoid a repetition of the failure to file such information.¹⁶ Moreover, I place

12. Sayles 1/8/01 pf. at 7.

13. Dunbar 11/30/00 pf. at 1.

14. Exhs. WorldCom-1 and WorldCom-2. MCI is a subsidiary of WorldCom. The exhibits were entered into the record as WorldCom exhibits.

15. Dunbar 11/30/00 pf. at 1; Sayles 1/8/01 pf. at 6.

16. Letter from William Lehman (MCI) to Susan Hudson, PSB Clerk, dated 11/30/00.

significant weight on the fact that the Department does not support the adoption of penalties at this time.

Nonetheless, the Board should put MCI on notice that MCI will face penalties in the future if it does not comply with Board orders. The actions of MCI (and Sprint) have caused the Board and Department to expend a significant amount of resources to ascertain compliance. Although I recognize that mistakes will occur, companies subject to regulation by the Board must have processes in place to ensure compliance with Board orders and Vermont law. It should not require a separate letter, *nor* the initiation of this Docket, to obtain that compliance.

B. Sprint

The Department and Sprint have reached a Stipulation, resolving all issues in this Docket, which they request the Board to approve. The proposed resolution contains the following basic elements:

- Sprint agrees to pay a \$29,730 one-time credit to its Vermont residential and business customers. This amount represents the amount by which Sprint's toll rates exceeded the levels mandated by the Docket 6167 Order (using the Department's methodology).¹⁷
- Sprint will pay an additional one-time credit of \$29,820 to its Vermont residential and business customers. This credit recognizes the Board's and the Department's time and effort spent to ensure that Sprint is in compliance with its access flow-through mandate.¹⁸
- Sprint will pay a penalty under 30 V.S.A. § 30 of \$14,910 for its failure to file a report demonstrating it had achieved the flow-through as mandated by the Docket 6167 Order and for any action or inaction that may have disrupted the procedural flow of the proceeding.¹⁹
- Sprint agrees to fully comply with requirements in the Docket 6167 Order in the future.²⁰

Both parties to the Stipulation assert that the Stipulation represents a reasonable resolution.

17. Stipulation at ¶¶ 1 and 3 at 2.

18. Stipulation ¶ 5 at 2.

19. Stipulation ¶ 4 at 2.

20. Stipulation ¶ 6 at 3; tr. 4/18/01 at 34 (Rearden).

The settlement between the Department and Sprint requires the Board to decide whether to strictly adhere to the toll rate reduction mandated by the Docket 6167 Order or to consider Sprint's actual rate reductions sufficient in light of the resulting toll/access price differential and Sprint's rate reductions during 1998 and 1999. The Board's Docket 6167 Order required Sprint to reduce its retail toll rates by an average of 6.4 cents per minute. Although not specifically stated, the Board clearly intended that the interexchange carriers covered by the Order would reduce rates in the 120 days following the Order. Here, the evidence demonstrates that Sprint did not reduce its toll rates by that amount in the period subsequent to Verizon's access rate reductions. Instead, Sprint reduced its toll rates by less than two cents between the first quarter of 2000 and the end of the year.²¹

Notwithstanding the fact that the difference between the access charge reduction and toll rate reduction was at least four-and-one-half cents per minute, Sprint and the Department request that the Board find that Sprint has complied with the flow-through requirement. According to the Department, strict interpretation of the Board's Docket 6167 Order would be "economically irrational and may distort the competitive market by requiring Sprint to sell its product below economic cost."²²

Sprint's actual pricing supports this assertion. In 1999 and the first quarter of 2000, Sprint introduced new calling plans and reduced other toll rates so that its average rate per minute was below the price of the access charges that Sprint paid.²³ In fact, it appears that by the time the Board directed Verizon to lower its access rates, Sprint's retail toll rates were substantially below the price of access. As a result, if the Board used Sprint's first quarter 2000 rates as the starting point for the flow-through analysis, Sprint would be required to set its retail toll rates more than three cents below the access charges that it pays Verizon.

This outcome does not appear to be consistent with the intent of the flow-through requirement in the Board's Docket 6167 Order, which was two-fold. First, the flow-through would ensure that ratepayers saw the benefits of lower access charges, rather than having those

21. Exh. DPS-1.

22. Sayles 3/22/01 pf. at 6.

23. Sayles 3/22/01 pf. at 4.

benefits flow to the interexchange carriers as had occurred in the aftermath of the access charge reductions ordered in Dockets 5700/5702.²⁴ Second, flow-through of the access charge reductions would put competitive pressure upon Verizon to reduce its own intrastate toll rates, for the benefit of customers. Sprint's current rates clearly achieve the latter objective. Moreover, because of Sprint's rate reductions in advance of the access charge cut, customers have effectively seen the benefit of the access charge reduction — Sprint's retail rates are within a reasonable margin of the access charges that it pays Verizon.²⁵

Moreover, strict adherence to the Board's Docket 6167 Order would produce an unreasonable result and could harm the competitive environment. Sprint would be required to price its retail product well below the costs it incurs to provide that service. Forcing Sprint to operate at a loss would not promote competition.²⁶

Thus, although literal interpretation of the Board's Order would seem to require Sprint to reduce its toll rates further, I recommend that the Board accept the parties' Stipulation and conclude that the rate reductions taken to date, and the refunds to customers to compensate them for Sprint's delay in reducing its toll rates, are adequate and represent compliance with the spirit of the flow-through mandate. Sprint's present rates are reasonable, particularly in light of its access charges.²⁷ Moreover, as part of the Stipulation, Sprint has agreed to refund over \$59,000 to its retail customers to compensate them for Sprint's delay in reducing its toll rates and the additional burdens imposed upon the Department to ascertain Sprint's compliance. Thus, customers will see the benefit of the rate reductions as if they had occurred in a timely fashion (i.e., by July 23, 2000). Overall, I consider this result fair and recommend its approval.

24. See Docket 5853, Order of 2/13/96 at 8.

25. Exh. Joint-1.

26. Sayles 3/22/01 pf. at 6.

27. The parties assert that the Board should consider rate reductions in 1998 and 1999 as elements of Sprint's rate reductions to comply with the Board's Docket 6167 Order. However, it appears that Sprint made these rate reductions as part of its overall response to competitive pressures. This pricing pattern suggests Sprint's willingness to price certain services below cost for competitive reasons. As such, there is no reason that the Board should consider these rate reductions when assessing compliance with the flow-through requirement. Thus, I do not rely upon these earlier rate reductions. Rather, as explained above, I find Sprint's present rates to be reasonable and consistent with the intent of the Board's Docket 6167 Order.

The Board's Docket 6167 Order also required Sprint to file supporting material demonstrating that its rate reductions were sufficient to comply with that Order. The Board, by letter dated July 19, 2000, noted that Sprint had not filed the flow-through demonstration and directed Sprint to file its report by July 31, 2000. Sprint responded on August 18, 2000, stating that Sprint had reduced toll rates in compliance with the Board's Order. This response was not timely (nor was it sufficient as it did not contain the requisite demonstration). In the Stipulation, the parties have agreed that Sprint did not comply with the Order and have agreed that Sprint will pay a fine of \$14,910 under 30 V.S.A. ¶ 30 for that failure. This proposed fine is reasonable and I recommend that the Board approve it.

Finally, the Docket 6167 Order requires Sprint and MCI (as well as AT&T) to maintain the toll rate reductions for a period of time and to submit a second compliance report. Both Sprint and MCI have committed to fully comply with that requirement.

V. CONCLUSION

For the foregoing reasons, I recommend that the Board find that MCI has complied with the requirement to reduce its toll rates to flow-through Verizon's access rate reductions. In addition, I recommend that the Board accept the Stipulation between Sprint and the Department and conclude that upon completion of the customer refunds required by that Stipulation, Sprint has complied with the flow-through mandate.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 15th day of May, 2001.

s/George E. Young
George E. Young
Hearing Officer

VI. BOARD DISCUSSION

We accept the Hearing Officer's Findings and recommendations, including the recommendation that we exercise our discretion and not impose penalties upon MCI for its failure to comply with the Docket 6167 requirement to demonstrate compliance by July 22, 2000. We want to stress, however, that all companies subject to regulation by the Board have a duty to comply with mandates set out in Board Orders. And although we elect to impose no penalty upon MCI, and only small penalties on Sprint, we do so with the expectation that those companies will comply with orders in the future. Should either company fail to comply with the second round of reporting and flow-through requirements later this year, consistent with our authority under 30 V.S.A. § 30, we will consider not only that future event, but also the compliance record in this proceeding, and would expect to adopt significant penalties.

VII. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Hearing Officer's findings and recommendations are accepted.
2. The Stipulation between the Department of Public Service and Sprint Communications Company, L.P. ("Sprint"), is approved.
3. Sprint shall provide a one-time refund to its retail customers of \$59,550 in the form of credits on the customer bills. Sprint shall provide the credit in a manner consistent with Finding 23 of this Order.
4. Pursuant to 30 V.S.A. Section 30, Sprint shall pay a penalty of \$14,910.

Dated at Montpelier, Vermont, this 15th day of May, 2001.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: May 15, 2001

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or mail) of any technical errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.