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David Fix
David Torok
Renard Francois
Attorneys for Plaintiff
600 Pennsylvania Avenue, NW H-238
Washington, DC 20580
(202) 326-3298 (Fix)
(202) 326-3075 (Torok)
(202) 326-2251 (Francois)
(202) 326-3395 FAX

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

BTV INDUSTRIES,

RIK COVELL,

ADAM LEWIS,

**NATIONAL COMMUNICATIONS TEAM,
INC.,**

LO/AD COMMUNICATIONS CORP.,

and

NICHOLAS LOADER

Defendants.

CV-S-02-0437-LRH-PAL

TEMPORARY RESTRAINING ORDER

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), having filed its complaint for a permanent injunction and other equitable relief in this matter pursuant to section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), and the FTC's Pay-Per-Call Rule entitled "Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992," 16 C.F.R. Part 308, and having moved *ex parte* for a temporary restraining order and for an order to show cause why a preliminary injunction should not be granted pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65(b), and the Court having considered the complaint, declarations, exhibits, and memorandum of law filed in support thereof, finds that:

1. This Court has jurisdiction over the subject matter of this case, and there is good cause to believe it will have jurisdiction of all parties hereto;
2. There is good cause to believe that the Defendants BTV Industries, National Communications Team, Inc., LO/AD Communications Corp., Rik Covell, Adam Lewis, and Nicholas Loader, have engaged and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and/or the Commission's Pay-Per-Call Rule, 16 C.F.R. Part 308, and that the Commission is therefore likely to prevail on the merits of this action;
3. There is good cause to believe that immediate and irreparable damage to the Court's ability to grant effective final relief for consumers in the form of monetary restitution will occur from the sale, transfer, or other disposition or concealment by Defendants of their assets or corporate records, or those assets and corporate records under their control, unless

Defendants are immediately restrained and enjoined by Order of this Court. The evidence set forth in the Plaintiff's Motion for Temporary Restraining Order, and in the accompanying memoranda, declarations and exhibits, shows that the Defendants have engaged in a concerted course of illegal activity in their dealings with consumers nationwide in connection with the marketing and sale of audiotext and videotext services, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45 and/or the Commission's Pay-Per-Call Rule, 16 C.F.R. Part 308. Thus, there is good cause to believe that the Defendants will attempt to conceal the scope of their deliberate illegal actions to avoid returning their ill-gotten gains to consumers injured by their unlawful practices if not restrained from doing so by Order of this Court;

4. The Commission has not provided notice to the Defendants due to the likelihood that advance notice of this action will cause the Defendants to dissipate funds, and to abscond with or destroy evidence. The Commission's request for this emergency, *ex parte* relief is not the result of any lack of diligence on the Commission's part, but instead is based upon the nature of Defendants' unlawful conduct;

5. Weighing the equities and considering Plaintiff's likelihood of ultimate success, a temporary restraining order with asset freeze and other equitable relief is in the public interest; and

6. Fed. R. Civ. P. 65(c) does not require security of the United States or an officer or agency thereof.

Definitions

For the purpose of this temporary restraining order, the following definitions shall apply:

- A. "Defendants" means BTV Industries, National Communications Team, Inc., LO/AD Communications Corp., Rik Covell, Adam Lewis, and Nicholas Loader, and each of their successors, assigns, officers, agents, servants, employees, subsidiaries or affiliates, and those persons in active concert or participation with them who receive actual notice of this Order by personal service, facsimile or otherwise, whether acting directly or through any entity, corporation, subsidiary, division, or other device, unless specified otherwise.
- B. "Corporate Defendants" means BTV Industries, National Communications Team, Inc., and LO/AD Communications Corp.
- C. "Assets" means any legal or equitable interest in, right to, or claim to, any real or personal property, including but not limited to "goods," "instruments," "equipment," "fixtures," "general intangibles," "inventory," "checks," "notes" (as those terms are defined in the Uniform Commercial Code), and all chattel, leaseholds, contracts, mail or other deliveries, shares of stock, lists of consumer names, accounts, credits, premises, receivables, funds, and cash, wherever located.
- D. "Audiotext services" means any information or entertainment services provided and delivered through telephone lines, through any dialing pattern, or through return calls to a telephone, and includes but is not limited to, any "pay-per-call service," as that term is defined in section 308.2(c) of the Pay-Per-Call Rule, 16 C.F.R. 308.2(c).
- E. "Dialer program" is an executable computer program that can be sent from one computer to another on the Internet and that, when downloaded onto the recipient's computer, is

stored in one or several locations on the recipient's hard drive, and when activated calls a programmed telephone number.

- F. "Document" is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, into reasonably usable form through detection devices. A draft or non-identical copy is a separate document within the meaning of the term.
- G. "Internet" means a worldwide system of linked computer networks that use a common protocol (TCP/IP) to deliver and receive information. The "Internet" includes, but is not limited to, the following forms of electronic communication: electronic mail, the World Wide Web, newsgroups, Internet Relay Chat, and file transfer protocols.
- H. "Line subscriber" means an individual or entity who has arranged with a Local Exchange Carrier, or the local telephone company, to obtain local telephone service provided through an assigned telephone number and billed for such number on a monthly (or other periodic) basis.
- I. "Pay-Per-Call Rule" means the FTC's Trade Regulation Rule pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992, 16 C.F.R. Part 308.
- J. "Pay-per-call service" has the meaning provided in section 308.2(c) of the Pay-Per-Call Rule, 16 C.F.R. 308.2(c).

- K. "Service vendor" or "vendor" means an entity that offers videotext or other services (other than transmission of telecommunications) that are billed to line subscribers either on telephone bills received by the line subscriber or on other bills sent directly to the line subscriber.
- L. "Videotext services" means visual (and possibly audio) information and entertainment services offered over the Internet through individual Web sites.
- M. "Web page" is a single electronic document on the World Wide Web, readily viewable on a computer by anyone with access to the Internet and standard Internet browser software. Every Web page on the World Wide Web is identified by a globally unique address.
- N. "Web site" is a set of electronic documents, usually a home page and subordinate pages, readily viewable on a computer by anyone with access to the Web, standard Internet browser software, and knowledge of the Web site's location or address.
- O. "World Wide Web" or "Web" means a system used on the Internet for cross-referencing and retrieving information.

ORDER

I. INJUNCTION AGAINST MISREPRESENTATIONS

IT IS THEREFORE ORDERED that, in connection with the advertising, promotion, offering for sale, sale, or delivery of, or billing or collecting for, any audiotext services or videotext services, Defendants are temporarily restrained and enjoined from making or assisting in the making of, expressly or by implication, orally or in writing, any statement or representation

of material fact that is false or misleading, including but not limited to falsifying the header information, including the "from" or "subject" lines, on any email correspondence, and any misrepresentations that:

- A. Consumers have won, have been given, or will receive some item of value;
- B. Consumers will be connected toll-free or without cost to a Web site or to the Internet; and
- C. Any of their goods, services, Web pages, Web sites, domain names, email communications, dialer programs, audiotext services, or videotext services are endorsed by, affiliated with, or associated with any third party. Such prohibited express or implied representations include, but are not limited to, using the third party's name, logo, or trademark without the express authorization of the third party.

II.

INJUNCTION AGAINST VIOLATING THE PAY-PER-CALL RULE

IT IS FURTHER ORDERED that, in connection with the advertising, promotion, offering for sale, sale, or delivery of, or billing or collecting for, any pay-per-call services, Defendants are temporarily restrained and enjoined from violating, or assisting others in violating, any part of the Pay-Per-Call Rule, 16 C.F.R. Part 308, including but not limited to:

- A. In any advertisement for any pay-per-call service, failing to disclose the cost of a call to access such service clearly and conspicuously, as required by the Pay-Per-Call Rule, 16 C.F.R. 308.3(b)(1);

- B. In any advertisement for any pay-per-call service, failing to disclose the cost of a call to access such service adjacent to every presentation of the telephone number used to access that service, as required by the Pay-Per-Call Rule, 16 C.F.R. 308.3(b)(2)(ii);
- C. Using any representation in any advertisement for a pay-per-call-service that is contrary to, inconsistent with, or in mitigation of any required cost disclosure, or using any audio, video, or print technique in any advertisement for a pay-per-call service that is likely to detract significantly from the communication of any required cost disclosure, as prohibited by the Pay-Per-Call Rule, 16 C.F.R. 308.3(a)(5), including but not limited to any direct or implied representation that consumer can access the service for free; and
- D. Prior to the commencement of any charges for a pay-per-call service, failing to provide, in a slow and deliberate manner and at a reasonable volume, an introductory disclosure message ("preamble") that identifies the name of the provider of the pay-per-call service, specifies the cost of the service, and informs the caller that charges for the call begin, and that to avoid charges the call must be terminated, three seconds after a clearly discernable signal or tone indicating the end of the preamble, as required by the Pay-Per-Call Rule, 16 C.F.R. 308.5(a).

III.

INJUNCTION AGAINST BILLING FOR UNAUTHORIZED CALLS

IT IS FURTHER ORDERED that the Defendants are temporarily restrained and enjoined from billing any line subscriber or causing any line subscriber to be billed, or collecting or attempting to collect payment, directly or indirectly, from any line subscriber, for any

videotext services or audiotext services without the express verifiable authorization from the line subscriber that he or she accepts or authorizes the purchase of such services.

**IV.
ASSET FREEZE**

IT IS FURTHER ORDERED that the Corporate Defendants and their officers, directors, agents, servants, employees, salespersons, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile or otherwise, except to the extent as otherwise provided herein, are temporarily restrained and enjoined from:

- A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, perfecting a security interest in, or otherwise disposing of any funds, property, accounts, contracts, shares of stock, lists of consumer names, or other assets, wherever located, including outside the United States, that are (1) owned or controlled, directly or indirectly, by any of the Corporate Defendants, in whole or in part; (2) in the actual or constructive possession of any of the Corporate Defendants; or (3) owned, controlled by, or in the actual or constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with any of the Corporate Defendants, including but not limited to any assets held by, for, or under the name of any of the Corporate Defendants at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company,

commodity trading company, precious metal dealer, or other financial institution or depository of any kind;

- B. Opening or causing to be opened any safe deposit box titled in the name of any of the Corporate Defendants, or subject to access by any of the Corporate Defendants; and
- C. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of any of the Corporate Defendants.

Notwithstanding the above, or without the prior approval of the Court, the Corporate Defendants may pay reasonable, usual, ordinary, and necessary business expenses and legal fees, with total payments provided to any single individual or entity not to exceed \$2,000, provided that the Corporate Defendants provide an accounting to counsel for the FTC of all such payments made, once within five business days after the date of entry of this Order, and once again each five business days thereafter that this Order remains in effect. Such accounting shall indicate the account name and number from which such funds were paid, and shall include the name and address of the person or entity receiving each payment, the date and amount of each payment, and the reason for the payment.

The assets affected by this paragraph shall include: (1) all of the assets of the Corporate Defendants existing as of the date of entry of this Order; and (2) for assets obtained after the date of entry of this Order, those assets that are derived from or otherwise related to income derived from videotext services billed through 900 telephone numbers.

V.
DUTIES OF ASSET HOLDERS

IT IS FURTHER ORDERED that, pending determination of the Plaintiff's request for a preliminary injunction, any financial or brokerage institution, business entity, or person served with a copy of this Order that holds, controls or maintains custody of any account or asset of the Corporate Defendants, or has held, controlled or maintained custody of any such account or asset at any time since the date of entry of this Order shall:

- A. Hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, pledge, encumbrance, disbursement, dissipation, conversion, sale, or other disposal of any such asset except as permitted by Paragraph IV above or by further order of the Court;
- B. Deny the Corporate Defendants access to any safe deposit box that is titled in the name of any of the Corporate Defendants, either individually or jointly, or otherwise is subject to access by any of the Corporate Defendants;
- C. Provide the Commission's counsel, within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:
 - 1. The identification number of each such account or asset titled in the name, individually or jointly, of any of the Corporate Defendants, or held on behalf of, or for the benefit of, any of the Corporate Defendants;
 - 2. The balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served and, if

the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and

3. The identification of any safe deposit box that is either titled in the name, individually or jointly, of any of the Corporate Defendants, or is otherwise subject to access by any of the Corporate Defendants; and

D. Upon the request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. Any such financial institution, account custodian, or other aforementioned entity may arrange for the Commission to obtain copies of any such records which the Commission seeks.

**VI.
REPATRIATION OF ASSETS AND DOCUMENTS
LOCATED IN FOREIGN COUNTRIES**

IT IS FURTHER ORDERED that Defendants, whether acting through any trust, corporation, subsidiary, division, or other device, shall:

A. Within three (3) business days following the date of service of this Order, take such steps as are necessary to transfer to the territory of the United States of America all documents

and assets that are located outside of such territory and are held by or for Defendants or are under Defendants' direct or indirect control, jointly, severally, or individually; and

- B. To the extent not disclosed in the financial reports completed pursuant to Paragraph VI below, and on the same business day as any repatriation under Subparagraph V.A. above, provide the Plaintiff with a full accounting of all documents and assets that are located outside of the territory of the United States of America and are held by or for Defendants or are under Defendants' direct or indirect control, jointly, severally, or individually; and
- C. Hold and retain all transferred documents and assets and prevent any transfer, disposition, or dissipation whatsoever of any such assets or funds, except as provided in Paragraph III above; and
- D. Provide Plaintiff access to Defendants' records and documents held by financial institutions outside the territorial United States, by signing the Consent to Release of Financial Records attached hereto as Attachment A.

VII. FINANCIAL STATEMENTS

IT IS FURTHER ORDERED that not less than five (5) days prior to the scheduled date and time for the hearing on a preliminary injunction in this matter, but in no event later than seven (7) days after the date of entry of this Order, each Defendant shall provide counsel to the Commission with a completed financial statement, on the forms attached to this Order as Attachments B and C, for each individual and corporate Defendant, and for each corporation of which an individual Defendant is an officer, as of the date of service of this Order upon such

Defendant. The financial statements shall be accurate as of the date of entry of this Order and shall include copies of all state and federal income and property tax returns, with attachments and schedules, as called for by the financial statements.

**VIII.
CONSUMER CREDIT REPORTS**

IT IS FURTHER ORDERED that pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), any consumer reporting agency may furnish a consumer report concerning any of the Defendants to the Commission.

**IX.
PRESERVATION OF RECORDS**

IT IS FURTHER ORDERED that Defendants are temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, documents or records of any kind that relate to the business practices or business or personal finances of the Defendants, including but not limited to computerized files, storage media (including but not limited to floppy disks, hard drives, cd-roms, zip disks, magnetic tape, backup tapes and computer chips) on which information has been saved, and any and all equipment needed to read such material, any contracts, accounting data, correspondence (including but not limited to electronic correspondence), advertisements (including but not limited to advertisements placed on the World Wide Web), FTP logs, server access logs, World Wide Web pages, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks

and check registers, bank statements, appointment books, and copies of federal, state or local business or personal income or property tax returns.

**X.
MAINTENANCE OF CURRENT BUSINESS RECORDS**

IT IS FURTHER ORDERED that Defendants are temporarily restrained and enjoined from:

- A. Failing to create and maintain documents that, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of money; and
- B. Creating, operating, or exercising any control over any business entity, including any partnership, limited partnership, joint venture, sole proprietorship or corporation, without first providing the Commission with a written statement disclosing: (1) the name of the business entity; (2) the address and telephone number of the business entity; (3) the names of the business entity's officers, directors, principals, managers and employees; and (4) a detailed description of the business entity's intended activities.

**XI.
PRODUCTION OF DEFENDANTS' BUSINESS RECORDS**

IT IS FURTHER ORDERED that, no later than three (3) business days after service of this Order on any Defendant, Defendants shall make available for inspection and copying by the Commission all non-privileged business or financial documents within any Defendant's possession, custody, or control as follows:

- A. These business records are to include: 1) all financial and accounting records pertaining to Defendants' business operation, including checking and bank statements, ledgers,

payroll records, records of payments to any service vendor or telecommunications provider, payments to or from any supplier, and any other reports or records reflecting Defendants' receipt or use of funds received as part of Defendants' business operation, or reflecting assets held by Defendants' for use in their business operation; 2) documents relating to the billing or charging of consumers; 3) any contracts relating to Defendants' business operation, including but not limited to contracts with service vendors, dialer program manufacturers, and telecommunications providers; 4) documents relating to any advertisements, email communications, or Web pages Defendants have placed on the Internet concerning their business operation; and 5) documents referring or relating to refunds, credits, or charge backs.

- B. Defendants shall make such documents available to the Commission at a reasonable location mutually agreeable between the parties. The Commission may take custody of any such documents for inspection and/or copying and shall return such documents to the Defendants within three (3) business days after they are produced.

XII.
EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that, in anticipation of the preliminary injunction hearing in this matter, prior to such hearing or the expiration of this Temporary Restraining Order, whichever occurs first:

- A. The Commission is granted leave to demand the production of documents, within three (3) business days, from any person or entity relating to the nature, status, extent, location

or other relevant information relating to the Defendants' assets, income, personal or business financial records or the location of a Defendant. The production of documents submitted pursuant to this provision shall not in any way waive plaintiff's rights to seek the production of additional documents; and

- B. The Commission may depose or subpoena any third party, pursuant to Fed. R. Civ. P. 30 and 45, upon forty-eight (48) hours notice. Any deposition taken pursuant to this provision is in addition to, and not subject to, the presumptive limits on depositions set forth in Fed. R. Civ. P. 30 and/or 31.

Nothing in this provision shall affect the Court's ability to further modify the discovery rules as they apply to this matter.

XIII. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer, director, employee, agent, attorney, and representative of any Defendant, and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that Defendants have complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order.

XIV. SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission, upon any financial institution or other entity or person that may

have possession, custody, or control of any documents or assets of the Defendants, or that may be subject to any provision of this Order. Pursuant to Fed. R. Civ. P. 4(c)(2), this Order and the initial papers filed in this matter may be served on Defendants by any law enforcement officer, by any agent of the Commission, or by any agent of any process service retained by the Commission.

PRELIMINARY INJUNCTION PROCEEDINGS

XV. SERVICE OF PLEADINGS

IT IS FURTHER ORDERED that the parties shall serve all memoranda, affidavits and other evidence on which they intend to rely at the preliminary injunction hearing set in this matter not later than 4:00 p.m. (EST) of the third day prior to the hearing date. Service on the Commission shall be performed by delivery to the attention of David Fix at the Federal Trade Commission, 600 Pennsylvania Ave., NW, Room H-238, Washington, DC 20580, or by facsimile transmission to (202) 326-3395.

XVI. WITNESS IDENTIFICATION

IT IS FURTHER ORDERED that, if any party to this action intends, with the permission of the Court, to present the testimony of any witness at the hearing on a preliminary injunction in this matter, that party shall, at least seventy-two (72) hours prior to the scheduled date and time of hearing, file with this Court and serve on all other parties a statement disclosing the name, address, and telephone number of any such witness, and either a summary of the witness's expected testimony, or the witness's affidavit revealing the substance of such witness's

expected testimony. Service on the Commission shall be performed by delivery to the attention of David Fix at the Federal Trade Commission, 600 Pennsylvania Ave., NW, Room H-238, Washington, DC 20580, or by facsimile transmission to (202) 326-3395.

**XVII.
PRELIMINARY INJUNCTION HEARING**

IT IS FURTHER ORDERED, pursuant to Fed. R.Civ. P. 65(b), that Defendants shall appear before this Court on the 29th day of April, 2002, at 1:30 o'clock P.m., at the United States Courthouse, Room 7D to show cause, if there is any, why this Court should not enter a preliminary injunction, pending final ruling on the Complaint against Defendants, enjoining them from further violations of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and/or the Commission's Pay-Per-Call Rule, 16 C.F.R. Part 308, continuing the freeze of their assets, and imposing such additional relief as may be appropriate.

XVIII.
RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for all purposes.

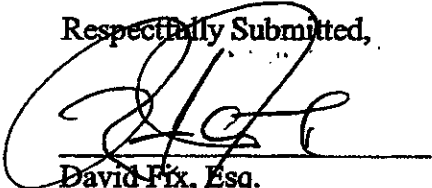
SO ORDERED, this ^{16th April} ~~16~~ day of ~~March~~ ^{April}, 2002, at ~~1:30 P.M.~~ ^{9:30 A.M.}



United States District Judge
District of Nevada

Dated: 27 MARCH 2002

Respectfully Submitted,



David Fix, Esq.

David Torok, Esq.

Renard C. Francois, Esq.

Federal Trade Commission

600 Pennsylvania Ave. NW, Room H-238

Washington, DC 20580

(202) 326-3298 (Fix)

(202) 326-3075 (Torok)

(202) 326-2251 (Francois)

(202) 326-3395 (Fax)