

FLORIDA PUBLIC SERVICE COMMISSION
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MEMORANDUM

APRIL 16, 1998

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FPSC - Records/Reporting

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (BEDELL) *CB, MB*
DIVISION OF COMMUNICATIONS (HAWKINS) *BHH*
DIVISION OF CONSUMER AFFAIRS (C.PENA) *CR Peña*

RE: DOCKET NO. 980180-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST DESTINY TELECOMM INTERNATIONAL, INC. FOR VIOLATION OF RULES 25-4.043, RESPONSE TO COMMISSION STAFF INQUIRIES, 25-24.490, CUSTOMER RELATIONS; RULES INCORPORATED, 25-4.111, CUSTOMER COMPLAINTS AND SERVICE REQUESTS, 25-4.113, REFUSAL OR DISCONTINUANCE OF SERVICE BY COMPANY, AND 25-24.485, TARIFFS, FLORIDA ADMINISTRATIVE CODE.

AGENDA: 04/28/98 - REGULAR AGENDA - ISSUE 1 - SHOW CAUSE - ISSUE 2 - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\980180.RCM

CASE BACKGROUND

DESTINY TELECOMM INTERNATIONAL, INC. (Destiny), is an interexchange service provider. The Commission granted Destiny permission to operate as an interexchange carrier on July 18, 1997. Destiny holds certificate number 5168. In August, staff received complaints from several customers who purchased prepaid debit cards from Destiny, and shortly thereafter, the cards became inoperable. Initially, the customers called the phone numbers 1-800-738-2196 (listed on the card) and a customer service number 1-800-833-5153 that both gave a busy signal. The customers then contacted the Commission and Commission staff contacted Destiny.

Staff received copies of customer correspondence from Destiny saying, "We have received your correspondence _____ (date), regarding the above-referenced complaint. We have traced and logged the alleged complaint and are taking steps to address this matter within the next 60 to 120 days." The note was signed by Mary Lou Rocca, Administrative Assistant. To date, none of the

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customers have been reimbursed, and the phone numbers for Destiny are not in service. On January 9, 1998, staff phoned Mr. Michael W. Mlinar, the liaison listed on the interexchange application submitted for Destiny. He said that he had not heard anything from Destiny for four months. He gets a recording when he calls, his letters have been returned, and the fax number has been disconnected. On February 18, 1998, staff received a letter from Mr. Randy Jeffers, President of Destiny Telecom International, Inc. requesting cancellation of its certificate. (Attachment A, Page 8.) Therefore, staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should Destiny be ordered to show cause why it should not be fined \$25,000 pursuant to Section 364.285, Florida Statutes, or have its Certificate No. 5168 cancelled for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, Rule 25-24.490, Florida Administrative Code, Customer Relations; Rules Incorporated, 25-4.111, Florida Administrative Code, Customer Complaints and Service Requests, 25-4.113, Florida Administrative Code, Refusal or Discontinuance of Service by Company, and Rule 24-24.485, Florida Administrative Code, Tariffs?

RECOMMENDATION: Yes. The Commission should require Destiny to show cause in writing within 20 days of the issuance of the Commission's Order why it should not be fined for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries, Rule 25-24.490, Florida Administrative Code, Customer Relations; Rules Incorporated, Rule 25-4.111, Florida Administrative Code, Customer Complaints and Service Requests, Rule 25-4.113, Refusal or Discontinuance of Service by Company Rule, and Rule 25-24.485 Tariffs, Florida Administrative Code, or have its certificate cancelled. If Destiny fails to respond to the show cause, the fines should be deemed assessed. If the fines are not paid within five business days of the expiration of the show cause response period, Destiny's certificate should be cancelled. If the fines are paid, they should be forwarded to the office of the Comptroller for deposit in Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. (HAWKINS)

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STAFF ANALYSIS: Destiny was granted a certificate by the Commission to operate as an interexchange service provider on July 18, 1997. On August 12, 1997, staff started receiving complaints from customers who had purchased inoperable debit cards. Staff as well as the customers were given a statement in writing saying that Destiny had received the complaints and was taking steps to address the matter within the next 60 to 120 days. To date, none of the customers have been reimbursed and the phone numbers for Destiny are not in service. On January 23, 1998, staff received a blank Regulatory Assessment Fee Return with the inscription: PLEASE BE ADVISED THAT DESTINY TELECOM INTERNATIONAL, INC. IS OUT OF BUSINESS AND HAS NOT BEEN IN OPERATION SINCE JUNE OF 1997."

On August 12, 1997, staff received a complaint from Severio Nesich against Destiny. Mr. Severio purchased a FREEDOM prepaid debit card, which would provide him 960 hours of phone service. He was only able to use approximately 300 hours.

On August 30, 1997, the following persons submitted complaints against Destiny:

- ◆ C & G Beveridge purchased a prepaid calling card in the amount of \$130.00. The card was never operable.
- ◆ Joy Guyton purchased a FREEDOM prepaid calling card for \$100.00. The card was to provide 300 units of service. When the card no longer worked, she found that her card had only two hundred units.
- ◆ Maxine and Edward Kolbe purchased a FREEDOM prepaid calling card that was to provide five hours of service. They only used forty minutes, yet the card is inoperable.
- ◆ Joyce Thomason purchased her prepaid card as a gift for a friend. The friend returned the card to her because it never worked.
- ◆ Richard L. Lodwick purchased a TURBO DELUXE prepaid calling card which was to provide 1,260 units of calling time. With 400 units of calling time left, a recording informed him he had only 352 units left.
- ◆ Ronald T. Hopwood purchased two prepaid cards, (FREEDOM CARD and DESTINY CARD) to provide a combined 480 units of calling time. The cards are inoperable and still have a large amount of time left.

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- ◆ Joe Biondo purchased a FREEDOM and TURBO prepaid card that did not work at all.
- ◆ Terrill Booker purchased a prepaid calling card that was supposed to provide 300 minutes of use, but it did not work.

Rule 25-4.043, Florida Administrative Code, states, in part:

The necessary replies to inquiries propounded by the Commission's staff concerning service or other complaints received by the Commission shall be furnished in writing within fifteen (15) days from the date of the Commission inquiry.

Since Destiny has failed to respond to staff, we believe the company is in violation of this rule.

Rule 25-24.490, Florida Administrative Code, states, in part:

Upon request, each company shall provide verbally or in writing to any person inquiring about the company's service: (a) any nonrecurring charge, (b) any monthly service charge or minimum usage charge, company deposit practices, (d) any charges applicable to call attempts not answered, (e) a statement of when charging for a call begins and ends, and (f) a statement of billing adjustment practices for wrong numbers or incorrect bills.

Since Destiny has failed to respond to it's customers and discontinued prepaid service without notice to its customers, staff believes the company is in violation of this rule.

Rule 25-4.111, Florida Administrative Code, states, in part:

(1) Each telephone utility shall make a full and prompt investigation of all complaints and service requests made by its customers, either directly to or through the Commission and respond to the initiating party within fifteen (15) days.

Since Destiny has failed to investigate all complaints and service requests from its customers, staff believes the company is in violation of this rule.

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Rule 25-4.113, Florida Administrative Code, states, in part:

(2) In case of refusal to establish service, or whenever service is discontinued, the company shall notify the applicant or customer in writing of the reason for such refusal or discontinuance.

Since Destiny failed to notify it's customers in writing of the reason for the discontinuance of service, staff believes the company is in violation of this rule.

Rule 25-24.485, Florida Administrative Code, states, in part:

(d) The tariff must be clearly expressed in simple words, sentences and paragraphs. It must avoid unnecessarily long, complicated or obscure phrases or acronyms so that the customer will understand that for which he is contracting.

Since the company's tariff fails to include necessary information, staff believes the company is in violation of this requirement.

Under Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each day a violation continues, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364, Florida Statutes, or revoke any certificate issued by it for any such violation. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally," Barlow v. United States, 32 U.S. 404, 411 (1833).

ISSUE 2: Should the Commission order all certified interexchange companies (IXCs) to discontinue providing interexchange telecommunications service to Destiny, pursuant to Rule 25-24.4701(3), Florida Administrative Code?

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RECOMMENDATION: Yes. At the conclusion of the show cause, the interexchange companies will be notified to disconnect the service if appropriate.

STAFF ANALYSIS: Rule 25-24.4701 (3). Florida Administrative Code Provision of Regulated Telecommunications Service to Uncertified Resellers Prohibited, states:

(3) The Commission, upon make a determination that a customer of an interexchange company is unlawfully reselling or rebilling intrastate interexchange service, may issue an order that directs the customer to cease and desist reselling or rebilling such service to such customer and/or to cease providing service to such customer at additional locations within Florida, provided that such discontinuance or limitation of service is technically feasible within the context of existing facilities and technology.

It appears that Destiny was operating in Florida without a certificate. Accordingly, staff recommends that the Commission order all certificated IXCs to discontinue providing intrastate long distance service for resale to this company at the conclusion of the show cause proceeding. If the company was simply operating as a distributor, it would not have ordered 800 number network access; therefore the actions here requiring carriers to discontinue the provision of service for resell will not affect a distributor's business. At the conclusion of the show cause, the interexchange companies will be notified to disconnect the service if appropriate.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: If staff's recommendation in Issue 1 is approved, Destiny will have 20 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined

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in the amount proposed. If Destiny does not respond to the Commission's Order to Show Cause, and the fines are not received within five (5) business days after the expiration of the show cause period, Destiny's certificate should be cancelled and this docket closed. (BEDELL)

STAFF ANALYSIS: If staff's recommendation is Issue 1 is approved, Destiny will have 20 days from the issuance of the Commission's show cause order to respond in writing why it should not be fined in the amount proposed or have its certificate cancelled. If Destiny timely responds to the show cause order, this docket should remain open pending resolution of the Show Cause proceeding. If Destiny does not respond to the Commission's Order to Show Cause, the fines should be deemed assessed. If Destiny fails to respond to the Order to Show Cause, and the fines are not received within five (5) business days after the expiration of the show cause response period, Destiny's certificate should be cancelled, and this docket closed.

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February 12, 1998

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CMU

William D. Talbott
Executive Director
Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

980180-TI

Re: Certificate of Authority

Dear Sir:

This is to inform you that we hereby wish to surrender our Certificate of Authority to offer telecommunications services as our company has been out of business since June of 1997 and is insolvent.

Please have the Commission revoke our authority effective immediately.

If you need to have further communications with us, please contact us at:

Destiny Issues
P.O. Box 1757
San Leandro, CA 94577

- ACK _____
- MFA _____
- APP _____
- QAF _____
- CMU I Blankin
- CTR _____
- EAG _____
- LEG WJ
- LIN _____
- OPC _____
- RCH _____
- SEC I
- WAS _____

Sincerely,

Randy Jeffers
President

RJ:rdm

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