

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CIV 03-60150
CIV-MARRA

MAGISTRATE JUDGE
SELTZER

FEDERAL TRADE COMMISSION,)
)
) Plaintiff,)
)
) v.)
)
) 800 CONNECT, INC.;)
)
) DAVID STEIN, individually and as an)
) officer of 800 Connect, Inc.; and)
)
) ILD TELECOMMUNICATIONS, INC.,)
) and d/b/a ILD TELESERVICES, INC.,)
)
) Defendants.)

CLOSED
CIVIL
CASE

FILED by *Jam* D.C.
FEB - 4 2003
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. FT. LAUD.

**STIPULATED FINAL JUDGMENT AND ORDER FOR
PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF
AS TO ILD TELECOMMUNICATIONS, INC. AND D/B/A ILD TELESERVICES, INC.**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), has filed its complaint for permanent injunction and other relief pursuant to §§ 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b) and 57b, and the Telephone Disclosure and Dispute Resolution Act of 1992 ("TDDRA"), 15 U.S.C. §§ 5701 *et seq.*, charging ILD Telecommunications, Inc. ("ILD") with violating Section 5 of the FTC Act, 15 U.S.C. § 45, and with violating the Commission's Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 ("Pay-Per-Call Rule"), 16 C.F.R. Part 308. The parties, represented by the attorneys whose names appear hereafter, are in agreement to settle the

[Signature]
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Complaint by entering into this Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief ("Final Order") upon the following terms and conditions;

THEREFORE, on the joint motion of Plaintiff and Defendant ILD, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

FINDINGS

1. This Court has jurisdiction over the subject matter of this case and the parties to this case as set forth hereto.
2. Venue is proper as to all parties in the Southern District of Florida under 15 U.S.C. § 53(b) and 28 U.S.C. § 1391(b) and (c).
3. The activities of ILD are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. The Complaint alleges claims upon which relief may be granted against ILD under §§ 5(a)(1), 13(b), and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 53(b), and 57b, and under the Pay-Per-Call Rule, 16 C.F.R. Part 308.
5. The Commission and ILD stipulate and agree to this Final Order to settle and resolve all matters in dispute arising from the Complaint to the date of entry of this Final Order.
6. ILD has waived all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).
7. ILD, by Dennis J. Stoutenburgh, President, acknowledges that it has read the provisions of this Final Order and has agreed to abide by them.
8. ILD waives all rights to seek appellate review or otherwise challenge or contest the validity of this Final Order.

9. ILD waives and releases any claim they may have against the Commission and its employees, representatives or agents.

10. This Order is for settlement purposes only and does not constitute an admission by ILD that it has engaged in violations of any law or regulation.

11. Entry of this Final Order is in the public interest.

DEFINITIONS

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

1. "ANI" or "Automatic Number Identification" refers to a system that captures the telephone number from which a call has been placed. ANI systems are similar to services popularly known as "caller ID" services.

2. "Audiotext service(s)" means information or entertainment programs that are provided over the telephone.

3. "Billing aggregator" means an entity that, on behalf of one or more service vendors, arranges to have charges for vendors' audiotext or other services placed on the telephone bills sent to Line Subscribers from their LECs, arranges for the LECs to collect those charges from Line Subscribers, and arranges for service vendors to receive payment for their services.

4. "BTN" means a Line Subscriber's bill or billing telephone number.

5. A "corresponding provision" of the Pay-Per-Call Rule, 16 C.F.R. Part 308, or of any specific provision of the Pay-Per-Call Rule, refers to any duly enacted regulation that amends, augments or replaces the provision to which "corresponding provision" refers.

6. "ILD" means ILD Telecommunications, Inc. and any entity through which it does business.

7. "Document" is equal in scope and synonymous in meaning with 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.

8. "Line subscriber" means an individual or entity, or any person acting on behalf of such individual or entity, who has arranged with a LEC to obtain local telephone service provided through an assigned telephone number, and to be billed for such service on a monthly (or other periodic) basis.

9. "Local Exchange Carrier" or "LEC" means the local telephone company or service from which a Line Subscriber receives his or her telephone bill.

10. The "Pay-Per-Call Rule" or "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, as currently promulgated or as it may hereafter be amended.

11. "Presubscription or comparable arrangement" has the meaning provided by § 308.2(e) of the Pay-Per-Call Rule, 16 C.F.R. § 308.2(e), as currently promulgated, or any corresponding provision of the Rule as it may hereafter be amended.

12. "Service vendor" or "vendor" means an entity that offers audiotext or other services that are billed to Line Subscribers on the telephone bills received by Line Subscribers from their LECs.

13. "Telephone-billed purchase" has the meaning provided by § 308.7(a)(6) of the Pay-Per-Call Rule, 16 C.F.R. § 308.7(a)(6), as currently promulgated, or any corresponding provision of the Rule as it may hereafter be amended.

I. INJUNCTIVE PROVISION

IT IS THEREFORE ORDERED that:

A. ILD, its successors, subsidiaries, affiliates and assigns, and their officers, agents, servants, independent contractors, employees, and all persons in active concert or participation with any one or more of them who receive actual notice of this Final Order by personal service or otherwise, are hereby permanently enjoined from, directly or indirectly, violating any provision of the Pay-Per-Call Rule, 16 C.F.R. Part 308, including, but not limited to, violating 16 C.F.R. § 308.7, or any corresponding provision of 16 C.F.R. Part 308, by failing to abide by the dispute resolution procedures required by the Rule;

B. ILD, its successors, subsidiaries, affiliates and assigns, and their officers, agents, servants, independent contractors, employees, and all persons in active concert or participation with any one or more of them who receive actual notice of this Final Order by personal service or otherwise, in connection with the billing or collection for any audiotext service or telephone-billed purchase, or in connection with responding to consumer inquiries or complaints regarding any audiotext service or telephone-billed purchase, are hereby permanently enjoined from, directly or indirectly, making any express or implied misrepresentation of material fact, orally or in writing, including, but not limited to, any misrepresentation that a consumer who has not authorized charges for any audiotext services accessed or provided over an 800, 888, 877, or other number advertised or widely understood to be toll-free is legally obligated to pay for such audiotext services; and

C. ILD, its successors, subsidiaries, affiliates and assigns, and their officers, agents, servants, independent contractors, employees, and all persons in active concert or participation with any one or more of them who receive actual notice of this Final Order by personal service or otherwise, are hereby permanently enjoined from, directly or indirectly, billing or causing to be billed, or collecting or attempting to collect payment from, a Line Subscriber for any audiotext services accessed or provided over an 800, 888, 877, or other number advertised as or widely understood to be toll-free, unless the charge for such transaction is authorized pursuant to a valid presubscription or comparable arrangement.

II. CONSUMER REFUNDS AND REDRESS

IT IS FURTHER ORDERED that:

A. Not later than sixty (60) days from the date of entry of this Order, ILD shall effect a refund or a credit, through the LEC to which ILD submitted the original charge, for any paid charge that was billed by ILD on behalf of 800 Connect, that was the subject of an individual inquiry or complaint of any type, by or on behalf of a Line Subscriber, and where the line subscriber has not previously received a refund or credit;

B. Within three (3) business days of entry of this Final Order, ILD shall pay to the FTC the sum of Six Hundred and Seventy Five Thousand Dollars, U.S. Currency, (\$675,000.00);

C. All funds paid to the FTC pursuant to this Final Order shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to consumer redress and any attendant expenses for the administration of any redress fund. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Commission may pay any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably

related to the defendants' practices as alleged in the complaint. Any funds not used for such equitable relief shall be deposited into the United States Treasury as disgorgement. ILD shall have no right to challenge the Commission's choice of remedies under this Paragraph;

D. ILD acknowledges and agrees that all monies paid by it, pursuant to this Final Order, are solely remedial in nature and no portion of any monies paid shall be deemed the payment of any fine, penalty, punitive assessment or forfeiture. ILD acknowledges and agrees that all money paid pursuant to this Final Order is irrevocably paid to the Commission for purposes of settlement between the FTC and ILD; and

E. Payment shall be made by certified check to the Federal Trade Commission, Division of Finance, 600 Pennsylvania Ave, NW, Washington, DC 20580, Reference Information U.S. v. 800 Connect, Matter No. 0223056; or by wire transfer to: Treasury ABA number: 021030004, ALC number 29000001, Federal Reserve Bank of NY, Appropriation 29X6013, FTC Consumer Redress, Reference information: FTC v. 800 Connect, Matter No. 0223056,

III. RIGHT TO REOPEN

IT IS FURTHER ORDERED that the Plaintiff's agreement to this Final Order is expressly premised upon the financial condition ILD as represented in the December 11, 2002, sworn affidavit of H. Edward Brooks, Executive Vice President and Chief Financial Officer of ILD Telecommunications, Inc., and the documents attached thereto, which include material information upon which the Commission relied in negotiating and consenting to this Order. If, upon motion by the Commission, a Court should find that ILD made a material misrepresentation or omitted material information concerning its financial condition, then this Final Order shall be reopened for the purpose of requiring payment to the Commission of

additional monetary redress in the amount of \$3,523,979.44 less the sum of any amounts paid by the defendants to this action after the date of this order. *Provided*, however, that in all other respects this judgment shall remain in full force and effect, unless otherwise ordered by the Court; and *provided further*, that proceedings instituted under this Paragraph are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that the FTC may initiate to enforce this Order.

IV. RECORD KEEPING

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Final Order, in connection with any business engaged in the billing or collection for any audiotext service or telephone-billed purchase transaction, ILD and its agents, employees, officers, corporations, successors, and assigns, and those persons in active concert or participation with them who receive actual notice of this Final Order by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following business records for activities occurring during said five-year period:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel 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;
- C. For all BTN's that ILD has charged or caused to be charged for audiotext services or other telephone-billed purchases, records containing the phone numbers, dollar amounts

billed, quantity of items or services purchased, and description of items or services purchased, including ANI records and, where applicable, call duration;

D. For all BTNs that ILD has charged or caused to be charged for audiotext services or other telephone-billed purchases, records that reflect, for every consumer complaint, refund request, billing question or billing dispute notice, whether received directly or through any third party:

1. the consumer's telephone number, the dollar amount billed;
2. the written complaint or summary of any oral complaint, refund request, or billing question or billing dispute notice, if any, and the date of the writing or the date the oral complaint was made;
3. if an investigation is warranted under the circumstances, a description of the nature and results of any such investigation concerning the complaint, refund request, or billing question or billing dispute notice;
4. the response to the complaint, refund request, or billing question or billing dispute notice and the date of the response; and
5. any final resolution and the date of the resolution.

E. By no later than six (6) months from the date of entry of this Final Order, for all BTNs that ILD has charged or caused to be charged for audiotext services or other telephone-billed purchases, records that reflect, for every consumer complaint, refund request, billing question or billing dispute notice, whether received directly or through any third person:

1. the reasons for the complaint, refund request, or billing question or billing dispute notice; and

2. in the event of a denial of a billing dispute notice or a refund or credit request, the reason for the denial.

F. Sales, entertainment, information, operator, recorded audiotext message, and customer service scripts, training materials, advertisements, form letter responses, or other marketing or customer service materials;

G. Recorded audiotext messages, including introductory and preamble messages; and

H. Call transport records or billing records that contain identifying information concerning the telephone numbers of consumers placing calls, in connection with purchasing or receiving audiotext services or telephone-billed purchases.

V. COMPLIANCE REPORTING

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

A. For a period of three (3) years from the date of entry of this Final Order, ILD shall notify the Commission of any proposed change in the structure of ILD, such as creation, incorporation, dissolution, assignment, sale, creation or dissolution of subsidiaries, or any other change that affect compliance obligations arising out of this Final Order, thirty (30) days prior to the effective date of any proposed change;

B. One hundred twenty (120) days after the date of entry of this Final Order, ILD shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which it has complied and is complying with this Final Order. This report shall include, but not be limited to:

1. A copy of each acknowledgment of receipt of this Final Order obtained by ILD pursuant to Paragraph VIII;

2. A statement describing the manner in which ILD has complied and is complying with:

(a) the injunctive provisions of this Final Order, including, but not limited to, the monitoring, record keeping, and compliance portions of this Final Order; and

(b) the consumer redress provision of this Final Order;

C. Upon written request by a representative of the Commission, ILD 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 Final Order;

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

Associate Director for Marketing Practices
Federal Trade Commission
Room 238
600 Pennsylvania Ave, N.W.
Washington, DC 20580
Re: FTC v. 800 Connect, Inc., et al.

E. For purposes of the compliance reporting required by this Paragraph, the Commission is authorized to communicate with ILD at:

Dennis J. Stoutenburgh, President
ILD Telecommunications, Inc.
5000 Sawgrass Village Circle, Suite 30
Ponte Vedra Beach, FL 32082.

VI. AUTHORITY TO MONITOR COMPLIANCE

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

A. The Commission is authorized, without further leave of the 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 ILD's compliance with any provision of this Final Order; and

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

C. Nothing in this Final 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 ILD has violated any provision of this Final Order or Section 5 of the FTC Act, 15 U.S.C. §45, or the Pay-Per-Call Rule.

VII. ACCESS TO BUSINESS PREMISES

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Final Order, for the purpose of further determining compliance with this Final Order, ILD shall permit 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 where the business is engaged in the billing or collection for any audiotext service or telephone-billed purchase, or in assisting others engaged in such services or transactions. In providing such access, ILD shall permit representatives of the Commission to inspect and copy all documents relevant to any matter contained in this Final Order; and shall permit Commission representatives to remove documents relevant to any matter contained in this

Final 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 Subparagraph 1 of this Paragraph applies, concerning matters relating to compliance with the terms of this Final Order. The person interviewed may have counsel present.

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

VIII. ACKNOWLEDGEMENT OF RECEIPT OF FINAL ORDER BY DEFENDANT

IT IS FURTHER ORDERED that, within five (5) business days after receipt by ILD of this Final Order as entered by the Court, ILD shall submit to the Commission at the address provided in Subparagraph E of Paragraph V above, a truthful sworn statement, in the form shown in *Appendix A*, that shall acknowledge receipt of this Final Order.

IX. DISTRIBUTION OF FINAL ORDER BY DEFENDANT

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

A. ILD shall, within ten (10) business days of the entry of this Final Order, provide a copy of this Final Order to, and obtain a signed and dated acknowledgment of receipt of same from each officer or director and each individual serving in a management capacity with any responsibility for the billing or collection for any audiotext service or telephone-billed purchase,

all personnel involved in responding to consumer complaints or inquiries, and all sales personnel, whether designated as employees, consultants, independent contractors or otherwise, within ten (10) business days of employing or retaining any such persons, for any business where:

1. ILD or any of its subsidiaries or affiliates 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 billing or collection for any audiotext service or telephone-billed purchase, or in assisting others engaged in such services or transactions.

B. ILD shall maintain for a period of five (5) 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 Final Order, as required in Subparagraph A.

X. COSTS

IT IS FURTHER ORDERED that each party shall bear its own costs and attorney's fees incurred in connection with this action.

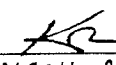
XI. RETENTION OF JURISDICTION

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 Final Order, for the enforcement of compliance therewith, or for the punishment of violations thereof

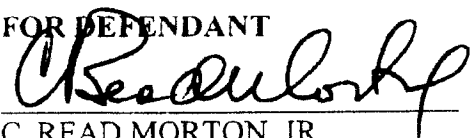
The Clerk may close this case for statistical purposes.

DONE AND ORDERED, this 4th day of FEB, 2003, in FT. LAUDERDALE,

Florida.



[name] **KENNETH A. MARRA**
United States District Judge

FOR DEFENDANT


C. READ MORTON, JR.
Attorney for Defendant ILD
Burr & Forman LLP
600 West Peachtree Street
Suite 1200
Atlanta, GA 30308
Telephone: (404) 685-4330
Facsimile: (404) 817-3244
Email: rmorton@burr.com

DATED: 12/13/02

FOR PLAINTIFF


ELIZABETH HONE
Attorney for Plaintiff
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room 238
Washington, D.C. 20580
Telephone: (202) 326-3207
Facsimile: (202) 326-3395
email: ehone@ftc.gov

DATED: 1/31/03



DENNIS STOUTENBURGH, President
For Defendant ILD Telecommunications, Inc.
ILD Telecommunications, Inc.
5000 Sawgrass Village Circle, Suite 30
Ponte Vedra Beach, FL 32082.

DATED: 12/13/62

Copies to:

Elizabeth Hone, Esq.
Federal Trade Commission
600 Pennsylvania Ave., N.W., Rm. 238
Washington, D.C. 20580
Facsimile: (202) 326-3395

C. Read Morton, Jr.
Burr & Forman LLP
600 West Peachtree Street, Suite 1200
Atlanta, GA 30308
Facsimile: (404) 817-3244

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FEDERAL TRADE COMMISSION,)
)
 Plaintiff,)
)
 v.)
)
 800 CONNECT, INC.;)
)
 DAVID STEIN, individually and as an)
 officer of 800 Connect, Inc.; and)
)
 ILD TELECOMMUNICATIONS, INC.,)
 d/b/a ILD TELESERVICES, INC.,)
)
 Defendants.)
)

AFFIDAVIT OF DENNIS J. STOUTENBURGH

I, Dennis J. Stoutenburgh, being duly sworn, hereby states and affirms as follows:

1. My name is Dennis J. Stoutenburgh. I am President of ILD Telecommunications, Inc., the defendant in the above-captioned civil action. 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. My current business address is _____
_____. My current residential address is
_____. My current residential telephone is _____.