

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

APR 26 2001

OFFICE OF
MANAGING DIRECTOR

86-285

Mary L. Brown
Senior Policy Counsel
Federal Law and Public Policy
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

RE: Request for Refund of Application Fees
Fee Control No. 9710028340104023

Dear Ms. Brown:

This is in response to your request for refund of the fees filed in connection with certain transfer of control applications associated with WorldCom's hostile tender offer for the shares of MCI Communications Corporation. You state that within approximately five weeks of the filing of these transfer of control applications, the hostile tender offer was transformed into a voluntary merger by mutual agreement of the parties, rendering those applications moot. You assert that those applications were never processed or acted upon by the Commission and that the Commission's rules authorize the full refund or return of application fees when it later becomes apparent that a fee was not required, citing 47 C.F.R. §§ 1.1113(b)(1), 1.1113(b)(3), and 1.1160(a)(1). Under these circumstances, you assert that good cause exists for refunding the filing fees in question.

We have fully considered all of your contentions. The fee requirement was established by the Schedule of Fees contained in the Omnibus Budget Act of 1989, Pub. L. No. 101-239, 103 Stat. 2106. See *Conference Report To Accompany H.R. No. 386*, 101st Cong., 1st Sess. 20-28 (1989); reprinted in the *Congressional Record* of Nov. 21, 1989 at page H9333 (*Conference Report*). Congress determined that the fees "represent a fair approximation of how the Commission's costs should be distributed." *Conference Report* at 433. The Commission also has stated that:

there will be individual situations in which the actual cost may be more or less [than the required application fee]. It is not our intention to make individualized determinations of the 'appropriate fee.' Rather, except in unusual cases in which the public interest requires otherwise, we will levy the fee as determined by Congress.

Establishment of a Fee Collection Program To Implement the Omnibus Budget Act of 1989, 3 FCC Rcd 5987 (1988).

We deny your request for refund of the filing fee. The Commission's rules do not provide for refund of a filing fee upon withdrawal of the underlying filings. Further, the Commission clearly incurred processing costs associated with the applications and, moreover, has stated that its "processing costs were but one factor that resulted in the legislated fees." *See Establishment of a Fee Collection Program To Implement the Provisions of the Consolidated Omnibus Budget Act of 1985*, 2 FCC Rcd 947, 949

(1987). In addition, the Commission has explicitly stated that a refund will not be granted once an application has cleared the fee review process, except in certain circumstances enumerated in Section 1.1113 of the Commission's rules. 47 C.F.R. § 1.1113. Your reliance on Sections 1.1113(b)(1) and (3) is misplaced. Those Sections pertain to a refund of *hearing* fees under certain circumstances, not *filing* fees as are in question here. By the same token, Section 1.1160(a)(1), which concerns *regulatory* fees, has no relevance here. In view of all of these circumstances, your request is denied.

If you have any questions concerning this letter, please call the Revenue & Receivables Operations Group at 418-1995.

Sincerely,



Mark Reger
Chief Financial Officer