

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

San Francisco, California
Date: January 7, 1998
Resolution No. L-266*

RESOLUTION

**Authorizes Release Of Confidential Documents To Department
of Treasury, Internal Revenue Service Related To
MTC Telemanagement Corporation**

BACKGROUND

On September 15, 1997, two revenue officers from the Department of Treasury, Internal Revenue Service (IRS) personally served on the Commission an administrative summons dated September 15, 1997. By this Summons, the IRS seeks production of records in the possession or control of the Commission "for the period of January 1, 1989 to December 31, 1995. . .which reflect the taxable sales of telephone service provided by" MTC Telemanagement Corporation (MTC). The Summons further demands "documents which reflect the persons who were responsible for collecting, accounting for, paying over, or filing telecommunication excise tax returns for MTC Telemanagement Corporation, Marin Telemanagement Corporation, NetSource Communications Inc., or the predecessor, successor, parent, or subsidiary of any of the above listed companies".

The IRS advises that the Summons was served in connection with an on-going investigation related to the agency's responsibility for enforcing the laws regarding excise taxes levied by the federal government. The IRS further notes that it became aware that the Commission had recently audited MTC and that those audit records are expected to be particularly helpful in the IRS investigation. In fact, an audit of MTC was conducted by Commission staff pursuant to the order in Decision (D.) 95-01-044, to "calculate and assess MTC the amount owing to the Commission for any fees, required of telecommunication providers, for telecommunications services rendered prior to the effective date of this order (January 25, 1995)" (D.95-01-044, Ordering Paragraph 6, page 32, mimeo).

DISCUSSION

Some of the documents sought by the IRS Summons are confidential records which were furnished to or obtained by the Commission pursuant to Section 583 of the Public Utilities Code. Section 583 and General Order 66-C prohibit staff disclosure of these records without formal authorization of said disclosure by the Commission.

There is a valid public policy basis for releasing to a law enforcement agency acting in the scope of its duty Commission records which are considered to be confidential and not open to public inspection. The documents requested by the IRS are sought in connection with that agency's law enforcement purpose. IRS intends to use said documents in the ongoing investigation of the payment of federal excise taxes by MTC and/or its related organizations. Disclosure of these documents to the IRS is in the public interest and should be authorized.

Finally, the IRS investigation may require the review of customer bills in the Commission's possession. The IRS should be advised that as expressly noted in Decision (D.)97-09-124, (which addresses rehearing of Resolution L-258, the predecessor to Resolution L-258A), California court decisions hold that personal customer records are covered by privacy laws. To release such records, even to law enforcement agencies, requires authorization through appropriate judicial processes. (See cases cited and discussion in *mimeo* D.97-09-124, pp. 4-5). Accordingly, this resolution does not approve the release of personal customer information. The IRS will be expected to provide appropriate court orders to obtain such information in the Commission's possession.

FINDINGS OF FACT

1. On September 15, 1997, the Commission was served with an administrative summons (Summons) by the Department of Treasury, Internal Revenue Service (IRS) seeking documents in connection with that agency's investigation of MTC Telemanagement Corp, Marin Telemanagement Corporation and NetSource Communications Inc..
2. The Summons was issued by the IRS in connection with its responsibility for enforcing the laws regarding excise taxes levied by the federal government.
3. Some of the records requested by the Summons are confidential documents furnished to or obtained by the Commission pursuant to section 583 of the Public Utilities Code.

CONCLUSIONS OF LAW

1. No member of the Commission staff shall release confidential information furnished to or obtained by the Commission pursuant to section 583 of the Public Utilities Code without the authorization of the Commission as provided for in General Order 66-C.
2. The Commission is vested with the jurisdiction to determine whether it is in the public interest to disclose to the public confidential information furnished to or obtained by the Commission or its employees in the course of their duties.
3. It is in the public interest to disclose confidential Commission records to a law enforcement agency acting within the scope of its duties.
4. The Commission is not authorized to release personal customer information, such as might be found on customer's bills. Such information in the possession of the Commission can be released upon production of the order of a court of competent jurisdiction.

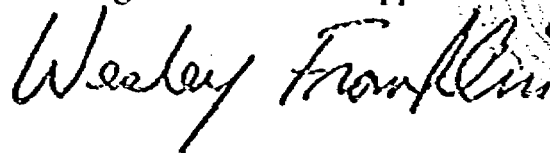
ORDER

1. The IRS Summons dated September 29, 1997 requesting Commission records related to the telephone sales of MTC Telemangement Corporation which were furnished to or obtained by the Commission pursuant to section 583 of the Public Utilities Code is granted.
2. The effective date of this order is today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting of January 7, 1998. The following Commissioners approved it:

P. GREGORY CONLON
President

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



WESLEY M. FRANKLIN
Executive Director