

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

FILED  
MAY 14 1996  
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\_\_\_\_\_)  
FEDERAL TRADE COMMISSION, )  
 )  
Plaintiff, )  
 )  
v. ) Civil No. 95-693-CIV-ORL-22  
 )  
TELECOMMUNICATIONS )  
OF AMERICA, INC.; )  
a corporation, *et al.*, )  
 )  
Defendants )  
\_\_\_\_\_)

**FINAL JUDGMENT AND ORDER ADJUDGING DEFENDANT BARRY TAYLOR IN CIVIL CONTEMPT AND GRANTING PLAINTIFF'S REQUEST FOR ADDITIONAL RELIEF**

This Court having issued a Stipulated Final Judgment and Order for Permanent Injunction Against Defendant Barry Taylor on March 14, 1996, and Plaintiff Federal Trade Commission ("FTC" or "Commission") having moved to hold Barry Taylor in Contempt of said Order as well as other ancillary relief, and this Court having considered the FTC's Application, declarations, exhibits, and memoranda of law filed in support thereof, as well as any and all opposition thereto:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

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## FINDINGS

1. This Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 1331 and 1337(a), 15 U.S.C. §§ 53(b) and 57b.
2. Venue is proper as to all parties in the Middle District of Florida.
3. The activities of the Defendant are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. Plaintiff and Defendant voluntarily entered a Stipulated Final Judgment and Order ("Final Order"), which was issued by this Court on March 14, 1996 ("1996 Order").
5. The record before the Court clearly and convincingly establishes that Defendant has acted in civil contempt of the 1996 Order and the Orders entered on March 23 and April 10, 2000.
6. The record before the Court clearly and convincingly establishes that Defendant injured consumers by knowingly misrepresenting to consumers, in violation of Section I of the Final Order, that they could earn an annual income ranging from \$28,000 to \$42,000, when in fact his customers do not earn more than nominal amounts. Additionally, Taylor injured consumers in violation of Section I of the Final Order by knowingly switching the greeting cards ordered by the consumer with greeting cards of lesser value, and by deceptively representing that he is a representative of Freedom Greeting Cards.
7. The record before the Court clearly and convincingly establishes that Defendant injured consumers in violation of Section II of the Final Order by knowingly

failing to make disclosures to consumers as required by the Franchise Rule, 16 C.F.R. Part 436.

8. The record before the Court clearly and convincingly establishes that Defendant violated Section VIII of the Final Order, by knowingly failing to fully and accurately notify the Commission of changes in his residential address, of changes in his employment status, and of changes in the structure of the business entities he owned or controlled in whole or in part.

9. The record before the Court clearly and convincingly establishes that consumers relied on Defendant's false representations when they purchased his business opportunities.

10. The record before the Court clearly and convincingly shows that the consumer injuries caused by Defendant's contumacious conduct are at least \$656,257.00.

11. In light of Defendant's violation of the Final Order, a ban on Defendant's sale of Franchises and Business Ventures is warranted.

12. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

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

## DEFINITIONS

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

1. "Asset" means any legal or equitable interest in, or right or claim to, any real and personal property, including without limitation, chattels, goods, instruments, equipment, fixtures, general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits, contracts, receivables, shares of stock, and all cash, wherever located.

2. "Business Venture" means any written or oral business arrangement, however denominated, whether or not covered by the Franchise Rule, which consists of the payment of any consideration for:

- a. The right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and
- b. The promise or provision of assistance to any person in connection with: (1) the establishment, maintenance, or operation of a new business; or (2) the entry by an existing business into a new line or type of business, including, but not limited to, referrals to one or more persons providing location services.

3. "Defendant" means Barry Taylor d/b/a Freedom Sales & Marketing; Chapel Hill Enterprises, LLC; TeleCommunications of America, Inc.; TCA of North

Carolina, Inc.; Trade Show Suppliers, LLC; Independence Vending, LLC; and Triangle Telephone Company.

4. The “Franchise Rule” or “Rule” means the FTC Trade Regulation Rule entitled “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,” 16 C.F.R. Part 436.

5. “Franchise” and “Franchisor” are defined as those terms are defined in Sections 436.2(a) and (c) of the Franchise Rule, 16 C.F.R. § 436.2(a) and (c), and include “business opportunity ventures” as defined in Sections 436.2(a)(1)(ii) and (2) of the Rule, and discussed in the FTC’s Final Interpretive Guide for the Franchise Rule, 44 Fed. Reg. 49966-68 (August 24, 1979). The term “franchise” in this Order shall also encompass any successor definition of “franchise,” “business opportunity” and “business opportunity venture” in any future trade regulation rule or rules that may be promulgated by the Commission to modify or supersede the Franchise Rule, in whole or part, from the date any such rule takes effect.

6. “Investment” or “Investment Offering” means any interest, product or service, including any partnership, interest in any partnership, stock or other beneficial interest, tangible or intangible, that in any way is (1) offered for sale, traded, or sold, to be held, wholly or in part, for purposes of economic benefit, profit, or income, or (2) offered for sale, traded, or sold, based on representations, wholly or in part, express or implied, about past or future income, appreciation, or resale value.

7. "Person" means a natural person, organization or other legal entity, including a corporation, partnership, proprietorship, association, or cooperative, or any other group or combination acting as an entity.

8. "Telemarketing" means the advertising, offering for sale, or sale of any good or service to any person by means of telephone sales presentations, either exclusively or in conjunction with the use of other advertising.

9. "UFOC format" is defined as the Uniform Franchise Offering Circular disclosure format which has been adopted by the North American Securities Administrators' Association and is now accepted by the Commission for use in lieu of the Franchise Rule's disclosure format.

#### **I. PERMANENT BAN**

IT IS FURTHER ORDERED that Defendant Barry Taylor, whether directly or indirectly, or through any corporation, business entity or person under his control, is hereby permanently restrained and enjoined from engaging or participating in the advertising, marketing, promotion, offering for sale, or sale of any franchise or business venture.

#### **II. PROHIBITED REPRESENTATIONS**

IT IS FURTHER ORDERED that, in connection with the advertising, telemarketing, offering for sale, licensing, contracting, sale or other promotion of any Investment or Investment Offering or other income-generating product or service, the Defendant, his successors, assigns, officers, agents, servants, employees and those

persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from making, or assisting in the making of, any statement or representation of material fact that is false or misleading, whether directly or by implication, orally or in writing, including, but not limited to, any or all of the following:

A. Any false or misleading representation about:

1. The income, profit, or sales volume that a purchaser is likely to achieve;
2. The income, profit or sales volume actually achieved by prior purchasers;
3. The amount of money, time and effort required to start up and operate an Investment or Investment Offering or other income-generating product or service;
4. The length of time that it is likely to take a purchaser to recoup the entire purchase price or investment;
5. The independence or authenticity of any third-party references, including persons represented to be prior purchasers, that are provided to potential purchasers;
6. The amount of competition within, or a purchaser's territorial rights to, any geographic territory;
7. The availability or existence of profitable locations in a purchaser's

geographic area;

8. The assistance that will be provided purchasers, including, but not limited to, providing profitable locations or clients;

9. The terms and conditions of any assurances, refunds or guarantees of profitability that relate to any location service or company to which a defendant refers a purchaser.

### III. MONETARY JUDGMENT AND REDRESS

IT IS FURTHER ORDERED that Judgment in the amount of \$656,257.00 is hereby entered against Defendant in favor of Plaintiff.

A. Defendant is ordered to relinquish any right, title or interest to the assets frozen pursuant to this Court's Ex Parte Order of March 23, 2000: \$5.82 from Wachovia Bank Account 7626-002553; \$1,455.08 from Wachovia Bank Account 7622-002526; and \$1,230.86 from Macon Bank Account 16531754107, and shall transfer these assets to the FTC by the close of business five (5) days after the date of entry of this Order; and

B. Any funds recovered under the Judgment and/or under Section III-A of this Order shall be deposited into a redress fund, administered by the FTC, to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. If the FTC determines, in its sole discretion, that redress to purchasers is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury as disgorgement or shall be used to educate consumers affected by the practices in the Commission's complaint in this matter.



Defendant shall have no right to contest the manner of distribution chosen by the FTC. The FTC, in its sole discretion, may use a designated agent to administer consumer redress.

C. The asset freeze imposed by the Court's March 23, 2000 Ex Parte Emergency Order Granting Ancillary Interim Relief, and Order to Show Cause Why Defendant Barry Taylor Should Not Be Held in Civil Contempt (Doc. 111) is hereby dissolved.

#### **IV. TRANSFER OF CUSTOMER LISTS**

IT IS FURTHER ORDERED that Defendant, his successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from selling, renting, leasing, transferring or otherwise disclosing the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to any Defendant at any time prior to entry of this Order, in connection with the advertising, promotion, telemarketing, offering for sale or sale of any Business Venture, or income-generating product or service; *provided, however*, that Defendant may disclose such identifying information to a law enforcement agency, or as required by any law, regulation (including the limited disclosures required by the Franchise Rule) or court order.

#### **V. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT**

IT IS FURTHER ORDERED that within five (5) business days of receipt of this

Order as entered by the Court, Defendant shall submit to the Commission a truthful sworn statement, in the form shown on Appendix A, that shall acknowledge receipt of this Order.

#### **VI. DISTRIBUTION OF ORDER BY DEFENDANT**

**IT IS FURTHER ORDERED** that, for a period of five (5) years from the date of entry of this Order, Defendant shall:

A. Provide a copy of this Order to, and obtain a signed and dated acknowledgment of receipt of same from, each officer and director, each individual serving in a management capacity, all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, within five (5) business days after receipt of this Order, and thereafter immediately upon employing any such person, for any business that Defendant directly or indirectly manage, control, or have a majority ownership interest in, that is engaged in the sale or distribution of any Business Venture, or income-generating product or service, or assisting others engaged in these activities; 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 receipt of copies of this Order, as required in Subsection A of this Paragraph.

## VII. COMPLIANCE REPORTING BY DEFENDANT

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

A. For a period of five (5) years after the date of entry of this Order, the Defendant shall notify the Commission in writing of the following:

1. Any changes in the residence, mailing addresses and telephone numbers of Defendant, within ten (10) days of the date of such change;
2. Any changes in the employment status (including self-employment) of Defendant, within ten (10) days of such change. Such notice shall include the name and address of each business that Defendant is affiliated with or employed by, a statement of the nature of the business, and a statement of Defendant's duties and responsibilities in connection with the business or employment;
3. Any proposed change in the structure of any business entity that the Defendant directly or indirectly manages, controls or has a majority ownership interest in, such as creation, incorporation, dissolution (including the dissolution of any subsidiaries), assignment, proposed filing of a bankruptcy petition, or sale or merger resulting in the emergence of a successor corporation, or any other change in that entity, including a change in the corporate name or address, that may affect any compliance obligation arising out of this Order, at least thirty (30)

days prior to the effective date of any such change; *provided, however*, that with respect to any proposed change in the structure of any business entity that the Defendant directly or indirectly manages, controls or has a majority ownership interest in, about which the Defendant learns less than thirty (30) days prior to the date such action is to take place, the Defendant shall notify the Commission as soon as is practicable after learning of such proposed change;

B. One hundred eighty (180) days after the date of entry of this Order, Defendant shall provide a written report to the Commission, sworn to under penalty of perjury, setting forth in detail the manner and form in which Defendant has complied and is complying with this Order. This report shall include but not be limited to:

1. Defendant's then current residence address, mailing addresses and telephone numbers;
2. Defendant's then current employment and business addresses and telephone numbers, a description of the business activities of each such employer or business, and the Defendant's title and responsibilities for each such employer or business;
3. A copy of each acknowledgment of receipt of this Order obtained by the Defendant pursuant to VI; and
4. A statement describing the manner in which the Defendant has

complied and is complying with Paragraphs I, II, III and VI of this Order;

C. Upon written request by a representative of the Commission, Defendant shall submit additional written reports (under oath, if requested) and produce documents on fifteen (15) days' notice with respect to any conduct that is subject to this Order;

D. For the purposes of this Order, Defendant shall, unless otherwise directed by a representative of the Commission, identify all written notifications to the FTC as provided in reference to Barry Taylor, United States District Court, Middle District of Florida, Orlando Division, Case No.95-693-CIV-ORL-22, X 950050 and mail them to:

Associate Director  
Division of Marketing Practices  
Federal Trade Commission Room 238  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

E. For the purposes of this Paragraph, "employment" includes the performance of services as an employee, consultant, or independent contractor; and "employers" include any individual or entity for whom Defendant performs services as an employee, consultant, or independent contractor; and

F. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate directly with Defendant.

### **VIII. MONITORING COMPLIANCE OF SALES PERSONNEL**

IT IS FURTHER ORDERED that, in connection with any business that Defendant

directly or indirectly manages, controls or has a majority ownership interest in, Defendant and successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are hereby permanently restrained and enjoined from:

A. Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Paragraphs I and II of this Order. Such steps shall include adequate monitoring of sales presentations or other calls with customers, and shall also include, at a minimum, the following:

1. Listening to the oral representations made by persons engaged in sales or other customer service functions;
2. Establishing a procedure for receiving and responding to consumer complaints; and
3. Ascertaining the number and nature of consumer complaints regarding transactions in which each employee or independent contractor is involved;
4. Failing promptly to investigate fully any consumer complaint received by any business to which this Paragraph applies; and
5. Failing to take corrective action with respect to any sales person

whom any Defendant or Representative determines is not complying with this Order, which may include training, disciplining, and/or terminating such sales person;

*Provided, however,* that this Paragraph does not authorize or require Defendant to take any action that violates any federal, state, or local law.

#### **IX. RECORD-KEEPING PROVISIONS**

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, in connection with any business that Defendant directly or indirectly manages, controls or has a majority ownership interest in, Defendant, his successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise are hereby restrained and enjoined from failing to create and maintain for a period of three (3) years following the date of their creation, unless otherwise specified:

A. Books, records and accounts that, in reasonable detail, accurately and fairly reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Records containing the name, address, telephone number and social security number of each person employed by Defendant in any capacity, including as an independent contractor, 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;

*provided, however,* that the businesses subject to this requirement shall retain such records during the employment of any person, and for a period of two (2) years after the date of their termination;

C. Records containing the name, address, telephone number, quantity of goods or services purchased, and a description of the goods or services purchased, for all consumers to whom the business has sold, invoiced or shipped any Business Venture, or income-generating product or service;

D. Records that reflect, for every written or oral consumer complaint or refund request received by the Defendant, his successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, whether directly or indirectly or through any third party: (1) the customer's name, address, telephone number; (2) the dollar amount paid by the consumer; (3) the written complaint or refund request, if any; (4) the basis of the complaint or refund request, including the name of any salesperson complained about; (5) the nature and result of any investigation conducted concerning the complaint or refund request; (6) each response and the date of the response to the complaint or refund request; and (7) any final resolution of the complaint or refund request, and the date of the resolution; and (8) in the event of a denial of a refund request, the reason for the denial; and



E. Copies of all sales scripts, training materials, advertisements, or other marketing materials utilized, which shall be retained for three (3) years after the last date of their dissemination or use.

#### **X. ACCESS TO BUSINESS PREMISES**

IT IS FURTHER ORDERED that for a period of five (5) years from the date of entry of this Order, for the purposes of determining or securing compliance with its provisions, Defendant, his successors, assigns, officers, agents, servants, employees and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise shall grant to representatives of the Commission, within three (3) business days of receipt of written notice from the Commission:

A. Access during normal business hours to any office or facility storing documents of any business that Defendant directly or indirectly manages, controls, or has a majority ownership interest in. In providing such access, Defendant shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Order; and shall permit representatives of the Commission to remove such documents for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

B. The opportunity to interview, without restraint or interference, officers, directors, employees, contractors, and agents, including all personnel involved in

responding to consumer complaints or inquiries and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, of any business to which Subsection A of this Paragraph applies, regarding compliance with the provisions of this Order. Any person interviewed may have counsel present.

*Provided, however,* that upon application of the Commission for good cause shown, the Court may enter an *ex parte* order granting immediate access to Defendant's business premises for the purposes of inspecting and copying all documents relevant to any matter contained in this Order.

#### **XI. AUTHORITY TO MONITOR COMPLIANCE**

IT IS FURTHER ORDERED that the Commission is authorized to monitor Defendant's compliance with this Order by all lawful means, including but not limited to the following:

A. The Commission is authorized, without further leave of Court, to obtain discovery from any person (including a Defendant) in the manner provided by Chapter V of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 26-37, including the use of compulsory process pursuant to Fed. R. Civ. P. 45, for the purpose of monitoring and investigating Defendant's compliance with any provision of this Order.

B. The Commission is authorized to use representatives posing as consumers or suppliers to Defendant, Defendant's employees, or any other entity managed or controlled in whole or in part by Defendant, without the necessity of identification or


prior notice; and

C. Nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. § 49 and 57b-1, to investigate whether Defendant has violated any provision herein or Section 5 of the FTC Act, 15 U.S.C. § 45, or any applicable rule or regulation promulgated and enforced by the Commission, including the Franchise Rule, 16 C.F.R. § 436.

## XII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for the purpose of enabling the parties to apply to the Court at any time for such further orders and directives as may be necessary or appropriate for the interpretation or modification of this Order, for the enforcement of compliance therewith, or for the punishment of violations thereof.

DONE AND ORDERED, this 5<sup>th</sup> day of October, 2000, at Orlando, Florida.

  
\_\_\_\_\_  
ANNE C. CONWAY  
UNITED STATES DISTRICT JUDGE

*mi*  
Copies to:

Counsel of Record  
Barry Taylor

APPENDIX A

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

TELECOMMUNICATIONS  
OF AMERICA, INC.;

a corporation, *et al.*,

Defendants

Civil No. 95-693-CIV-ORL-22

AFFIDAVIT

I, Barry Carlton Taylor, being duly sworn, hereby state and affirm as follows:

1. My name is Barry Carlton Taylor. My current residence address is

\_\_\_\_\_. I am a citizen of the United States

and am over the age of eighteen. I have personal knowledge of the facts set forth in this

Affidavit.

2. I am a Defendant in Federal Trade Commission v. TeleCommunications of America, Inc., *et al.* (United States District Court for the Middle District of Florida, Orlando, Division).

3. On [date], I received a copy of the Order, which was signed by the Honorable Anne C. Conway, and entered by the Court on [date of entry of Order]. A true and correct

copy of the Order I received is appended to this Affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on [date], at [city and state].

\_\_\_\_\_

State of \_\_\_\_\_, City of \_\_\_\_\_

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
\_\_\_\_\_