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X990036

**Judge Pauley**

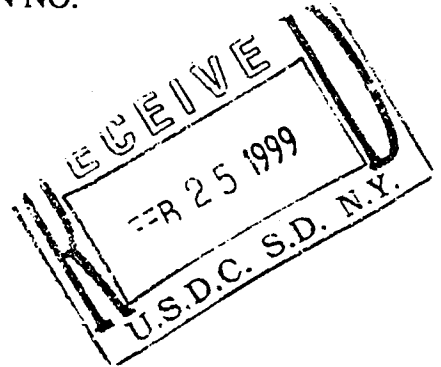
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**99 CIV. 1432**

_____		)
FEDERAL TRADE COMMISSION		)
		)
Plaintiff,		)
		)
v.		)
		)
PT-1 COMMUNICATIONS, INC.		)
(formerly known as PHONETIME, INC.		)
or PTI), a New York corporation,		)
		)
Defendant.		)
_____		)

CIVIL ACTION NO.



**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission ("Commission"), for its complaint alleges as follows:

1. The Commission brings this action under Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), to obtain a permanent injunction, enjoining the acts and practices complained of herein, and providing for rescission of contracts, restitution,

disgorgement, and other equitable relief for defendant's acts and practices in connection with the sale and offering for sale of prepaid phone cards in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345 and 15 U.S.C. § 53(b).

3. Venue in the United States District Court for the Southern District of New York is proper under 28 U.S.C. §§ 1391(b) and (c) and 15 U.S.C. § 53(b).

### **PLAINTIFF**

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41 *et seq.* The Commission is charged, among other things, with enforcement of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits deceptive acts or practices in or affecting commerce. The Commission is authorized to initiate federal district court proceedings to enjoin violations of the FTC Act in order to secure such equitable relief as may be appropriate in each case. 15 U.S.C. §§ 45(a) and 53(b).

### **DEFENDANT**

5. Defendant PT-1 Communications, Inc. ("PT-1"), (formerly known as Phonetime, Inc. or PTI), a New York corporation with its principal place of business at 30-60 Whitestone Expressway, Flushing, New York, promotes and sells prepaid phone cards to consumers through distributors, including wholesale distributors and retail outlets. PT-1 has transacted business in the Southern District of New York.

## COMMERCE

6. At all times relevant to this complaint, defendant has maintained a substantial course of trade in the offering for sale and sale of prepaid phone cards, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

## BACKGROUND

7. Prepaid phone cards are cards that embody a right to exchange the card's monetary value for telephone calling time, often at specified rates.

8. To use a prepaid phone card, the caller dials a specified toll free number. He or she then is prompted to enter a Personal Identification Number ("PIN"), after which the caller typically is given a voice response system-generated statement of the remaining value of the card. The caller then enters the number to be called and the call is placed. The switching facility through which the call is routed monitors the time from the moment the party called has answered the phone until either party to the call has hung up or been disconnected (hereinafter "connect time") and reduces the value of the card as charges are incurred. The card user generally is given a warning when the remaining value of the card has fallen below the cost of two minutes of calling time at the then applicable rate.

## DEFENDANT'S MARKETING AND SALES ACTIVITIES

9. Since at least April 1995, defendant has marketed and sold to wholesale distributors and retail outlets a prepaid phone card, the "PT-1 Card," for resale to consumers throughout the United States. The PT-1 Card has been available in \$5, \$10, and \$25 denominations and has been sold at many types of retail establishments, including newsstands,

grocery stores, pharmacies, delicatessens, and fast food restaurants. The PT-1 Card may be purchased from a vending machine or directly from a store employee.

10. In marketing the PT-1 Card, defendant has disseminated or caused to be disseminated to consumers and distributors through its World Wide Web site on the Internet, point-of-sale materials (including, but not necessarily limited to, illuminated signs, posters, and "take one" cards), and other means, advertisements that tout the low cost of using the PT-1 Card in making international or domestic long distance calls. These advertisements state the following:

**"LOWEST INTERNATIONAL RATE CARD**  
**CALL THROUGHOUT THE US FOR ONLY 19¢ PER MINUTE**  
**• 24 HOURS • 7 DAYS • SAME LOW RATES •"**

or:

**"PTI [sic] Pre-Paid PHONE CARD SOLD HERE**  
**LOWEST INTERNATIONAL RATE CARD!**  
**Call throughout the US for ONLY U.S.A. 19¢ Per Minute"**  
(emphasis in original).

11. Defendant imposes a connection charge on all domestic long distance calls equal to the cost of one minute of calling time, without disclosing this charge to consumers.

12. Since on or about April 1, 1996, defendant has imposed a service fee, reducing the value of its prepaid phone cards 25 cents per card for each month after the first month of active use, without disclosing this fee to consumers.

13. As set forth below, defendant has violated Section 5(a) of the FTC Act by misrepresenting and failing to disclose material facts in connection with the offer and sale of its prepaid phone cards.

## VIOLATIONS OF SECTION 5 OF THE FTC ACT

14. Defendant has represented, expressly or by implication, that the value of its prepaid phone cards is reduced only at the advertised per minute rates.

15. In fact, in numerous instances, the value of defendant's prepaid phone cards is not reduced only at the advertised per minute rates. Consumers incur a connection charge of 19 cents for every domestic long distance call that is made, and consumers also incur a monthly service fee of 25 cents per card for each month after the first month of active use.

16. Defendant's representation as set forth in Paragraph 14 above is thus false and misleading, and constitutes a deceptive act or practice in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

17. Defendant has represented, expressly or by implication, that the value of its prepaid phone cards is reduced only at the advertised per minute rates. In numerous instances, defendant has failed to disclose that consumers also incur a connection charge of 19 cents for every domestic long distance call that is made, and a monthly service fee of 25 cents per card for each month after the first month of active use. These facts would be material to distributors and consumers in their purchase or use of defendant's prepaid phone cards. The failure to disclose these facts, in light of the representation made, is deceptive.

## CONSUMER INJURY

18. Defendant's violations of Section 5(a) of the FTC Act have injured, and will continue to injure consumers. As a result of defendant's deceptive acts or practices, consumers throughout the United States have suffered substantial monetary loss. Absent injunctive relief by this Court, defendant is likely to continue to injure consumers and harm the public interest.

### **THIS COURT'S POWER TO GRANT RELIEF**

19. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other relief to prevent and remedy violations of the FTC Act, and in the exercise of its equitable jurisdiction, this Court may award redress to remedy the injury to consumers, order disgorgement of monies resulting from defendant's unlawful acts or practices, and order other ancillary equitable relief.

### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff respectfully requests that this Court, as authorized by Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and this Court's own equitable powers:

- (1) Permanently enjoin defendant from violating Section 5(a) of the FTC Act in connection with the advertising, offering for sale, sale, or other promotion, to consumers or distributors, of prepaid phone cards and substantially similar or related goods or services pertaining thereto;
- (2) Award such relief as the Court finds necessary to redress injury to consumers resulting from defendant's violations of Section 5 of the FTC Act including, but not limited to, rescission of contracts or refund of money, restitution, and disgorgement of unlawfully obtained monies; and
- (3) Award plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: Feb. 25, 1999

Respectfully Submitted,

DEBRA A. VALENTINE  
General Counsel

MICHAEL JOEL BLOOM  
Regional Director

RHONDA J. MCLEAN  
Assistant Regional Director



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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**99 CIV. 1432**

X 990036

FEDERAL TRADE COMMISSION )

Plaintiff, )

v. )

PT-1 COMMUNICATIONS, INC. )  
(formerly known as PHONETIME, INC. )  
or PTI), a New York corporation, )

Defendant. )

CIVIL ACTION NO.

# 99-1432

**STIPULATED FINAL JUDGMENT AND ORDER FOR  
PERMANENT INJUNCTION AND CONSUMER REDRESS  
AGAINST DEFENDANT PT-1 COMMUNICATIONS, INC.**

Plaintiff, the Federal Trade Commission ("Commission"), commenced this action by filing its complaint against Defendant PT-1 Communications, Inc. ("PT-1"), (formerly known as Phonetime, Inc. or PTI). The complaint alleges that defendant engaged in deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act ("FTC Act"),



15 U.S.C. § 45, and seeks a permanent injunction and monetary relief pursuant to Section 13(b) of the FTC Act.

Plaintiff and Defendant PT-1 have agreed to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Consumer Redress Against Defendant PT-1 Communications, Inc. (hereinafter "Order") without trial or adjudication of any of the issues of law or fact herein, as a means of resolving the issues raised by the complaint.

**NOW, THEREFORE**, Plaintiff and Defendant have requested the Court to enter this Order. It is therefore, **ORDERED, ADJUDGED AND DECREED**, as follows:

#### FINDINGS

1. This is an action instituted by the Commission under Sections 5 and 13(b) of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 53(b). The complaint seeks both permanent injunctive relief and consumer redress for alleged deceptive acts or practices by Defendant in connection with the sale of prepaid phone cards.
2. The Commission has the authority under Section 13(b) of the FTC Act to seek the relief it has requested.
3. This Court has jurisdiction over the subject matter of this case and has jurisdiction over all parties hereto. Venue in the Southern District of New York is proper, and the complaint states a claim upon which relief may be granted against Defendant PT-1 under Sections 5 and 13(b) of the FTC Act.
4. The activities of Defendant PT-1 are in or affecting commerce, as defined in 15 U.S.C. § 44.

5. Defendant PT-1 neither admits nor denies the allegations set forth in the complaint.

6. Defendant PT-1 waives all rights to seek judicial review or otherwise challenge or contest the validity of this Order. Defendant PT-1 also waives any claim that it may have held under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action to the date of this Order. Defendant PT-1 shall bear its own costs and attorneys' fees.

7. Entry of this Order is in the public interest.

### DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. "Prepaid Phone Cards" means cards that embody a right to exchange the card's monetary value for telephone calling time, often at specified rates.
2. "Related Products or Services" means any prepaid telephone, cellular, or facsimile product or service sold between or among two or more parties.
3. "Defendant" means PT-1 Communications, Inc. and any successors, assigns, officers, agents, servants, employees, attorneys, subsidiaries, or divisions.
4. "Clearly and prominently" shall mean as follows:
  - A. In an advertisement communicated through an electronic medium (such as television, video, radio, and interactive media such as the Internet and online services), the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. *Provided, however,* that in any advertisement presented solely through video or audio means, the disclosure may be made through the same means in which the advertisement is presented. The

audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend it. In addition to the foregoing, in interactive media the disclosure shall also be unavoidable and shall be presented prior to the consumer incurring any financial obligation.

B. In a print advertisement, promotional material, or instructional manuals, the disclosure shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears. In multi-page documents, the disclosure shall appear on the cover or, alternatively, on the first page where any price representation is made.

C. On a product label which includes any price representation, the disclosure shall be in a type size and location on the principal display panel sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

The disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement or on any label.

5. "Material" means any information or fact which is likely to affect a consumer's choice of, or conduct regarding, a product or service.

**PERMANENT INJUNCTION**

**I.**

**IT IS HEREBY ORDERED** that Defendant, in connection with the advertising, promotion, distribution, offer for sale, or sale of Prepaid Phone Cards or Related Products or Services, is hereby permanently restrained and enjoined from:

A. Falsely representing, expressly or by implication, that the value of its Prepaid Phone Cards or Related Products or Services will be reduced only at the advertised per minute (or other per unit) rates;

B. In connection with any specific price representation, such as "19 cents per minute," failing to disclose, clearly and prominently and in close proximity to that price representation, the existence and amount of any connection, service, and/or other fees and charges that may be paid by the consumer in addition to the price represented; and

C. In connection with the marketing or distribution of its Prepaid Phone Cards, providing wholesale distributors and/or retail outlets with advertising or promotional materials, including but not limited to point-of-sale posters, illuminated signs, or "take one" cards, which provide false or inaccurate representations of the rates at which Defendant's Prepaid Phone Cards will be reduced in value, or which fail to make the disclosures required by subsection B of this Paragraph.

**II.**

**IT IS FURTHER ORDERED** that Defendant is permanently restrained and enjoined from:

- A. Misrepresenting prices, other conditions, or any other material facts associated with the ownership or use of its Prepaid Phone Cards or Related Products or Services; and
- B. Reducing the value of any Prepaid Phone Card or Related Product or Service at a rate greater than the advertised per minute (or other per unit) rate and all other disclosed charges in effect at the time of the card's use.

### REDRESS

#### III.

#### IT IS FURTHER ORDERED that:

- A. Judgment is hereby entered against Defendant, in the amount of Three Hundred Thousand Dollars (\$300,000) for equitable monetary relief, including but not limited to, consumer redress, and for paying any attendant expenses of administering any redress fund. The parties agree that in no event shall Defendant be required by this judgment to pay more than Three Hundred Thousand Dollars (\$300,000);
- B. If the Commission, in its sole discretion, determines that redress is wholly or partially impractical, any funds not so used shall be deposited in the United States Treasury. The Commission in its sole discretion may use a designated agent to administer consumer redress. Defendant acknowledges and agrees that this judgment for equitable monetary relief, as with all other relief provided in this Order, is solely remedial in nature and is not a fine, penalty, punitive assessment, or forfeiture;
- C. Within five (5) business days of signing this Order by the Defendant, Defendant shall deposit One Hundred Fifty Thousand Dollars (\$150,000) into an escrow account to be established by Simpson, Thacher & Bartlett, attorneys for the Defendant, for the purpose of

receiving payments due under the provisions of this Order, pending the Commission's and the Court's final approval of this Order;

D. Defendant shall pay the remaining One Hundred Fifty Thousand Dollars (\$150,000) to the Federal Trade Commission, by electronic fund transfer on or before the fifth business day following the date of entry of this Order;

E. Within five (5) days of the entry of this Order, the Escrow Agent agrees to relinquish the escrow account to the Federal Trade Commission, except that any interest earned on the escrow principal during the pendency of the escrow shall not accrue to the amount of consumer redress, but instead shall be the property of the Defendant;

F. In the event of any default in payment, which default continues for ten days beyond the due date of payment, the entire unpaid amount, together with interest, as computed pursuant to 28 U.S.C. § 1961 from the date of default to the date of payment, shall immediately become due and payable; and

G. Defendant further agrees that the facts as alleged in the complaint shall be taken as true in any subsequent litigation filed by the Commission pursuant to this Order, including but not limited to, a non-dischargeability complaint in any subsequent bankruptcy proceeding.

#### **RECORD KEEPING AND DOCUMENT RETENTION**

#### **IV.**

**IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Order, Defendant is hereby restrained and enjoined from failing to create, and from failing to retain for a period of three (3) years following the date of such creation, unless otherwise specified:

- A. All advertisements, promotional materials, or other marketing materials used;
- B. Records that, in reasonable detail, accurately and fairly reflect the cost of goods sold, revenues generated, and the disbursement of such revenues, including but not limited to, audited financial statements, general ledger, books, written or printed records, accounts, and accounting data;
- C. Records accurately reflecting: the name, address, and telephone number of each person that Defendant's business employs in any capacity; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable. The business subject to this Paragraph shall retain such records for any terminated employee for a period of two (2) years following the date of termination;
- D. Records containing the names, addresses, phone numbers, dollar amounts paid, quantity of items purchased, and description of items purchased, for all distributors to whom the Defendant's business has sold, invoiced or shipped any goods or services, or from whom the Defendant's business accepted money or other items of value;
- E. To the extent that the specific information set forth below has been made available to the Defendant, records that reflect, for every oral and/or written consumer complaint or refund request maintained in the ordinary course of business, whether received directly or indirectly or through any third party:
1. the consumer's name, address, telephone number, and the dollar amount paid by the consumer;
  2. the written complaint, if any, and the date of the complaint or refund request;
  3. the basis of the complaint; and

4. each response and the date of the response; and
- F. Copies of each telephone script used to solicit or respond to consumers or training packets, to the extent any exists.

### **ORDER DISTRIBUTION**

#### **V.**

**IT IS FURTHER ORDERED** that Defendant for a period of three (3) years from the date of entry of this Order, shall:

- A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, all principals, directors and officers who have responsibilities for customer complaints, advertising, marketing, and the maintenance of financial records, or any equivalent position which may be created, immediately upon employing or retaining any such persons; and
- B. Maintain for a period of three (3) years after creation, and upon reasonable notice make available to representatives of the Commission, the original signed and dated acknowledgments of the receipt of copies of this Order, as required in subsection A. of this Paragraph.

### **ACCESS AND MONITORING**

#### **VI.**

**IT IS FURTHER ORDERED** that, in order that compliance with the provisions of this Order may be monitored:

- A. Defendant shall notify the Commission, where practicable, at least thirty (30) days prior to, and in no event later than seven (7) days after, any change in any business or entity owned or controlled by Defendant including, but not limited to, merger, incorporation,



dissolution, assignment, sale which results in the emergence of a successor corporation, the creation or dissolution of a subsidiary or parent, or any other change which may affect Defendant's obligations under this Order; and

B. For the purposes of this Order, all written notifications to the Commission shall be mailed to:

Regional Director  
New York Regional Office  
Federal Trade Commission  
150 William Street, Suite 1300  
New York, New York 10038  
Re: FTC v. PT-1 Communications, Inc.  
98-Civ-( ) (SDNY).

#### VII.

**IT IS FURTHER ORDERED** that, for a period of three (3) years from the date of entry of this Order, for the purpose of further determining compliance with this Order, Defendant shall:

A. Within seven (7) business days of receipt of written notice from the Commission permit representatives of the Commission access during normal business hours to any office or facility storing documents, of any business where Defendant engages in, or is assisting others engaged in, the advertising, promotion, distribution, offering for sale, or sale, by any means, of any Prepaid Phone Cards or Related Products or Services. In providing such access, Defendant shall permit representatives of the Commission to inspect and copy all documents, in whole or in part, relevant to any matter contained in this Order;

B. Upon twenty (20) days notice, permit representatives of the Commission to interview or depose the officers, directors, agents and employees, including all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, concerning

matters relating to compliance with the terms of this Order. The person interviewed or deposed may have counsel present. *Provided further*, that the Commission may otherwise investigate or monitor Defendant's compliance with this Order by all lawful means available, including, but not limited to, the use of compulsory process seeking production of documents and the use of investigators posing as consumers, potential investors, suppliers and/or other entities; and

C. Upon thirty (30) days written notice by any duly authorized representative of the Commission, submit written reports and produce documents with respect to any conduct subject to this Order.

### COMPLIANCE

#### VIII.

**IT IS FURTHER ORDERED** that, within sixty (60) days after the date of entry of this Order, Defendant shall file a report with the Plaintiff setting forth the manner and form in which it has complied with this Order.

### RETENTION OF JURISDICTION

#### IX.

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED, this 23<sup>rd</sup> day of March, 1999.

  
UNITED STATES DISTRICT JUDGE

The parties, by their respective counsel, hereby consent to the terms and conditions of the Stipulated Final Order as set forth above and consent to entry thereof.

**FOR THE FEDERAL  
TRADE COMMISSION:**

BY: 

ANN-F. WEINTRAUB (AW 3080)  
New York Regional Office  
150 William Street, Suite 1300  
New York, New York 10038  
(212) 264-1226

**FOR THE DEFENDANT:**

PT-1 COMMUNICATIONS, INC.

BY: \_\_\_\_\_

SAMER TAWFIK, CHAIRMAN AND  
CEO  
PT-1 Communications, Inc.  
30-60 Whitestone Expressway  
Flushing, New York 11354  
(718)939-9000



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\_\_\_\_\_  
KY KIRBY

Swidler & Berlin  
Counsel for Defendant  
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Washington, D.C. 20007-5116  
(202) 424-7795

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**FOR THE FEDERAL  
TRADE COMMISSION:**

BY: \_\_\_\_\_

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**FOR THE DEFENDANT:**

PT-1 COMMUNICATIONS, INC.

BY:  \_\_\_\_\_  
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