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MAIL DATE

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Decision 98-03-079

March 26, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Complainants,

v.

Pacific Bell (U 1001 C) and MFS
Intelenet of California, Inc. (U 5397 T),

Defendants.

ORIGINAL

Case 96-02-014
(Filed February 2, 1996)

ORDER DENYING REHEARING OF DECISION 97-10-025

An application for rehearing of Decision (D.) 97-10-025 was filed by MFS Intelenet of California, Inc. (MFS). D.97-10-025 addresses the complaint filed by MCI Telecommunications Corporation (MCI) and AT&T of California (AT&T) alleging that the implementation of an agreement between Pacific Bell (Pacific) and MFS is in violation of applicable tariff restrictions under Pacific's joint-user tariff. In D.97-10-025 we concluded that MFS was in violation of provisions of the joint-user tariff. We ordered that MFS is prohibited from providing joint user Centrex services obtained from Pacific to any customer for which it is not acting as an agent, as distinct from a principal. We further ordered MFS to directly rebill all charges by Pacific and to separately state such charges on its bill in connection with joint use Centrex services. Finally, we prohibited MFS

from holding itself out as a provider of intraLATA services in connection with joint use Centrex services. (D.97-10-025, Ordering Paragraphs 1-3.)

Applicant argues that our decision is "out of step" with the decisions of public utility commissions in other jurisdictions. We are not required to follow the precedent of other jurisdictions. The policy arguments made by applicant do not form the basis of a finding of legal or factual error. We note, furthermore, that the cases cited are of limited relevance. Similarly, Applicant's reliance on *In the Matter of the Public Utilities Commission of Texas et al.*, CCBPJol 96-13, 14, 16, 19 (Rel. Oct. 1, 1997) before the FCC is misplaced. Unlike that matter, in this case the tariff restrictions applied do not effectively preclude the resale of Centrex service.

Applicant is incorrect in its contention that we err in our application of agency-principal law. The undisputed facts are that MFS has reserved the right to displace Pacific and provide MFS' own services to the end user. Pacific is under no obligation to deal with the end user for any aspect of Centrex service provided by MFS. Civil Code Section 2295 provides that an "agent" is one who represents another, called a principal, in dealings with third persons. The facts support our conclusion that MFS is not acting as an agent in this case.

Contrary to MFS' assertion, the Decision does not restrict the ability of MFS to provide Centrex service. The Decision addresses the more narrow issue of the conditions under which MFS may provide joint user Centrex services obtained from Pacific. These conditions do not prohibit MFS from providing Centrex service, nor do they require that MFS do so under the joint user tariff.

No further discussion is required of Applicant's allegations of error. Accordingly, upon reviewing each and every allegation of error raised by Applicant we conclude that sufficient grounds for rehearing of D.97-10-025 have not been shown.

Therefore, **IT IS ORDERED:**

1. That the application for rehearing of Decision 97-10-025 filed by MFS is denied.

This order is effective today.

Dated March 26, 1998, at San Francisco, California.

RICHARD A. BILAS

President

P. GREGORY CONLON

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

Commissioners