

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA, PHOENIX DIVISION**

FEDERAL TRADE COMMISSION,)	
)	CV- No.
)	
Plaintiff,)	
)	
v.)	
)	
RJB Telcom, Inc.,)	
a corporation;)	[PROPOSED] TEMPORARY
)	RESTRAINING ORDER
)	
Robert J. Botto, Jr.)	
individually, and as an officer of RJB)	
Telcom, Inc., and Robert J. Botto, Jr.)	
and Suzette Botto, as Husband and Wife;)	
)	
Richard D. Botto,)	
individually, and as an officer of RJB)	
Telcom, Inc., and Richard D. Botto)	
and Anne Botto, as Husband and Wife,)	
)	
Defendants.)	
)	

Plaintiff Federal Trade Commission (“Commission”), pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), has filed a Complaint for Permanent Injunction and other relief, including consumer redress, and applied ex parte for a Temporary Restraining Order with asset freeze, repatriation order, appointment of a temporary receiver, provision for immediate access to the Defendants’

business premises and records, and an order to show cause why a Preliminary Injunction should not issue pursuant to Rule 65 of the Federal Rules of Civil Procedure.

4. There is good cause to appoint a Temporary Receiver.
5. Weighing the equities and considering the Commission's likelihood of success in its causes of action, this Temporary Restraining Order is in the public interest.
6. No security is required of any agency of the United States for issuance of a restraining order. Fed. R. Civ. P. 65(c).

ORDER

Definitions

1. **"Defendants"** means Robert J. Botto, Jr., Richard D. Botto, and RJB Telcom, Inc., and each of them, by whatever names each might be known, as well as their successors, assigns, officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, all other persons or entities directly or indirectly under their control or under common control with them, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, including, but not limited to, fictitious business names.
2. **"Relief Defendants"** means Suzette Botto and Anne Botto, and each of them, by whatever names each might be known, as well as their successors, assigns, officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, all other persons or entities directly or indirectly

under their control or under common control with them, and all other persons or entities in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any corporation, subsidiary, division, or other device, including, but not limited to, fictitious business names.

3. **“Receivership Defendants”** means RJB Telcom, Inc., by whatever names it might be known, as well as its parents, subsidiaries, affiliates, successors and assigns.

4. **“Assets”** means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

5. **“Document”** is equal in scope and synonymous in meaning 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 any 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.

6. **“Internet”** means a worldwide system of linked computer networks that use a common protocol to deliver and receive information. The “Internet” includes, but is not

limited to, the following forms of electronic communication: electronic mail, file transfers, the World Wide Web, newsgroups, Internet Relay Chat, audio, and video.

7. **“Line subscriber”** means an individual or entity who has arranged with a local exchange carrier (“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.

8. **“Local Exchange Carrier”** or “LEC” means the local telephone company from which a line subscriber receives his or her telephone bill.

9. **“World Wide Web”** means a system used on the Internet for cross-referencing and retrieving information. A **“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 Internet, standard software, and knowledge of the web site's location or address.

I. PROHIBITED MISREPRESENTATIONS

IT IS THEREFORE ORDERED that in connection with the advertising, promotion, offering, or sale of goods or services by telephone, on or through the Internet, the World Wide Web, any web site, or otherwise in commerce, Defendants are hereby temporarily restrained and enjoined from making, directly or through an intermediary, expressly or by implication, orally or in writing, any misrepresentation of material fact, including but not limited to:

Falsely representing that consumers have purchased or agreed to purchase goods or services from Defendants, and therefore owe money to Defendants.

II. PROHIBITED BILLING PRACTICES

IT IS FURTHER ORDERED that the Defendants are temporarily restrained and enjoined from billing or receiving money, or assisting others in billing or receiving money, from consumers without express verifiable authorization, including, but not limited to:

- A. Charging or debiting consumers' credit card or debit card accounts without consumers' express verifiable authorization; and
- B. 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 good or service without express verifiable authorization from the line subscriber that he or she accepts or authorizes the purchase of such services.

III. ASSET FREEZE

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

- A. Transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, or otherwise disposing of any funds, real or personal property, accounts, contracts, shares of stock, or other assets, wherever located, inside or outside the United States, that are:

1. Owned or controlled by any Defendant or Relief Defendant, in whole or in part, including but not limited to, property, bank accounts or other assets where the title is held or taken in the name of any Defendant or Relief Defendant alone, in joint tenancy or common ownership with another person or entity, whether a party or non-party, or held in trust; or
2. In the actual or constructive possession of any Defendant or Relief Defendant; 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 Defendant or Relief Defendant, including, but not limited to, any assets held by or for any of the Defendants or Relief Defendants, or subject to their access, at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metals dealer, or other financial institution or depository of any kind, or with any third-party billing agent, LEC, common carrier or other telecommunications company;

Provided however, that a Defendant or Relief Defendant may transfer funds for the sole purpose of repatriating them and depositing them in a designated domestic account, as set forth in Paragraph IV.

- B. Opening or causing to be opened any safe deposit boxes titled in the name of a Defendant or Relief Defendant, or subject to access by any of them;
- C. Incurring charges or cash advances on any credit card issued in the name, singly or jointly, of any Defendant or Relief Defendant;
- D. Obtaining a personal or secured loan; and
- E. Incurring liens or other encumbrances on real property, personal property or other assets in the name, singly or jointly of any Defendant or Relief Defendant.

IV. REPATRIATION OF ASSETS AND DOCUMENTS

IT IS FURTHER ORDERED that Defendants and Relief Defendants, and those persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, shall:

- A. Within forty-eight (48) hours following service of this Order, take such steps as are necessary to transfer to the territory of the United States of America all assets and documents that are located outside of such territory and are held by or for Defendants or Relief Defendants, or are under their direct or indirect control, jointly, severally, or individually;
- B. Within forty-eight (48) hours following service of this Order, provide Plaintiff and the Temporary Receiver with a full accounting of all documents and assets that are located outside the territory of the United States of America and are held by or for

Defendants or Relief Defendants, or are under their direct or indirect control, jointly, severally, or individually;

C. Hold and retain all assets and transferred documents, and prevent any transfer, disposition, or dissipation whatsoever of any such assets, except for transfers to the Temporary Receiver; and

D. Provide Plaintiff and the Temporary Receiver with access to records and documents of the Defendants held by financial institutions outside the territorial United States of America, by signing and delivering to Plaintiff the Consent to Release of Financial Records, attached hereto as Attachment A, within forty-eight (48) hours of service of this Order.

persons or entities directly or indirectly under their control or under common control with them, and all other persons or entities in active concert or participation with them, from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of any account, funds, documents, property or other asset:

1. Titled or maintained in the name of a Defendant or Relief Defendant, whether jointly, severally or individually;
2. Held on behalf, or for the benefit, of a Defendant or Relief Defendant, whether jointly, severally or individually; or
3. Subject to access or use by a Defendant or Relief Defendant, whether jointly, severally, or individually.

Provided, however, that this Order shall not prohibit transfers:

1. As directed by further order of the Court;
2. For specific transfers authorized in writing by counsel for the Commission;
or
3. As directed by the Receiver (regarding assets held in the name, or for the benefit, of the Receivership Defendants);

B. Deny Defendants, Relief Defendants, and their officers, agents, servants, employees, attorneys, affiliates or subsidiaries, successors or assigns, and all persons or entities directly or indirectly under their control or under common control with them, and

all other persons or entities in active concert or participation with them, access to any safe deposit box that is:

1. Titled in the name of a Defendant or Relief Defendant, whether jointly, severally or individually; or
2. Otherwise subject to access by a Defendant or Relief Defendant, whether jointly, severally or individually;

C. Provide counsel for the Commission and the Receiver, within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:

1. The identification number of each account or asset titled or maintained in the name of a Defendant or Relief Defendant, whether jointly, severally or individually, or held on behalf, or for the benefit of, any such Defendant or Relief Defendant;
2. The balance of each such account, or a description of the nature and value of each such asset, as of the time of receipt of notice of this Order, and, if the

D. Upon the request of the Receiver or the Commission, promptly provide the Receiver and the Commission with copies of all records or other documentation pertaining to each 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; and

E. Cooperate with all reasonable requests of the Receiver relating to implementation of this Order, including transferring funds at the Receiver's direction and producing records related to the accounts of the Defendants and Relief Defendants.

including, but not limited to, Jettis.com, are hereby temporarily restrained and enjoined from destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any documents that relate to the

the agent of this Court, and solely the agent of this Court, in acting as Receiver under this Order. The Receiver shall be accountable directly to this Court. The Receiver shall comply with all Local Rules governing receivers.

X. RECEIVER'S DUTIES

IT IS FURTHER ORDERED that the Temporary Receiver is authorized and directed to accomplish the following:

A. Assume full control of the Receivership Defendants by removing, as the Receiver deems necessary or advisable, any director, officer, independent contractor, employee, or agent of any of the Receivership Defendants, including any Defendant, from control of, management of, or participation in, the affairs of the Receivership Defendants;

B. Take exclusive custody, control, and possession of all assets and documents of, or in the possession, custody, or under the control of, the Receivership Defendants, wherever situated. The Receiver shall have full power to divert mail and to sue for, collect, receive, take in possession, hold, and manage all assets and documents of the Receivership Defendants and other persons or entities whose interests are now held by, or are under the direction, possession, custody, or control of, the Receivership Defendants. The Receiver shall assume control over the income and profits therefrom and all sums of money now or hereafter due or owing to the Receivership Defendants.

Provided, however, that the Receiver shall not attempt to collect any amount from a

consumer if the Receiver believes the consumer was a victim of the unfair or deceptive acts or practices alleged in the Complaint in this matter, without prior Court approval;

C. Take all steps necessary to secure each location from which the Receivership Defendants operate their business. Such steps may include, but are not limited to, any of the following, as the Receiver deems necessary or advisable: (1) serving this Order; (2) completing a written inventory of all receivership assets; (3) obtaining pertinent information from all employees and other agents of the Receivership Defendants, including, but not limited to, the name, home address, social security number, job description, method of compensation, and all accrued and unpaid commissions and compensation of each such employee or agent; (4) photographing and video taping all portions of the location; (5) securing the location by changing the locks and disconnecting any computer modems or other means of access to the computer or other records maintained at that location; and (6) requiring any persons present on the premises at the time this Order is served to leave the premises, to provide the Receiver with proof of identification, or to demonstrate to the satisfaction of the Receiver that such persons are not removing from the premises documents or assets of the Receivership Defendants. Law enforcement personnel, including, but not limited to, police or sheriffs, may assist the Receiver in implementing these provisions in order to keep the peace and maintain security.

D. Conserve, hold, and manage all assets of the Receivership Defendants, and perform all acts necessary or advisable to preserve the value of those assets in order to prevent any irreparable loss, damage, or injury to consumers or creditors of the Receivership Defendants, including, but not limited to, obtaining an accounting of the

J. Make payments and disbursements from the receivership estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Order. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Receivership Defendants prior to the date of entry of this Order, except payments that the Receiver deems necessary or advisable to secure assets of the Receivership Defendants, such as rental payments;

K. Determine and implement the manner in which the Receivership Defendants will comply with, and prevent violations of, this Order and all other applicable laws, including, but not limited to, revising sales materials and implementing monitoring procedures;

L. Institute, compromise, adjust, appear in, intervene in, or become party to such actions or proceedings to implement the m

advisable to preserve the assets of the Receivership Defendants, or as the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;

N. Continue to conduct the business of the Receivership Defendants in such manner, to such extent, and for such duration as the Receiver may in good faith deem to be necessary or appropriate to operate the businesses profitably and lawfully, if at all; *provided that*, the continuation and conduct of the business shall be conditioned upon the Receiver's good faith determination that the businesses can be lawfully operated at a profit using the assets of the receivership estate;

O. Issue subpoenas to obtain documents and records pertaining to the receivership, and conduct discovery in this action on behalf of the receivership estate;

P. Open one or more bank accounts as designated depositories for funds of the Receivership Defendants. The Receiver shall deposit all funds of the Receivership Defendants in such a designated account and shall make all payments and disbursements from the receivership estate from such an account. The Receiver shall serve copies of monthly account statements on all parties;

Q. Maintain accurate records of all receipts and expenditures that he makes as Receiver; and

R. Cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency.

XI. COOPERATION WITH THE TEMPORARY RECEIVER

IT IS FURTHER ORDERED that Defendants and Relief Defendants shall fully cooperate with and assist the Receiver. Defendants' cooperation and assistance shall include, but not be limited to, providing information to the Receiver that the Receiver deems necessary in order to exercise the authority and discharge the responsibilities of the Receiver under this Order; providing any password required to access any computer, electronic file, or telephonic data in any medium; and advising all persons who owe money to the Receivership Defendants that all debts should be paid directly to the Receiver. Defendants are hereby restrained and enjoined from directly or indirectly:

E. Failing to notify the Receiver of any asset, including accounts, of a Receivership Defendant held in any name other than the name of the Receivership Defendant, or by any person or entity other than the Receivership Defendant, or failing to provide any assistance or information requested by the Receiver in connection with obtaining possession, custody, or control of such assets;

F. Doing any act or refraining from any act whatsoever to interfere with the Receiver managing, or taking custody, control, or possession of, the assets or documents subject to this receivership; or to harass or interfere with the Receiver in any way; or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants; or to refuse to cooperate with the Receiver or the Receiver's duly authorized agents in the exercise of their duties or authority under any order of this Court.

XII. ACCESS TO BUSINESS OFFICES AND RECORDS

IT IS FURTHER ORDERED that the Plaintiff and Receiver, and their representatives, agents, and assistants, shall have immediate access to the business premises of the Receivership Defendants, and immediate access to any other location, where business-related property, records, and equipment are likely to be located. Such locations specifically include, but are not limited to, 8601 N. Scottsdale Rd., Ste. 330, Scottsdale, AZ 85253; and 13771 Fountain Hills Blvd. #247, Fountain Hills, AZ 85268. The Plaintiff and Receiver are authorized to employ the assistance of law enforcement

officers as they deem necessary, to effect service and to implement peacefully the provisions of this Order. The Plaintiff and Receiver, and their representatives, agents, and assistants, shall have the right to remove documents from the above-listed premises in order that they may be inspected, inventoried, and copied.

If any property, business records, documents, or computer files relating to the

C. Produce to the Receiver a list of all agents, employees, officers, servants or those persons in active concert and participation with him or her, who have been associated or done business with Receivership Defendants.

XIII. DELIVERY OF RECEIVERSHIP PROPERTY

IT IS FURTHER ORDERED that:

A. Immediately upon service of this Order upon them, or within such period as may be permitted by the Receiver, Defendants and Relief Defendants shall transfer or deliver possession, custody, and control of the following to the Receiver:

1. All assets of the Receivership Defendants;
2. All documents of the Receivership Defendants, including, but not limited to, books and records of accounts, all financial and accounting records, balance sheets, income statements, bank records (including monthly statements, canceled checks, records of wire transfers, and check registers), client lists, title documents and other papers;
3. All assets belonging to members of the plTther p lTt 2acTfer or delive21.2 TD -0.0627

B. In the event any person or entity fails to deliver or transfer any asset or otherwise fails to comply with any provision of this Paragraph, the Receiver may file ex parte an

XV. STAY OF ACTIONS

IT IS FURTHER ORDERED that:

A. Except by leave of this Court, during pendency of the receivership ordered herein, Defendants, Relief Defendants, and all customers, principals, investors, creditors, stockholders, lessors, and other persons seeking to establish or enforce any claim, right, or interest against or on behalf of the Defendants or Relief Defendants, and all others acting for or on behalf of such persons, including attorneys, trustees, agents, sheriffs, constables, marshals, and other officers and their deputies, and their respective attorneys, servants, agents and employees, be and are hereby stayed from:

1. Commencing, prosecuting, continuing, entering, or enforcing any suit or proceeding, except that such actions may be filed to toll any applicable statute of limitations;
2. Accelerating the due date of any obligation or claimed obligation; filing or enforcing any lien; taking or attempting to take possession, custody, or control of any asset; attempting to foreclose, forfeit, alter, or terminate any interest in any asset, whether such acts are part of a judicial proceeding, are acts of self-help, or otherwise;
3. Executing, issuing, serving, or causing the execution, issuance or service of, any legal process, including, but not limited to, attachments, garnishments,

subpoenas, writs of replevin, writs of execution, or any other form of process whether specified in this Order or not; or

4. Causing any Receivership Defendant to be placed in involuntary bankruptcy; or

5. Doing any act or thing whatsoever to interfere with the Receiver managing, or taking custody, control, or possession of, the assets or documents subject to this receivership, or to harass or interfere with the Receiver in any way, or to interfere in any manner with the exclusive jurisdiction of this Court over the assets or documents of the Receivership Defendants.

B. This paragraph does not stay:er form of process

petition for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, without prior permission from this Court.

XVII. COMPENSATION OF RECEIVER

IT IS FURTHER ORDERED that the Receiver and all personnel hired by the Receiver as herein authorized, including counsel to the Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Order and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by, in the possession or control of, or which may be received by, the Receivership Defendants. The Receiver shall file with the Court and serve on the parties periodic requests for the payment of such reasonable compensation, with the first such request filed no more than sixty (60) days after the date of this Order. The Receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

XVIII. RECEIVER'S BOND

IT IS FURTHER ORDERED that the Receiver shall file with the Clerk of this Court a bond in the sum of \$_____ with sureties to be approved by the Court, conditioned upon the Receiver well and truly performing the duties of the office, and abiding by and performing all acts the Court directs.

XIX. DEFENDANTS' ACCESS TO THEIR BUSINESS PREMISES

IT IS FURTHER ORDERED that the Receiver shall allow the Defendants' representatives, and the Defendants themselves, reasonable access to the premises of the Receivership Defendants. The purpose of this access shall be to inspect and copy any and all books, records, accounts, and other property owned by or in the possession of the Receivership Defendants. The Receiver shall have the discretion to determine the time, manner, and reasonable conditions of such access.

XX. DISTRIBUTION OF ORDER BY DEFENDANTS

IT IS FURTHER ORDERED that Defendants shall immediately provide a copy of this Order to each of their affiliates, subsidiaries, partners, divisions, sales entities, successors, assigns, employees, independent contractors, agents, attorneys, spouses, and representatives, and shall, within ten (10) days from the date of entry of this Order, serve upon counsel for the Commission a sworn statement that they 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. The Receiver has no obligations under this paragraph.

XXI. SERVICE OF ORDER

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile, by agents or employees of the Commission or the Receiver, or the Arizona Attorney General, upon any financial institution, or other entity or person

that may have possession, custody or control of any documents or assets of any Defendant, Relief Defendant, or Receivership Defendant. Service upon any branch or office of any financial institution shall effect service upon the entire financial institution.

XXII. CONSUMER CREDIT REPORT

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

XXIII. EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that the Commission and the Receiver are granted leave, at any time after service of this Order:

A. To take the deposition of any person or entity, for the purpose of discovering the nature, status, extent, location or other relevant information relating to the assets, income, personal or business financial records of the Defendants or Relief Defendants; and

B. To demand the production of documents from any person or entity, relating to the nature, status, extent, location or other relevant information relating to the assets, income, personal or business financial records of the Defendants and Relief Defendants.

Forty-eight (48) hours notice shall be deemed sufficient for any such deposition or production of documents. The limitations and conditions set forth in Fed.R.Civ.P. 30(a)(2)(B) regarding subsequent depositions of an individual shall not apply to depositions taken pursuant to this provision; and any such depositions taken shall not be

counted in calculating any limitation on the number of depositions that can be taken without leave of the Court as set forth in the Federal Rules of Civil Procedure or the Local Rules. Additionally, 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.

XXIV. SERVICE OF PLEADINGS

IT IS FURTHER ORDERED that Defendants 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. of the fourth (4th) business day prior to the preliminary injunction hearing set in this matter. Service on the Commission shall be performed by delivery to David Spiegel at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Rm. H238, Washington, DC 20580, (202) 326-3281, or by facsimile transmission to (202) 326-3395. The Commission shall be permitted a

name, address, and telephone number of any such witness, and either a summary of the

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their assets, continuing the receivership, and imposing such additional relief as may be appropriate.

XXVIII. RETENTION OF JURISDICTION

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

DATED, this _____ day of _____, 2000.

United States District Judge