

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

T2U CO., INC.

**d/b/a/ RCP Communications, and
RICHARD C. PEPLIN, JR.,
individually and as an officer of the above
corporation,**

Defendants.

**STIPULATED FINAL
JUDGMENT AND ORDER
FOR PERMANENT
INJUNCTION AND
CONSUMER REDRESS**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), has filed its complaint for permanent injunction and other relief pursuant to §§ 13(b) and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 56(a), charging Defendants T2U Co., Inc. and Richard C. Peplin, Jr. with violating Section 5 of the FTC Act, 15 U.S.C. § 45(a).

The parties have agreed to the entry of this Stipulated Final Judgment and Order for Permanent Injunction and Consumer Redress ("Order") by this Court to resolve all matters of dispute between them in this action without adjudication of any issue of fact or law, and without Defendants' admitting liability for any of the matters alleged in the complaint.

NOW, THEREFORE, Plaintiff Federal Trade Commission and Defendants T2U Co., Inc. and Richard C. Peplin, Jr. having requested the Court to enter this Order,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter of this case and of the parties consenting hereto.
2. Venue is proper as to all parties in the Northern District of Ohio, Eastern Division.
3. The activities of Defendants are in or affecting commerce, as defined in the FTC Act, 15 U.S.C. § 44.
4. The Complaint states a claim upon which relief may be granted against Defendants T2U Co., Inc., and Richard C. Peplin, Jr. under § 5(a) of the FTC Act, 15 U.S.C. § 45(a).
5. Defendants have waived all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. No. 104-121, 110 Stat. 847, 863-64 (1996).
6. This agreement resolves all matters arising from the allegations in the complaint.
7. Nothing in this Order shall be construed as relieving Defendants of any obligations they may have under any other rule or law enforced by the FTC or the Federal Communications Commission.

DEFINITIONS

1. “Consumer” means a purchaser, customer, or natural person.
2. “Defendants” means T2U Co., Inc. (“T2U”), formerly known as RCP Enterprise Group, Inc., and doing business as RCP Communications, and Richard C. Peplin, Jr. (“Peplin”), their successors and assigns, and their agents, employees, officers, and servants, and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise.
3. “Telephone-billed transaction” means any purchase or purported purchase of a good or service that is charged to a consumer’s telephone bill, including any voice mail, audiotext, or videotext services, but excluding: (1) purchases solely of common carrier transmission services; and (2) purchases of services accessed by dialing a 900 number or other number that can be blocked by the Line Subscriber pursuant to 47 U.S.C. § 228(c).

PROHIBITED BUSINESS ACTIVITIES

I.

IT IS THEREFORE ORDERED that in connection with the advertising, promotion, offering for sale, or sale of prepaid telephone cards or any other telephone-billed transaction, Defendants are hereby permanently restrained and enjoined from making, expressly or by implication, orally or in writing, directly or through any intermediary, any misrepresentation of material fact, including, but not limited to:

- A. Any misrepresentation that a consumer is obligated to pay for any product or service that the consumer did not purchase; and

B. Any misrepresentation that a charge for such product or service has been authorized.

II.

IT IS FURTHER ORDERED that in connection with the advertising, promotion, offering for sale, or sale of prepaid telephone cards or any other telephone-billed transaction, Defendants are hereby permanently restrained and enjoined from failing to disclose, prior to billing such consumers, clearly and conspicuously, in any promotional offering or advertising, the following material terms and conditions:

- A. The cost of the product or service;
- B. The amount of any one-time, recurring, monthly, or renewal charge;
- C. The manner in which any recurring, monthly, or renewal charge will be billed;
- D. Any limitations on the usage of the product or service, such as the expiration of time on a prepaid telephone card; and
- E. The means by which a consumer can cancel any recurring, monthly, or renewal charge.

III.

IT IS FURTHER ORDERED that in connection with the advertising, promotion, offering for sale, or sale of prepaid telephone cards or any other telephone-billed transaction, Defendants are hereby permanently restrained and enjoined from:

- A. Billing, or causing to be billed, any consumer's telephone number prior to delivery of any product or service whose time or value expires prior to or within the billing period;

B. Failing to disclose, for any other product or service whose time or value does not expire prior to or within the billing period, that the cost for such product or service will be billed to the consumer's telephone number prior to delivery; and

C. Failing to obtain a consumer's express authorization for any telephone-billed transactions.

CONSUMER REDRESS

IV.

IT IS FURTHER ORDERED that Judgment is entered against Defendants in the amount of Three Million Two Hundred Thousand Dollars (\$3,200,000). Based on the sworn representations in the financial statements of Defendants, the foregoing monetary amount shall be suspended. The Commission's acceptance and the Court's approval of this settlement is expressly premised upon the truthfulness, accuracy, and completeness of the Defendants' financial statements signed and dated on October 5, 1999. If, upon motion by the Commission, this Court should find that any defendant made a material misrepresentation or omission concerning his or its financial condition, then the Court shall enter a judgment against Defendants in the above amount of Three Million Two Hundred Thousand Dollars (\$3,200,000) without further adjudication.

A. The Commission may apply any or all funds received from Defendants pursuant to this Order, and any interest received thereon, to a consumer redress program and to related administrative expenses; provided, however, that if the Commission determines a consumer redress program is not feasible, the Commission may pay such funds to the United States Treasury as disgorgement. The Commission shall have full and sole discretion to:

1. Determine the criteria for participation by individual claimants in any consumer redress program implemented pursuant to this Order;
2. Determine the manner and timing of any notices to be given to consumers regarding the existence and terms of such programs; and
3. Delegate any and all tasks connected with such redress program to any individuals, partnerships, or corporations; and pay the fees, salaries, and expenses incurred thereby from the payments made pursuant to this Order;

B. Defendants expressly waive their rights to litigate the issue of disgorgement.

Defendants acknowledge and agree that all money paid pursuant to this Order is irrevocably paid to the Commission for purposes of settlement between Plaintiff and the Defendants; and

C. Defendants shall provide the Commission, or its agent, within thirty (30) days of such a request, the name, last known address, telephone number, and date of purchase, of each consumer billed by defendants for a prepaid telephone card, as well as any further information Plaintiff deems necessary to effecting a consumer redress program; *provided, however*, that Defendants need not provide such information for any consumer who has already received a full refund for all charges for Defendants' prepaid telephone cards, or for any consumer who used Defendants' prepaid telephone cards.

GENERAL REQUIREMENTS

V.

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Order, Defendants, in connection with any business engaged in the sale of prepaid

telephone cards, or the sale of any other telephone-billed purchase, or any business that assists others to sell prepaid telephone cards or other products or services billed to a consumer's telephone number, are hereby restrained and enjoined from failing to create, and from failing to retain for a period of two (2) years following the date of such 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 accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, 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.

The businesses subject to this Paragraph shall retain such records for any terminated employee for a period of two (2) years following the date of termination;

C. Records containing the names, addresses, telephone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased for all consumers to whom such business has sold any goods or services;

D. Records that reflect, for every consumer complaint or refund request, 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 or refund request, if any, and the date of the complaint or refund request;

3. The basis of the complaint, including the name of any salesperson complained against, and the nature and result of any investigation conducted concerning any complaint;
4. Each response and the date of the response;
5. Any final resolution and the date of the resolution; and
6. 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, promotional materials, or other marketing materials utilized; provided that copies of all sales scripts, training materials, advertisements, promotional materials, or other marketing materials utilized shall be retained for five (5) years after the last date of dissemination of any such materials.

VI.

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

A. For a period of three (3) years from the date of entry of this Order, Defendants shall notify the Commission of the following:

1. Any changes in any individual Defendant's residence, mailing addresses, and telephone numbers, within thirty (30) days of the date of such change;
2. Any changes in any individual Defendant's employment status (including self-employment) within thirty (30) days of such change. Such notice shall include the name and address of each business that any such Defendant is affiliated with or employed by, a statement of the nature of the business,

and a statement of such Defendant's duties and responsibilities in connection with the business or employment; and

3. Any proposed change in the corporate structure of any corporate Defendant, or any proposed change in the structure of any business entity owned or controlled by the individual Defendant, such as creation, incorporation, dissolution, assignment, sale, merger, creation, dissolution of subsidiaries, proposed filing of a bankruptcy petition, or change in the corporate name or address, or any other change that may affect compliance obligations arising out of this Order, thirty (30) days prior to the effective date of any proposed change; *provided, however*, that, with respect to any proposed change in the corporation about which any Defendant learns less than thirty (30) days prior to the date such action is to take place, such 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, Defendants shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which Defendants have complied and are complying with this Order. This report shall include but not be limited to:

1. The individual Defendant's then current residence address and telephone number;

2. The individual Defendant's then current employment, business addresses and telephone numbers, a description of the business activities of each such employer, and Defendant's title and responsibilities for each employer;
3. A copy of each acknowledgment of receipt of this Order obtained by Defendant pursuant to Part IX;
4. A statement describing the manner in which each such defendant has complied and is complying with the (a) the injunctive provisions of this Order, and (b) the consumer redress provisions of this Order;

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

D. For the purposes of this Order, Defendants shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director
Division of Marketing Practices
Federal Trade Commission, Room 238
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
RE: FTC v. T2U Co.

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

F. For purposes of the compliance reporting required by this Part, the Commission is authorized to communicate directly with Defendants unless represented by counsel.

VII.

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

A. The Commission is authorized, without further leave of court, to obtain discovery from any person 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 Defendants' compliance with any provision of this Order;

B. The Commission is authorized to use representatives posing as consumers or suppliers to: Defendants, Defendants' employees, or any other entity managed or controlled in whole or in part by any 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, 57b-1, to investigate whether Defendants have violated any provision of this Order, or Section 5 of the FTC Act, 15 U.S.C. § 45.

VIII.

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, Defendants shall permit representatives of the Commission, within five (5) 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 where (1) any Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business is engaged in the sale of prepaid telephone cards, or the sale of any other telephone-billed purchase, or any business that assists others to sell prepaid telephone cards or other products or services billed to a consumer's telephone number. In providing such access, Defendants shall permit representatives of the Commission to inspect and copy, at the Commission's expense, all documents relevant to any matter contained in this Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this Order for a period not to exceed five (5) business days so that the documents may be inspected, inventoried, and copied; and

B. To interview the officers, directors, and employees, 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 Paragraph (A) of this Part applies, concerning matters relating to compliance with the terms of this Order. The persons interviewed may have counsel present.

IX.

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

A. For any business where (1) any Defendant is the majority owner of the business or directly or indirectly manages or controls the business, and where (2) the business is engaged in the sale of prepaid telephone cards, or the sale of any other product or service billed to a consumer's telephone number, or any business that assists others to sell prepaid telephone cards or other products or services billed to a consumer's telephone number, provide a copy of this Order, and obtain a signed and dated acknowledgment of receipt of same from each officer or director, and each individual serving as a manager or supervisor, and from all present personnel, whether designated as employees, consultants, independent contractors or otherwise, and within five (5) business days upon employing or retaining any such persons, involved in (a) responding to consumer complaints or inquiries, and (b) sales; 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 Paragraph (A) of this Part.

X.

IT IS FURTHER ORDERED that within ten (10) business days after receipt by Defendants of this Order as entered by the Court, Defendants shall submit to the Commission a truthful sworn statement, in the form shown on Attachment A, that shall acknowledge receipt of this Order.

XI.

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

SO ORDERED, this _____ day of _____, 2001.

UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OHIO

The parties, by their respective counsel, hereby consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof

this ____ day of _____, 200_.

FOR DEFENDANTS

D. Reed Freeman, Jr.
Arent Fox Kintner Plotkin & Kahn, PLLC
1050 Connecticut Avenue, NW
Washington, DC 20036
202-857-6000
COUNSEL FOR Defendants

Richard C. Peplin, President
T2U Co., Inc.

Richard C. Peplin
Individually

FOR PLAINTIFF

Stephen L. Cohen
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580
202-326-3322

ATTACHMENT A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

T2U CO., INC.

**d/b/a/ RCP Communications, and
RICHARD C. PEPLIN, JR.,
individually and as an officer of the above
corporation,**

Defendants.

**AFFIDAVIT OF
RICHARD C. PEPLIN, JR.**

I, Richard C. Peplin Jr., being duly sworn, hereby states and affirms as follows:

1. My name is Richard C. Peplin, Jr. My current 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. On [date], I received a copy of the Stipulated Final Judgment and Order for Permanent Injunction and Consumer Redress, which was signed by the Honorable [name] 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 swear or affirm, under the penalty of perjury, with knowledge of the penalties for false statements provided by 18 United States Code Section 1001, and with the knowledge that this declaration is submitted by me to affect action by the Federal Trade Commission, that the foregoing is true and correct.

Date: _____
Richard C. Peplin, Jr.