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Decision 99-08-017 August 5, 1999

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)

INTERIM OPINION

Summary

This decision clarifies our general policy on securing assets to fund potential reparation orders or fines and directs that funds held by respondents' billing agents be deposited with the Commission. The billing agents are named as additional respondents, and a hearing is set at which the parties (including both original and additional respondents) may contest the actions ordered in this decision. A copy of this decision will be personally served on the additional respondents' respective registered agents for service of process in California. A copy of this decision will also be sent by certified mail to each of the additional respondents.

Background

The record in this proceeding contains evidence that Coral Communications, Inc. (Coral) and/or Easy Access, Inc., also a respondent, billed 256,000 California consumers a \$2.99 set up fee and \$6.99 monthly charge for a calling card which 97% of the consumers did not use. The evidence shows that respondents used sweepstake contests to obtain names and phone numbers and purported authorizations, in fine print, for the calling cards. The total amount billed is nearly \$6 million. On May 14, 1999, the Consumer Services Division (CSD) filed its initial brief in this proceeding in which it sought over \$14 million in reparations and fines from respondents.

This proceeding is currently pending before the Commission. The merits of this investigation will be addressed in a subsequent decision.

The purpose of this interim decision is to reaffirm the Commission's policy on enforcement of its consumer protection decisions and to order specific immediate actions in this proceeding.

Commission's Policy on Enforcement

Where Commission staff alleges that an entity has wrongfully obtained funds from consumers or that fines are required to deter any future such activity, the Commission must take all actions within its power to ensure that respondents' assets will be available to fund any ordered reparations or fines. Of course, there may be instances where, despite diligent efforts, no assets can be located; nevertheless, aggressive actions must be fully pursued.

The Commission has previously relied on its authority over the Local Exchange Carriers (LECs), which often provide billing and collection services to telecommunications investigation respondents. See Sonic, 59 CPUC2d 30 (D.95-03-016) (ordering LECs to hold payments due to Sonic). Other administrative and judicial means exist to thwart asset flight.

Therefore, we reaffirm our policy of resolutely pursuing all assets which may be needed to fund reparations orders or fines. We direct CSD to consider from the outset of all enforcement cases any actions which could be taken to preserve such assets. We put on notice all entities which provide billing and collection services, including LECs and billing agents, that the Commission may direct them to provide information on billing services provided to respondents in future proceedings. We direct the General Counsel to explore all innovative administrative means which the Commission has authority to impose, and to consider whether any additional legislation is needed to expand our authority. The General Counsel should also consider and be ready to pursue judicial remedies to preserve assets for a potential reparations and fine order, or otherwise to enforce such an order through judicial means.

Imprisonment of Officers, Agents, or Employees

By statute, any officer, agent, or employee of a public utility or a corporation not a public utility, which violates the Public Utilities Code or fails to comply with a Commission directive, is subject to imprisonment in the county jail for a period not to exceed one year. (Pub. Util. Code §§ 2110, 2112.) While the Commission reserves imprisonment for the most serious offenders, this sanction is available to the Commission through the state courts and will be considered, particularly in cases of widespread, blatant, or repeated violations of the Public Utilities Code.

New Authority Over Billing Agents

Effective January 1, 1999, Pub. Util. Code §§ 2889.9 and 2890 grant the Commission authority to impose its penalty provisions against billing agents that violate those statutes. The new statutes require (1) billing agents to bill only for charges authorized by telecommunications subscribers, and (2) entities which

provide telecommunications products or services to maintain a consumer dispute resolution process. The Commission is directed to adopt rules for tracking consumer complaints¹ and to initiate an investigation when more than 100 complaints are filed in any 90-day period. All billing agents must also respond to Commission staff requests for information or be subject to immediate termination of their billing rights through California telephone companies.

(§ 2889.9(f).) The Commission is also granted broad authority to "adopt rules, regulations, and issue decisions and orders, as necessary, to safeguard the rights of consumers and to enforce the provisions of [the statute]." (§ 2889.9(i).)

The Commission intends to fully utilize this new authority in its ongoing efforts to combat unauthorized charges in California telephone bills. In this proceeding, these statutes provide the Commission the necessary authority over the billing agents to require a full accounting of their transactions with Coral and/or Easy Access, §§ 2889.9(f) and (g), and to remit any reserved funds and fees, § 2889.9(i).

Specific Actions in this Proceeding

As to this proceeding, the record reveals that both corporate respondents, Coral and Easy Access, have stated that they are insolvent. No asset of either has been identified in the record, with the exception of funds on deposit with a

¹ The Commission is currently considering draft rules which will apply to billing agents in Rulemaking 97-08-001/Investigation 97-08-002, as well as other issues regarding billing agents.

billing agent, Telephone Billing Services. CSD reports that Telephone Billing Services "considers this money either its own or CCPI's."²

In light of CSD's request for \$14 million in reparations and fines, safeguarding the rights of consumers requires preserving the funds on deposit with Telephone Billing Services for California consumers, should the Commission determine that reparations or a fine are warranted in this proceeding. Accordingly, Telephone Billing Services shall, within 20 days of the effective date of this order, file, serve, and submit to the Director of the Commission's Telecommunications Division a complete accounting of all its transactions with and on behalf of Coral Communications and/or Easy Access.

In addition, "safeguard[ing] the rights of consumers" requires the Commission to ensure whenever possible the availability of funds to pay reparations that the Commission may order. (See further discussion below.) Accordingly, any funds collected on behalf of Coral Communications and/or Easy Access that remain in Telephone Billing Services' possession shall be secured for further disposition by the Commission. Telephone Billing Services can satisfy this requirement by submitting either an irrevocable letter of credit from an approved financial institution, or a bond, or by depositing the funds with the Commission.³

² CCPI is identified in CSD's brief as another billing agent Coral used to bill through Telephone Billing Services. CSD also indicates that Telephone Billing Services is doing business in California as LD Billing Company.

³ The Commission is open to considering proposals by the billing agents for alternative means of providing the same level of financial assurance.

Coral Billing Agents ITA, OAN, Accutel, and CCPI

The record in this proceeding, as well as CSD's brief, reveals that Coral used at least four other billing agents, ITA, OAN, Accutel, and CCPI, to bill California consumers. The record does not reveal the financial status of these entities, nor does it indicate whether they may also hold funds on behalf of Coral and/or Easy Access. For this reason, we will order ITA, OAN, Accutel, and CCPI to (1) submit a thorough accounting of their transactions with Coral and/or Easy Access which includes but is not limited to (1) the total amount collected on behalf of Coral/Easy Access, (2) the amount disbursed to Coral/Easy Access or refunded to customers, and (3) the amount retained by the billing agent (amount #1 less amount #2). Each billing agent shall secure for further disposition by the Commission (by any of the means discussed above) the amount it has retained from Coral/Easy Access billings (amount #3).

Commission Authority to Secure Assets

In this proceeding, CSD has alleged that Coral/Easy Access billed California customers through the named billing agents for \$6 million in unauthorized charges. The record shows that both respondents are insolvent and that CSD seeks \$14 million in reparations and fines. A reported asset of Coral's is an amount held by a billing agent. The Legislature has recently authorized the Commission to obtain accountings from and take actions "as necessary to safeguard the rights of consumers" against billing agents. To the extent assets of Coral/Easy Access are retained by the billing agents, the Commission is authorized to identify and secure those assets for consumers.

These assets were obtained directly from the allegedly wrongfully billed consumers. Should the Commission determine that Coral/Easy Access did wrongfully bill those consumers, all such assets should be returned to

consumers. We find that such actions are necessary to safeguard the rights of consumers.

Original Respondents' and Billing Agents' Right to a Hearing

The parties (including the originally named respondents and billing agents) may appear and contest the actions ordered in this decision at a hearing to be held:

Thursday, August 26, 1999
9:00 a.m.
505 Van Ness Avenue
Commission Hearing Rooms
San Francisco, CA

Consideration in Executive Session

Government Code Section 11126(d)(2) allows the Commission to "deliberate on the institution of proceedings" in Executive Session. Although the investigation of Coral and Easy Access has been on-going, this decision initiates actions against the billing agents and thus falls within this exemption. As this decision is "authorized by law to be considered in Executive Session," it is exempt from the service and comment requirements found in § 311(g)(1). See § 311(g)(2).

Coral Billing Agents and California LECs

Pursuant to § 2889.9(f), the Commission is authorized to direct California LECs to cease to provide billing and collection services to any billing agent which has not complied with a Commission request for information. Consistent with this authority, we will order all California LECs to cease to provide such services to any named billing agent that fails to comply with this order.

Correspondingly, billing agents that fully comply with these requirements will suffer no interruption of their billing contracts.

We recognize that ordering the LECs to suspend billing services and to hold funds due to the billing agents may have an effect on entities other than Coral and Easy Access. As we understand the LECs' contracts with billing agents, the LECs do not possess the information necessary to segregate any Coral/Easy Access billing from billing for other entities. Consequently, it is of critical importance that the Commission receive promptly the detailed accounting information requested above. With this information, the Commission will be in a position to evaluate if and to what extent billing agents' funds are properly held for potential Coral/Easy Access reparations or fines.

Findings of Fact

1. All corporate respondents have indicated that they are insolvent.
2. No known assets of respondents exist in California.
3. CSD has sought reparations and fines of over \$14 million.
4. Telephone Billing Services informed CSD that it has provided telecommunications billing services through California LECs to Coral totaling \$450,000.
5. Telephone Billing Services informed CSD that it has reserves from the Coral billings which it intends to retain.
6. CSD states that ITA, OAN, Accutel, and CCPI provided billing services to Coral and/or Easy Access.
7. Safeguarding the rights of consumers requires that the Commission act to preserve the remaining assets of the original respondents for a potential Commission decision ordering reparations or fines.
8. Safeguarding the rights of consumers requires that the billing agents fully account for all funds that may have been collected as the result of wrongful billing.

9. The Commission has previously ordered California LECs to cease remitting funds to entities which are alleged to have violated the Public Utilities Code.

10. This decision initiates proceedings directed at the billing agents to the extent they may retain funds resulting from wrongful billing of consumers.

Conclusions of Law

1. The Commission has specific jurisdiction over billing agents pursuant to Pub. Util. §§ 2889.9 and 2890.

2. The Commission has jurisdiction pursuant to §§ 2889.9(f) and (g) to order the named billing agents to submit an accounting of their transactions with Coral.

3. The Commission is authorized to "adopt rules, regulations and issue decisions and orders, as necessary, to safeguard the rights of consumers and to enforce the provisions of [§ 2889.9]."

4. The Commission is authorized to consider in Executive Session decisions which initiate a proceeding; such decisions are exempt from § 311(g)(1).

5. The Commission may suspend the right of a billing agent to bill through a local exchange carrier pursuant to Pub. Util. Code § 2889.9(c).

6. In order to ensure that the Commission can achieve its enforcement objectives, this order should be effective immediately.

INTERIM ORDER

Therefore **IT IS ORDERED** that:

1. Telephone Billing Services, ITA, OAN, Accutel, and CCPI (collectively, billing agents) are named as additional respondents. No later than 20 days after the effective date of this order, the billing agents shall provide to the Director of the Commission's Telecommunications Division, and shall concurrently file with the Commission's Docket Office and serve on all parties, a full accounting of their respective transactions with, or on behalf of, Coral Communications, Inc. (Coral) and/or Easy Access, Inc. (Easy Access). Such accounting shall include, without limitation, a statement of all amounts billed for Coral/Easy Access, amounts actually collected, amounts refunded to consumers, amounts disbursed to Coral/Easy Access, and amounts retained by the billing agent.
2. No later than 22 days after the effective date of this order, the billing agents shall remit to the Manager of the Commission's Fiscal Office a certified check, or other appropriate financial assurance as discussed in this decision, payable to California Public Utilities Commission 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. All such funds will be held by the Commission and will be distributed pursuant to further order of the Commission.
3. A hearing will be held, commencing at 9:00 a.m., Thursday, August 26, 1999, at the Commission's hearing rooms, 505 Van Ness Avenue, San Francisco, at which the original and added respondents, and other parties, may contest or otherwise comment on the actions ordered in today's decision.
4. Parties may file and serve responses to the billing agents' accountings no later than Tuesday, September 7, 1999.

5. At a subsequent Commission meeting, the Commission will consider whether further actions pursuant to § 2889.9(f) are needed.

6. Effective immediately, all California incumbent local exchange carriers and any billing agents that bill through such companies, shall perform no billing and collection services for Coral/Easy Access.

7. This decision shall be served on all parties, on all incumbent California local exchange carriers, and on the additional respondents, namely, Telephone Billing Services, ITA, OAN, Accutel, and CCPI. Service of this decision on the additional respondents will be effectuated by personally serving a copy of the decision on the additional respondents' respective registered agents for service in California, namely:

- for Telephone Billing Services (dba in California as LD Billing Company):
Agent: None in California
- for ITA (International Telemedia Associates):
Corporation Service Company
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833
- for OAN Services, Inc.:
CT Corporation System
818 West Seventh Street
Los Angeles, CA 94111
- for Accutel Communications, Inc.:
Warner Bott Berry
One Maritime Plaza, Suite 700
San Francisco, CA 94111
- for CCPI (Call Card Plus, Inc.):
Agent: None in California

In addition, a copy of this decision will be sent by certified mail to the additional respondents at their respective business addresses, as follows:

- Telephone Billing Services
4480 West Spring Mountain Rd., Ste. 400
Las Vegas, NV 89102
- ITA
340 Interstate North Parkway, Ste. 200
Atlanta, GA 30339
- OAN Services, Inc.
9255 Corbin Avenue
Northridge, CA 91324
- Accutel Communications, Inc.
100 East Sample Rd., Ste. 210
Pompano Beach, FL 33064
- CCPI
16807 U.S. Hwy 19 North, Suite B
Clearwater, FL 33764

This order is effective today.

Dated August 5, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners