

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 980180-TI
ORDER NO. PSC-98-0682-SC-TI
ISSUED: May 18, 1998

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

ORDER TO SHOW CAUSE AND
PROPOSED AGENCY ACTION ORDER
REQUIRING INTEREXCHANGE CARRIERS TO
DISCONTINUE SERVICE TO DESTINY TELECOMM INTERNATIONAL, INC.

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that part of the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. 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.

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FPSC-RECORDS/REPORTING

In August, this Commission 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.

Although Destiny responded to customer complaints through correspondence that promised to address complaints within 60 to 120 days, none of the complainants have been reimbursed and the phone numbers for Destiny are no longer in service. The Commission contacted the liaison listed on the interexchange application submitted for Destiny who said that he gets a recording when he calls, his letters have been returned and the fax number has been disconnected. On January 23, 1998, the Regulatory Assessment Fee form was returned with a notation that the company had been out of business since June of 1997. On February 17, 1998, shortly after Commission staff initiated show cause proceedings by opening this docket, Mr. Randy Jeffers, President of Destiny Telecomm International, Inc., sent a letter requesting cancellation of the certificate.

In August of 1997, we received the following complaints against Destiny:

- (1) Salver Nesich purchased a FREEDOM prepaid debit card with 960 hours of phone service of which he was only able to use approximately 300 hours;
- (2) C & G Beveridge purchased a prepaid calling card in the amount of \$130.00 which was never operable;
- (3) Joy Guyton purchased a FREEDOM prepaid calling card for \$100.00 with 300 units of service; however, when the card no longer worked, she found that her card had been issued for only two hundred units;
- (4) Maxine and Edward Kolbe purchased a FREEDOM prepaid calling card that was to provide five hours of service, but they were only able to use forty minutes before the card became inoperable;
- (5) Joyce Thomason purchased a prepaid card which never worked;
- (6) Richard L. Lodwick purchased a TURBO DELUXE prepaid calling card which was to provide 1,260 units of calling time,

and with 400 units of calling time left, a recording informed him he had only 352 units left;

(7) Ronald T. Hopwood purchased two prepaid cards, (FREEDOM CARD and DESTINY CARD) to provide a combined 480 units of calling time, but the cards became inoperable with a large amount of time left;

(8) Joe Biondo purchased a FREEDOM and TURBO prepaid card that did not work at all; and

(9) Terrill Booker purchased a prepaid calling card that was supposed to provide 300 minutes of use, but it did not work.

II. ALLEGED VIOLATIONS

Rule 25-4.043, Florida Administrative Code, states in pertinent 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.

We find that Destiny has failed to respond to inquiries. Therefore, we conclude that Destiny violated this rule.

Rule 25-24.490, Florida Administrative Code, states in pertinent 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.

We find that Destiny has failed to respond to its customers and discontinued prepaid service without notice to its customers. Therefore, we conclude that Destiny violated this rule.

Rule 25-4.111, Florida Administrative Code, states in pertinent 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.

We find that Destiny failed to investigate any complaints and service requests from its customers. Therefore, we conclude that Destiny violated this rule.

Rule 25-4.113, Florida Administrative Code, states in pertinent 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.

We find that Destiny failed to notify its customers in writing of the reason for the discontinuance of service. Therefore, we conclude that the company violated this rule.

Rule 25-24.485, Florida Administrative Code, states in pertinent 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.

We find that the company's tariff fails to include necessary information. Therefore, we conclude that Destiny violated this rule.

III. CONCLUSION

A. Show Cause

Pursuant to Section 364.285, Florida Statutes, we are authorized to impose upon any entity subject to our 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). Accordingly, we hereby order Destiny to show cause in writing within twenty (20) days of the effective date of this Order why it should not be fined \$25,000 per day for its apparent violations of Rules 25-4.043, 25-24.490, 25-4.111, 25-4.113, and 25-24.485, Florida Administrative Code. Failure to respond in a timely manner shall constitute an admission of the violations described above, waiver of the right to a hearing, and will result in the assessment of the appropriate fine.

B. Proposed Agency Action

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

(3) The Commission, upon making 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.

If Destiny's certificate is canceled, any intrastate interchange service offered by Destiny would be in violation of Rule 25-24.474, Florida Administrative Code, and the rule provision set forth above may be applied. Accordingly, all certificated IXCs are hereby ordered to discontinue providing intrastate long distance service for resale to this company at the conclusion of the show cause proceeding. IXCs should contact the Commission at the conclusion of the show cause period set out in this Order to determine if the show cause proceeding has been concluded.

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 canceled, and this docket closed.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Destiny Telecomm International, Inc., shall show cause in writing within twenty (20) days of the issuance of this Order why it should not be fined for Rule violations described in the body of this Order. It is further

ORDERED that failure to respond to this Order in the manner and by the date set forth in the "Notice of Further Proceedings or Judicial Review," attached hereto, shall constitute an admission of the violations described in the body of this Order, waiver of the right to a hearing, and will result in the automatic assessment of an appropriate fine. It is further

ORDERED that all Interexchange Carriers shall discontinue providing service to Destiny Telecomm International, Inc., at the conclusion of this show cause proceeding. Any Interexchange Carriers providing service to Destiny shall contact the commission at the conclusion of the show cause response period set forth herein to determine whether the show cause proceeding has been concluded. It is further

ORDERED that the portion of this Order which requires Interexchange Carriers to discontinue providing services to Destiny Telecomm International, Inc., is issued as Proposed Agency Action and shall become final and effective unless an appropriate petition in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that this docket shall remain open pending the resolution of the show cause process or any protest to the Proposed Agency Action portion of this Order. It is further

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ORDERED that in the event the Proposed Agency Action portion of this Order become final, and Destiny Telecomm International, Inc., fails to respond to this Order to show cause as prescribed herein, this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 18th day of May, 1998.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

CB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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The show cause portion of this Order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.037(1), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 7, 1998.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing pursuant to Rule 25-22.037(3), Florida Administrative Code, and a default pursuant to Rule 25-22.037(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to this order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of any electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.

The portion of the action proposed herein which is preliminary in nature will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this portion of the Order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 8, 1998.

In the absence of such a petition, the proposed agency action portion of the order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

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Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the proposed agency action portions of this order become final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.