

Decision 98-10-027 October 8, 1998

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Destiny
Telecomm International, Inc., for a Certificate of
Public Convenience and Necessity to Operate as a
Reseller of Telecommunications Services Within
the State of California.

Application 96-12-001
(Filed December 3, 1996)

OPINION DENYING APPLICATION WITH PREJUDICE

Summary

By this decision, we deny with prejudice the application of Destiny Telecomm International, Inc. (Destiny), a California corporation, formerly known as Tel America International, Inc., seeking authority to act as a reseller of telecommunications services within California.

Discussion

On December 3, 1996, Destiny, filed an application seeking authority to operate as a nondominant interexchange carrier providing resold interLATA and intraLATA long distance telecommunications services within the State of California. Notice of filing of the application appeared in the Commission's Daily Calendar on December 4, 1996. No hearing on the application is necessary and none was held.

During the course of routine examination of the application by the assigned Administrative Law Judge (ALJ), information was developed that Destiny was then the subject of an investigation by the Alabama Attorney General's Office for possibly operating a pyramid scheme in violation of that state's Deceptive Trade Practices Act, and that Alabama's Public Service

Commission had issued a cease and desist order against Destiny. It was further learned that Destiny was also the subject of an investigation in Oregon and was of interest to officials in the State of Washington. Upon receipt of the information concerning Destiny's method of operation and encounters with the regulatory officials of Alabama and other states, the ALJ requested that a detailed investigation of Destiny and its method of operation be conducted by the Commission's Enforcement Branch.

On March 13, 1997, the Commission's Consumer Services Division filed a motion to accept a late-filed protest. That motion was granted and the protest accepted by the ALJ by ruling dated and filed March 21, 1997. The ALJ's ruling also stayed further proceedings concerning Destiny's application until such time as the requested investigation into Destiny's operations was completed.

On March 25, 1997, the ALJ was furnished a copy of the Final Judgment and Permanent Injunction entered March 18, 1997, in Case No. 782085-6 in the Superior Court of the State of California for the County of Alameda, entitled "PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff v. DESTINY TELECOMM INTERNATIONAL, INC.; RANDALL D. JEFFERS; SANDY BRITTAIN and DOES 1 through 50 inclusive, Defendant."(sic). That action was brought jointly by the District Attorney of Alameda County, the District Attorney of Monterey County, and the Attorney General of the State of California. Among other provisions, the judgment precludes the operation by defendants Destiny and Jeffers (the president of Destiny and its sole shareholder) of any form of pyramid scheme in violation of California Penal Code Section 327. Further, civil penalties in the amount of \$1.6 million were assessed against defendants Destiny and Jeffers pursuant to Business and Profession Code Sections 17203 and 17206. The Judgment ordered the complaint dismissed against defendants Brittain and Does 1 through 50 inclusive. We take Official Notice of that Final Judgment and

Permanent Injunction, and direct that a copy of the same be included in and made a part of the official record of this proceeding.

On July 1, 1998, Special Agent Richard C. Maniscalco of CSD's Enforcement Branch filed and served upon all parties to this proceeding his official report of the investigation of Destiny and its operations. The findings and results of that investigation are best summarized in Special Agent Maniscalco's own words:

"My investigation of Destiny has revealed the following:

- "1. Destiny purchased, constructed, and operated telephone switching equipment in downtown Oakland, California, without first obtaining Commission authority.
- "2. Destiny sold debit phone cards to the general public to promote a pyramiding scheme.¹ MCI was the underlying telephone provider for Destiny's debit phone cards, which were used to place interLATA and intraLATA telephone calls within California. In 1997, the Monterey and Alameda District Attorneys Offices and the State Attorney Generals Office prosecuted Destiny for engaging in such unlawful conduct.²
- "3. Destiny also acted as MCI's agent to sell presubscribed long distance telephone service to its members in California under a program called 'Destiny Direct.'

¹ After persons purchased Destiny's phone cards, they were required to become independent representatives (IRs) in Destiny's pyramid scheme and earned commissions by recruiting others to purchase into the scheme.

² The crime violated Penal Code Section 327 and Business and Professions Code Sections 17200 and 17500. Destiny settled with these law enforcement agencies, but the company failed to refund in full all persons who were victimized by Destiny.

- "4. Destiny failed to collect and/or remit surcharges, fees, and taxes, from its telecommunications operations, to the appropriate agencies.
- "5. Destiny failed to fully comply with the Final Judgment and Permanent Injunction (judgment) settlement it entered into with the California Attorney General and the District Attorneys of Monterey and Alameda Counties. This settlement came about after the DAs and A.G.'s offices filed civil charges against Destiny alleging Destiny was operating an endless pyramid scheme in violation of Penal Code Section 327 and Business and Professions Code Sections 17200 and 17500. Specifically, Destiny failed to refund in full all persons who became IRs [Independent Representatives] prior to April 10, 1997 and who requested refunds and to provide 90% refunds to persons who became IRs after April 10, 1997 pursuant to the agreement. Destiny also failed to pay in full the \$1.6 million fine levied against it." (Declaration of Special Agent Richard C. Maniscalco, [Report of] Investigation of Destiny Telecomm International, Inc. [July 1, 1998, pp. 1-2]).

Investigation reveals that Destiny no longer occupies the premises it did at the time of application, and reportedly it is no longer in business. Efforts to locate Jeffers have been unsuccessful. No forwarding address for Destiny or Jeffers has been submitted to the Commission as is required by our regulations, and the consultant who submitted the application on Destiny's behalf has advised that he no longer represents Destiny and has no information concerning Destiny and/or the current whereabouts of Jeffers. Telephone calls to the telephone number specified for Destiny in the application indicate that the number is no longer assigned to Destiny, but for over a year has been reassigned to a company named Income Network, Inc., which reportedly is unrelated to Destiny. In addition, Jeffers is unknown to the current subscribers of that number. Attempts to reach the Fax number listed for Destiny in the application

were met with a recorded telephone company operator message that the number has been disconnected.

In view of the existence of the Final Judgment and Permanent Injunction of the Superior Court referred to above, and in view of the failure/refusal of Destiny to comply with its terms to the detriment of all concerned, and in view of Destiny's flagrant and intentional disregard of the Commission's rules and regulations in operating a telephone switch without prior authority from the Commission, and Destiny's failure to collect and/or remit applicable fees, surcharges and taxes to the appropriate agencies and/or authorities, Destiny's application for a Certificate of Public Convenience and Necessity should be denied with prejudice for lack of fitness.

Further Proceedings

Our order today provides further that any subsequent application or other filing with this Commission by or on behalf of Destiny Telecomm International, Inc., or Tel America International, Inc., or Randall D. Jeffers, also known as Randy Jeffers, shall not be granted without the Commission first conducting a full hearing on the findings and allegations of the Consumer Services Division (CSD) report dated July 1, 1998. In connection with such hearing, the Commission may consider instituting an Order to Show Cause as to whether further sanctions should not be imposed on the applicant based on the CSD report.

Findings of Fact

1. On December 3, 1996, Destiny, a California corporation formerly known as Tel America International, Inc., made application for authority to act as a nonfacilities based reseller of telecommunications services within California.
2. During routine examination of the application, negative information was developed concerning the applicant and its method of operation.

3. The assigned ALJ requested the Commission's Enforcement Branch to conduct an investigation into Destiny and its method of operation.

4. On March 13, 1997, the Commission's Consumer Services Division filed a motion to accept a late-filed protest.

5. By ruling dated and filed March 21, 1997, the ALJ accepted CSD's late-filed protest, and issued a stay of proceedings pending completion of the Enforcement Branch's investigation into applicant's operation.

6. On March 25, 1997, the ALJ was furnished a copy of the Final Judgment and Permanent Injunction in Alameda Superior Court Case No.782085-6, wherein Destiny and Randall D. Jeffers, Destiny's president, were enjoined from conducting a pyramid scheme in violation of Section 327 of the Penal Code, and were assessed civil penalties of \$1.6 million pursuant to Business and Professions Code Sections 17203 and 17206.

7. On July 1, 1998, Special Agent Richard C. Maniscalco, Enforcement Branch, Consumer Services Division, submitted his report concerning Destiny and its method of operation.

8. Special Agent Maniscalco's report and sworn declaration contained detailed findings and conclusions in at least five general areas:

- a. Destiny's purchase, construction, and operation of telephone switching equipment without Commission authority.
- b. Destiny sold debit phone cards to the general public to promote a pyramiding scheme. In 1997, The Monterey and Alameda County District Attorneys and the California Attorney General prosecuted Destiny for engaging in such unlawful conduct. That prosecution resulted in the Final Judgment and Permanent Injunction referred to in Finding of Fact 6.
- c. Destiny acted as MCI's agent to sell presubscribed long distance telephone service to its members in California under a program called "Destiny Direct".
- d. Destiny failed to collect and/or remit surcharges, fees, and taxes from its telecommunications operation, to the appropriate agencies.

e. Destiny failed to fully comply with the Final Judgment and Permanent Injunction entered into with the District Attorneys of Monterey and Alameda Counties and the Attorney General of California, and failed to pay in full the \$1.6 million fine levied against it.

9. Destiny has failed to provide the Commission with its current address, telephone number, and name and address of its current contact person.

Conclusions of Law

1. The application filed by Destiny was protested by the Commission's Consumer Services Division.

2. Official Notice should be taken of the Final Judgment and Permanent Injunction entered in Alameda Superior Court Case No. 782085-6 wherein Destiny and its president, Randall D. Jeffers, were enjoined from conducting a pyramid scheme in violation of Penal Code Section 327, and were assessed civil penalties of \$1.6 million pursuant to Business and Professions Code Sections 17203 and 17206.

3. No hearing is required as the entry of the Final Judgment and Permanent Injunction, without more, is sufficient for denial of the application on the ground of lack of fitness.

4. The sworn declaration of Special Agent Richard C. Maniscalco dated July 1, 1998, detailing the results of his investigation of Destiny and its activities also constitutes just cause for denial of Destiny's application on the ground of lack of fitness.

5. Destiny's application should be denied with prejudice.

6. This decision should be effective upon issuance.

O R D E R

IT IS ORDERED that:

1. The Final Judgment and Permanent Injunction filed in Alameda County Superior Court Case No. 782085-6 on March 18, 1997, is Officially Noticed and is hereby incorporated into and made a part of the official record of this proceeding and a copy thereof shall be placed in the official file of this proceeding.

2. The application of Destiny Telecomm International, Inc. (Destiny), a California corporation, formerly known as Tel America International, Inc., seeking authority to provide interLATA and intraLATA telecommunications services within the State of California is denied with prejudice.

3. Any subsequent application or other filing by or on behalf of Destiny, or Tel America International, Inc., or Randall D. Jeffers, also known as Randy Jeffers, shall not be granted until the Commission first has conducted a hearing on the allegations of the Consumer Services Division (CSD) report dated July 1, 1998. In connection with such hearing, the Commission may institute an Order to Show Cause as to whether further sanctions should not be imposed on the applicant based on the CSD report.

4. This proceeding is closed.

This order is effective today.

Dated October 8, 1998, at Laguna Hills, California.

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