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MAIL DATE

4/21/00

Decision 00-04-067

April 20, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, and conduct of Coral Communications, Inc. (Coral) and Michael Tinari, President of Coral; William Gallo, Senior Vice President of Coral; Devon Porcella, Vice President of Sales and Operations of Coral; Neal Deleo, Vice President Finance and MIS of Coral to determine whether the corporation or its principals have operated within California without having a certificate to operate from the Commission and whether they have charged California subscribers for telecommunications services the subscribers never authorized.

Investigation 98-08-004  
(Filed August 6, 1998)

**ORDER GRANTING A PARTIAL STAY OF DECISION 99-08-017 AND  
DISMISSING APPLICATIONS FOR REHEARING OF  
DECISION 99-08-017 WITHOUT PREJUDICE**

**I. SUMMARY**

In Interim Decision (D.) 99-08-017, we addressed the need to secure funds for eventual reparations to California consumers in this case. We added as respondents five companies that have performed billing services for Coral, either directly or through other billing agents. Two of these companies, OAN Services, Inc. (OAN) and Telephone Billing Services, Inc. (TBS) filed applications for rehearing challenging the portion of the Decision that required them to turn over to the Commission money that they had collected on behalf of Coral, pending further order, or provide alternative security for any Coral funds in their possession.

Today, we stay that portion of the Decision (Ordering Paragraph (OP) No. 2) pending consideration of TBS's and OAN's objections. We dismiss their applications for rehearing of D.99-08-017 without prejudice.

## II. BACKGROUND

Based on numerous complaints from California consumers about unauthorized charges on their telephone bills that were traced to Coral, and other evidence gathered by our Consumer Services Division (CSD), on August 6, 1998, we began formal proceedings charging Coral with cramming and operating without a certificate of public convenience and necessity. The evidence gathered by CSD indicates that in the summer and fall of 1997, Coral used sweepstakes to obtain the names and telephone numbers of thousands of California consumers, and used this information to bill California customers for calling card services they had never authorized and in most cases, never used. We later added as respondents Easy Access, Inc. and two of its directors based on evidence that Easy Access had purchased Coral's calling card business. (See D.98-12-101, as modified by D.99-04-033.)

In approximately December 1998, the District Attorneys of Monterey, San Mateo, Tulare and Kings County filed suit jointly against Coral and individuals believed to be responsible for Coral's actions. The civil action, filed in Monterey County Superior Court, was based on the same conduct that prompted the Commission's investigation, and charged Coral with misleading advertising and other violations of the California Unfair Business Practices Act.<sup>1</sup> On January 4, 1999, the Superior Court issued a preliminary injunction enjoining Coral from offering any telephone service without written approval from the Commission, and from charging customers for any telephone service without their informed, written, and verified consent.<sup>2</sup> Ultimately, judgment approving a settlement agreement was entered.

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<sup>1</sup> See California Business & Professions Code § 17200 et seq. and § 17500 et seq.

<sup>2</sup> People of the State of California v. Coral Communications et al., Case No. 116211 (January 4, 1999).

The Commission, in its own proceeding against Coral, held an evidentiary hearing on April 12 and 13, 1999. Coral failed to appear, and abandoned all efforts to defend itself.

In an effort to ensure that funds be available for potential restitution to consumers in this case, on August 6, 1999, we issued our interim Decision D.99-08-017. This decision was directed in part at companies that had provided billing services to Coral and might be holding funds collected as a result of Coral's allegedly unlawful conduct. Relying on authority conferred on the Commission by recently enacted statutes designed to protect consumers from cramming, Public Utilities Code sections 2889.9 and 2890, we ordered OAN, TBS, and three other billing companies to file an accounting of their transactions with Coral (OP No. 1). This portion of the Decision has not been challenged. In addition, we ordered them to remit a certified check or other financial assurance "in the amount of the difference between the amount collected on behalf of Coral/Easy Access and the amount disbursed to Coral/Easy Access or refunded to customers" (OP No. 2). These funds were to be held by the Commission pending resolution of the case against Coral. (*Id.*) The billing agents were given the options of submitting an irrevocable letter of credit or a bond instead of a certified check, although these options were only specified in the discussion portion of the Decision. (See pp. 5-6.)

The Decision ordered a hearing to be held on August 26, 1999 in order to give the parties, particularly the billing agents, an opportunity to contest the actions ordered in the Decision before they were required to turn over any funds. (OP No. 3.) OAN, TBS, and Accutel appeared at the hearing through counsel and raised a number of legal, factual, and procedural objections to OP No. 2. OAN and TBS argued that the Commission lacks authority to order them to turn over funds in their possession. In addition, TBS presented this argument in a "Motion to Dismiss for Lack of Jurisdiction" filed on August 25, 1999. OAN included a similar objection in written objections to the Decision. Both companies objected, as well, to the lack of findings on whether each of them was in possession of any funds belonging to Coral. TBS

argued that the funds that the Decision apparently required TBS to turn over to the Commission belonged to TBS, not to Coral. In a motion to stay the Decision, TBS then argued inconsistently that it could not turn over to the Commission the money it had collected on behalf of Coral without breaching its contract with Coral.

## **II. DISCUSSION**

The purpose of the August 26 hearing was to entertain objections to our Decision. The objections that were made at the hearing and in subsequent filings will be addressed in a forthcoming decision. That decision will be made in light of all of the relevant evidence in the record, including the information submitted by the billing agents in response to OP No. 1 of the Decision. Any relevant information submitted in response to the assigned ALJ's order of February 15, 2000, which requested clarifying information, will also be considered.

TBS and OAN's applications for rehearing of the Decision raise the same objections raised at the August 26 hearing and in the motions and comments previously filed in response to the Decision. Because those objections will be addressed in a forthcoming Decision, we dismiss these rehearing applications without prejudice.

In light of the objections raised at the August 26 hearing, and pending resolution of factual and legal issues that must be resolved regarding the potential liability of the billing agents in this case, we grant in part TBS's motion to stay the Decision. We will stay OP No. 2 of the Decision.

Accordingly,

### **IT IS ORDERED that:**

1. TBS's motion to stay D.99-08-017 is granted in part. OP No. 2 of D.99-08-017 is stayed pending the upcoming Commission decision in this investigation. In all other respects, D.99-08-017 remains in effect pending the Commission's decision addressing all the legal and factual objections to OP No. 2 in D.99-08-017 that have been raised so far in this proceeding.

2. The applications for rehearing filed by TBS and OAN are dismissed without prejudice.

This order is effective today.

Dated April 20, 2000, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

CARL W. WOOD

Commissioners