

Decision 97-09-105 September 24, 1997

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Bell (U 1001 C),

Complainant,

vs.

AT&T Communications of California, Inc.
(U 5002 C) and MCI Telecommunications
Corporation (U 5001 C),

Defendants.

ORIGINAL

Case 97-03-016
(Filed March 12, 1997)

O P I N I O N

Background

On March 12, 1997, Pacific Bell filed a complaint against AT&T Communications (AT&T) and MCI Telecommunications (MCI) alleging that AT&T and MCI were marketing both their local and long-distance services to consumers as a complete package of telecommunications services ("joint marketing")¹ in violation of the 1996 Telecommunications Act, 47 U.S. C. § 271(e). Specifically, Pacific Bell alleged MCI and AT&T were violating the Federal Communications Commission's (FCC) decision describing in detail what type of activity constituted joint marketing.² Pacific Bell also alleged violations of the California Business and Professions Code and the

¹ According to Pacific Bell, it is generally accepted that consumers desire to receive both their local and long-distance service from one provider such that they will receive only one bill and write only one check. The FCC, in apparent recognition of this fact, limited interexchange carriers from marketing both local and long-distance services in advance of the regional Bell Operating Companies entering the long-distance market.

Commission's decisions on local competition. Pacific Bell sought temporary, preliminary, and permanent injunctions against the defendants. In response to a ruling by the Assigned Administrative Law Judge, Pacific Bell amended its complaint to address the Commission's jurisdiction over this matter.

On May 22, 1997, MCI filed a motion to stay this proceeding because in response to a petition for declaratory ruling filed by MCI, the FCC was considering the very issues raised in Pacific Bell's complaint. MCI stated that its declaratory ruling request sought a clarification from the FCC as to the proper application of the FCC's order as carriers launch their advertising campaigns across the nation to market local exchange service.

Also on May 22, 1997, AT&T filed a motion requesting that the Commission dismiss or stay this proceeding pending FCC action on MCI's petition. On May 29, 1997, AT&T filed a motion seeking official notice of a FCC public notice which established procedures for FCC consideration of MCI's petition and a complaint filed by Ameritech Corporation covering the same issues (File No.E-97-17).

Discussion

The basis for Pacific Bell's complaint is that AT&T and MCI are marketing their local and interexchange services as one package in violation of federal law and a decision by the FCC. Although Pacific Bell also alleges violations of state law and Commission decisions, MCI's and AT&T's actions are violations of these laws and decisions only because their actions violate the federal law.

The question of whether AT&T's and MCI's actions have violated federal law is better left to the authors and interpreters of that law, the FCC. Similarly, consistent application of the federal law will be enhanced by having one regulatory body address these issues. Finally, efficient deployment of this Commission's resources requires that

³ Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended. CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-189, released December 24, 1996.

we decline to exercise our jurisdiction where a fully competent agency is also addressing the same issues.

For these reasons, we will grant AT&T's motion to dismiss this proceeding, without prejudice. Should any issues which affect California consumers remain after the FCC completes its process, Pacific Bell may file a complaint at that time.

Pursuant to Commission Rule of Practice and Procedure 73, official notice is taken of the FCC Public Notice dated May 21, 1997, regarding File No. E-97-17 and CC Docket No. 96-149.

Findings of Fact

1. The FCC is currently considering many of the same issues raised in Pacific Bell's complaint.
2. The Commission's limited resources should not be expended on cases where another competent regulatory body is addressing the same questions.

Conclusions of Law

1. Alleged violations of federal law and FCC decisions are the basis for Pacific Bell's complaints.
2. The FCC is currently considering issues arising out of MCI's and AT&T's alleged joint marketing of local and long distance services.
3. The complaint should be dismissed without prejudice to refile after the FCC completes its review.
4. The FCC public notice meets the Commission's requirements for official notice.

ORDER

IT IS ORDERED that:

1. This complaint is dismissed without prejudice to refile to address issues which affect California consumers and are unresolved by the Federal Communications Commission (FCC).

2. Official notice is hereby taken of the May 21, 1997, Public Notice by the FCC.

This order is effective today.

Dated September 24, 1997, at San Francisco, California.

JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
RICHARD A. BILAS
Commissioners

President P. Gregory Conlon, being necessarily absent, did not participate.