

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

July 13, 2006

IN RE:

**JOINT PETITION OF MCI WORLDCOM
COMMUNICATIONS, INC. AND VCUSTOMER
CORPORATION FOR EXPEDITED APPROVAL
OF THE ASSIGNMENT OF THE CONTRACT TO
PROVIDE RELAY SERVICES AND TO OPERATE
THE TENNESSEE RELAY CENTER AND THE
TRANSFER OF THE TENNESSEE TELERELAY
CALL CENTER, DIRECTORY ASSISTANCE,
OPERATOR SERVICES AND OTHER RELATED
ASSETS TO VCUSTOMER**

**DOCKET NO.
05-00168**

ORDER VACATING AUTHORITY'S AUGUST 8, 2005 DECISION

This matter came before Chairman Ron Jones, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on March 6, 2006 to consider the vacatur of the panel's decision of August 8, 2005 approving the *Joint Petition for Expedited Approval* ("Joint Petition") filed by MCI, Inc. on behalf of its subsidiary MCI WorldCom Communications, Inc. ("MCI") and vCustomer Corporation ("vCustomer").

BACKGROUND

MCI is a facilities-based network operator, which obtained certification from the TRA to provide competitive local exchange carrier services and resold intrastate long

distance services by Order dated January 30, 1998 in Docket No. 97-01361.¹ Since the inception of this docket, the company has changed its name to MCI Communications Services, Inc.²

In 2001, the TRA awarded to MCI, through the state's request for proposal ("RFP") process, the contract to provide relay services in Tennessee³ and to establish and operate an in-state relay center. The TRA, MCI and the State of Tennessee entered a contract ("Relay Contract") for MCI's provision of relay services and operation of the relay center effective September 25, 2001 and expiring September 24, 2006. The Relay Contract provides for the assignment of the contract upon prior written approval of the State.

vCustomer is a privately held company with its principal place of business at 520 Kirkland Way, Suite 101, Kirkland, Washington 98033. vCustomer provides call center and information technology services for American-based companies. The TRA granted vCustomer a Certificate of Public Convenience and Necessity ("CCN") for authority to provide competing local telecommunications services, including telecommunications relay services, within the State of Tennessee, as memorialized in the order dated August 8, 2005 in Docket No. 05-00171.⁴

¹ At that time, MCI Communications was known as WorldCom Technologies, Inc. In 1999, the company changed its name to MCI WorldCom Communications, Inc. as part of a corporate reorganization. *In re: Petition of MCI WorldCom, Inc., WorldCom Network Services, Inc., MFS Communications Company, Inc. MCI Communications Corp., MCI Telecommunications Corp, and WorldCom Technologies, Inc. for Authority to Reorganize and for Related Transactions ("MCI/WorldCom Reorganization")*, Docket No. 99-00433, *Order Approving Reorganization and Related Transactions*, p. 2 (October 29, 1999).

² *In re: Notice of Name Change from MCI WorldCom Communications, Inc. to MCI Communications Services, Inc.*, Docket No. 05-00205, *Order Granting Approval of the Petition of MCI WorldCom Communications, Inc. to Amend its Corporate Name* (January 4, 2006).

³ Relay services provide communication assistance in the transmission of telephone calls for individuals who are deaf, hard of hearing, deaf-blind or who have a speech disability.

⁴ vCustomer filed the Application for its CCN on June 24, 2005.

TRAVEL OF THE CASE

Joint Petition

On June 22, 2005, MCI and vCustomer (“Petitioners” or “Parties”) filed the *Joint Petition* requesting, pursuant to Tenn. Code Ann. § 65-4-112 (2004) and Tenn. Comp. R. & Reg. 1220-1-1-.08, the TRA to permit the consummation of a transaction involving the assignment to vCustomer of the Relay Contract and the transfer to vCustomer of the Tennessee Telerelay Call Center (“TRC”) and assets related to directory assistance, operator services business and other related MCI assets. The Petitioners had entered an asset purchase agreement (“APA”) providing for the assignment and transfers. The Petitioners expected to close the APA by August 27, 2005 and therefore sought the TRA’s expedited consideration and approval of the request by August 1, 2005.

Under the APA, vCustomer would acquire MCI’s expertise in providing relay services. MCI would transfer the TRC and its call-center employees to vCustomer after the TRA’s approval and upon closing the APA. According to the *Joint Petition*, Tennessee customers would benefit from the proposed assignment and transfers because MCI’s resources would be better directed toward providing high-quality, high-value network services to vCustomer in the provision of the relay services, and vCustomer would focus on its core call-center expertise. vCustomer asserted that it would honor the terms, conditions and quality standards of MCI’s Relay Contract with the TRA and State of Tennessee.

August 8, 2005 Decision

Tenn. Code Ann. § 65-4-112 (2004) requires that public utilities obtain TRA approval before merging or consolidating property, rights or franchises with utilities of like

character holding CCNs in the State of Tennessee. Tenn. Code Ann. § 65-4-112(a) (2004) provides:

No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of any other such public utility of like character shall be valid until approved by the [A]uthority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

In addition, Tenn. Comp. R. & Reg. 1220-1-1-.08 provides a mechanism for the TRA to approve actions not otherwise covered by the TRA's rules.

At the August 8, 2005 Authority Conference, the voting panel voted unanimously to approve the proposed assignment of the Relay Contract and transfer of the TRC and MCI's related assets pursuant to a finding of compliance with Tenn. Code Ann. § 65-4-112 and the rules of the TRA.⁵ The TRA and the State of Tennessee thereafter completed contract amendments with MCI and vCustomer allowing for vCustomer's assumption of the Relay Contract, effective upon the closing of the APA between MCI and vCustomer.

December 12, 2005 Authority Conference

On November 2, 2005, MCI notified the TRA that the APA had not closed and had been terminated and that the proposed transfer of the Relay Contract and sale of assets from MCI to vCustomer had been cancelled. On December 9, 2005, vCustomer filed a response acknowledging the transaction had not closed. vCustomer, however, asserted that MCI failed to comply with its covenants and obligations set forth in the APA. vCustomer

⁵ The approval was conditional upon the approval of the CCN for vCustomer. The initial order granting the CCN, issued August 8, 2005, became final after fifteen days, on August 23, 2005, when it was not reviewed in accordance with Tenn. Code Ann. § 4-5-315 (2005).

stated that it “again demanded that MCI fulfill its obligations under the APA and proceed to closing of the transaction contemplated in the APA immediately.”⁶

At a regularly scheduled Authority Conference on December 12, 2005, the panel requested a status update from the parties. vCustomer did not make an appearance at the Conference.⁷ MCI appeared through counsel and informed the Authority that it had sent notice to vCustomer on October 22, 2005 terminating the APA.⁸ According to MCI, vCustomer had not contacted MCI about MCI’s termination of the APA, had not filed litigation or made any demands on MCI about such termination, and had not served MCI with a copy of vCustomer’s December 9, 2005 letter to the Authority.⁹ MCI further affirmed that it was continuing to provide the relay service and honor the Relay Contract and would do so until the matter is resolved.¹⁰ The panel voted to hold the docket in abeyance pending resolution of the dispute between the parties.¹¹

January 10, 2006 Authority Conference

The docket was placed on the agenda for the regularly scheduled Authority Conference on January 10, 2006 for a status update from the parties. vCustomer again failed to appear, and MCI appeared through counsel.¹² MCI stated it had not heard anything from vCustomer since the December 12, 2005 Authority Conference and acknowledged it had not attempted to initiate contact with vCustomer.¹³ MCI asserted that

⁶ vCustomer Status Update Letter, pp. 1-2 (December 9, 2005).

⁷ Transcript of Authority Conference, pp. 22, 27 (December 12, 2005). According to the Authority’s General Counsel, vCustomer had been timely notified of the Conference by direct notice of the agenda and by telephone. *Id.* at 27.

⁸ *Id.* at 22.

⁹ *Id.* at 22-23.

¹⁰ *Id.* at 23, 27-28.

¹¹ *Id.* at 28.

¹² Transcript of Authority Conference, p. 17 (January 10, 2006).

¹³ *Id.* at 18-19.

there was no asset purchase agreement in place between the parties whereby vCustomer could take over the control or operation of the relay service and that the transaction between vCustomer and MCI had been terminated.¹⁴ MCI affirmed that MCI, together with Verizon Communications Inc., is committed to providing the relay services under the Relay Contract through its expiration in September 2006.¹⁵ MCI argued that the panel should vacate its earlier approval of the *Joint Petition* and return to the arrangements in effect before the August 8, 2005 Authority Conference.¹⁶ The panel voted to defer action on the docket.¹⁷

On January 23, 2006, vCustomer filed a letter providing a status update in response to the agenda for the January 10, 2006 Authority Conference. vCustomer represented that no developments or changes had occurred since vCustomer's letter of December 9, 2006.

February 21, 2006 Authority Conference

The docket again was placed on the agenda for the regularly scheduled Authority Conference on February 21, 2006 for a status update from the parties and for the panel's consideration of any further action that may be necessary in the docket. MCI appeared through counsel and the Chief Executive Officer of vCustomer, Mr. Sanjay Kumar, appeared telephonically.¹⁸ After hearing the positions of both parties, the panel directed vCustomer to file its opposition to the vacatur of the Authority's August 8, 2005 decision

¹⁴ *Id.* at 19.

¹⁵ *Id.* at 18, 20-22. MCI became a wholly owned subsidiary of Verizon Communications, Inc. as a result of a corporate merger in 2005. *See In re: Petition for Approval of Verizon Communications Inc.'s Acquisition of MCI, Inc.*, Docket No. 05-00066, Letter from MCI and Verizon Communications, Inc. Notifying TRA of Acquisition (March 8, 2005).

¹⁶ *Id.* at 19-20.

¹⁷ *Id.* at 22.

¹⁸ Transcript of Authority Conference, pp. 12-13 (February 21, 2006). Counsel had notified the Authority of its withdrawal from representation of vCustomer on February 1, 2006.

by February 28, 2006 and gave MCI an opportunity to respond to that filing by March 6, 2006.¹⁹ The panel then deferred the matter to the March 6, 2006 Authority Conference.²⁰

Filings by the Parties

vCustomer did not respond to the merits of the potential vacatur of the Authority's August 8, 2005 decision by February 28, 2006 as directed by the panel. Instead, on March 1, 2006, vCustomer filed a letter stating that it was unable to file a claim against MCI before the March 6, 2006 Authority Conference, while acknowledging that the Authority had no jurisdiction to resolve the dispute. vCustomer requested that the Authority hold the matter in abeyance until it finalized its course of action. On March 3, 2006, MCI filed its response, noting that no action by the TRA is required because the amendment to the Relay Contract is only effective upon the closing of the transaction between MCI and vCustomer pursuant to the APA. According to MCI, its request for the Authority to vacate its decision is solely a matter of housekeeping and would not affect the substantive rights of either MCI or vCustomer.

MARCH 6, 2006 AUTHORITY CONFERENCE

The docket was placed on the agenda for the regularly scheduled Authority Conference on March 6, 2006 for consideration of further action. MCI appeared through counsel and vCustomer again failed to appear.²¹ After noting the need to take action regarding its earlier decision and MCI's responsiveness and willingness to continue to provide the relay service, the panel voted unanimously to vacate its August 8, 2005 decision approving and authorizing the assignment of the Relay Contract and transfer of

¹⁹ *Id.* at 22.

²⁰ *Id.*

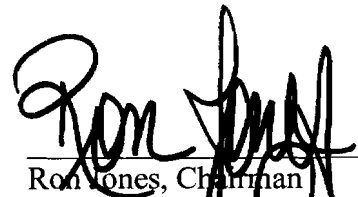
²¹ Transcript of Authority Conference, p. 24 (March 6, 2006).

MCI's relay facilities and related assets.²² The panel stated that its decision was not intended to express an opinion concerning the contractual dispute between MCI and vCustomer and that neither party was prohibited from bringing the matter back before the Authority in the event of a resolution of the dispute.²³

IT IS THEREFORE ORDERED THAT:

1. The Authority's August 8, 2005 decision approving the assignment of the Relay Contract and transfer of MCI's relay facilities and related assets to vCustomer as described in the *Joint Petition* is vacated.

2. Nothing in this decision is intended to express an opinion concerning the contractual dispute between MCI and vCustomer and either party may bring this matter back before the Authority if that dispute is resolved prior to the expiration of the Relay Contract.



Ron Jones, Chairman



Pat Miller, Director



Sara Kyle, Director

²² *Id.* at 25-26.

²³ *Id.* at 26.