

State of Florida  
-M-E-M-O-R-A-N-D-U-M-

ORIGINAL



## Public Service Commission

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**DATE:** February 5, 1999  
**TO:** Records and Reporting  
**FROM:** Kelly Biegalski, Division of Communications  
**RE:** Docket No. 981300TC; Manuel Serna

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Please place the attached correspondence in the docket file.

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DOCUMENT NUMBER-DATE

01560 FEB-5 99

FPSC-RECORDS/REPORTING

Moses

**JANE W. MOSCOWITZ, P.A.**  
 Receiver for Comtel Communications  
 Global Network, Inc. and affiliated companies  
 Temporary Receiver for International Toy Distributors  
 100 S.E. 2nd Street  
 Suite 3700  
 Miami, FL 33131

Telephone: (305) 379-6700

Fax: (305) 379-2215

RECEIVED  
 PUBLIC SERVICE COMMISSION  
 97 APR 15 AM 7:19  
 MAIL ROOM

April 14, 1997

Public Service Commission  
 State of Florida  
 Capital Circle Office Center  
 2540 Shumard Oak Boulevard  
 Tallahassee, FL 32399-0850



**RE: FTC v. Comtel Communications, et al.,**  
**Case No.: 96-3134-Civ-Highsmith**

Dear Sir or Madam:

Comtel Communications Global Network, Inc. ("Comtel"), at 3467 N.E. 163rd Street, North Miami Beach, Florida, 33160, has been placed in receivership due to the above referenced federal lawsuit filed against the company by the Federal Trade Commission. I was appointed the receiver pursuant to a Temporary Restraining Order signed by the United States District Court for the Southern District of Florida on November 5, 1996, and a Stipulated Preliminary Injunction entered on January 7, 1997. A copy of the Stipulated Preliminary Injunction is enclosed for your convenience.

Many of the consumers of Comtel, a company which sold pay telephone business opportunities, lost all of their investment as a result of Comtel's business practices. Manuel Serna is one such consumer. You have recently written to Mr. Serna regarding delinquent Regulatory Assistance Fees. Enclosed is a copy of the letter Mr. Serna received.

Given the circumstances, as receiver of Comtel, I am requesting that you forgive any past due fees of Comtel consumers. Please feel free to call with any comments or questions.

Very truly yours,

*Jane W. Moscowitz*  
 Jane W. Moscowitz

Enclosures



Preliminary Injunction pursuant to Fed. R. Civ. P. 65. Defendants Comtel Communications Global Network, Inc., Marc Zimmerman, and Eric Zimmerman, Jane W. Moscovitz, Receiver for Defendant Comtel Communications Global Network, Inc. and for Zimco Communications, Inc., Zimco Trading Corp., and Zimco Investments and Development, Inc., and the Commission have agreed to the entry of this Stipulated Preliminary Injunction by this Court. Now, therefore, Comtel Communications Global Network, Inc., Marc Zimmerman, and Eric Zimmerman, Jane W. Moscovitz, Esquire, and the Commission having requested that this Court enter this Stipulated Preliminary Injunction, it is hereby **ORDERED** and **DECREED** that:

1. This Court has jurisdiction of the subject matter of this case and of all parties hereto;
2. There is good cause to believe that Defendants Comtel Communications Global Network, Inc., Marc Zimmerman, and Eric Zimmerman have engaged and are likely to engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the Federal Trade Commission Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" (the "Franchise Rule"), 16 C.F.R. Part 436, and that the Commission is therefore likely to prevail on the merits of this action;
3. Good cause exists for appointing a permanent receiver for Defendant Comtel Communications Global Network, Inc. and for Zimco Communications, Inc., Zimco Trading Corp., and Zimco Investments and Development, Inc.;
4. Weighing the equities and considering the Commission's likelihood of ultimate success, a Stipulated Preliminary Injunction With Asset Freeze and Appointment of a Permanent

Receiver is in the public interest; and

5. This Order does not constitute and shall not be interpreted to constitute an admission by the Stipulating Defendants that the Stipulating Defendants have engaged in violations of the FTC Act or the Franchise Rule, nor does it constitute evidence against or an admission by the Stipulating Defendants with respect to any issue of law or fact herein.

### **Definitions**

For purposes of this Stipulated Preliminary Injunction, the following definitions shall apply:

1. "Franchise" and "Franchisee" are defined in Section 436.2(a) of the Federal Trade Commission Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," (the "Franchise Rule"), 16 C.F.R. § 436.2(a), a copy of which is attached to this Order.

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. more than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business

or the entry by an existing business into a new line or type of business.

3. "Defendants" means Comtel Communications Global Network, Inc., Marc Zimmerman, and Eric Zimmerman and each of them and their 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, whether acting directly or through any corporation, subsidiary, division, or other device.

**I.**

**IT IS THEREFORE ORDERED** that, in connection with the offering for sale or sale of any franchise or business venture, defendants are hereby restrained and enjoined from:

- A. Misrepresenting, either orally or in writing, to any potential investor of a franchise or business venture, the following:
  - 1. the income, profits, or sales volume likely to be achieved; and
  - 2. the income, profits, or sales volume achieved by other franchise or business venture purchasers.
  
- B. Violating or assisting others to violate any provision of the Franchise Rule, 16 C.F.R. Part 436, including but not limited to:
  - 1. failing to provide potential franchisees with a complete and accurate disclosure document within the times stated in the Franchise Rule, 16 C.F.R. § 436.1(a);
  - 2. failing to provide potential franchisees with an earnings claim

document when any earnings claim is made, as required by the Franchise Rule, 16 C.F.R. § 436.1(b)-(e); and

3. failing to disclose, in immediate conjunction with any mass advertised earnings claim, the material basis for the claim (or the lack of such basis) and a warning that the earnings claim is only an estimate, as required by the Franchise Rule, 16 C.F.R. § 436.1(e)(3)-(4).

## II.

**IT IS FURTHER ORDERED** that the defendants and their successors and assigns are hereby restrained and enjoined from:

- A. transferring, converting, encumbering, selling, concealing, dissipating, disbursing, assigning, spending, withdrawing, granting a lien or other interest in, or otherwise disposing of any funds, property, accounts, contracts, shares of stock or other assets, wherever located, that are (1) owned or controlled by any named defendant, their successors and assigns, in whole or in part; or (2) in the actual or constructive possession of any named defendant, their successors and assigns; or (3) owned, controlled by, or in the actual constructive possession of any corporation, partnership, or other entity directly or indirectly owned, managed, or controlled by, or under common control with, any named defendant, their successors and assigns, including, but not limited to, any assets held by or for any named defendant, their successors and assigns at any bank or savings and loan institution, or with any broker-dealer, escrow agent, title company, commodity trading company, precious metal dealer, or other financial institution or

depository of any kind;

- B. opening or causing to be opened any safe deposit boxes titled in the name of any named defendant, their successors and assigns, or subject to access by any named defendant, their successors and assigns.

Provided, however, that nothing in this Paragraph shall affect accounts opened by defendants Marc Zimmerman and Eric Zimmerman at the Aventura South Branch of the First Union Bank pursuant to the Stipulated Order entered by this Court on December 13, 1996.

### III.

**IT IS FURTHER ORDERED** that Jane W. Moscovitz, Esquire, is appointed as permanent receiver, with the full power of an equity receiver, for Defendant Comtel Communications Global Network, Inc. and for Zimco Communications, Inc., Zimco Trading Corp., and Zimco Investments and Development, Inc., and their affiliates and subsidiaries (hereinafter referred to as "the receivership defendant"), and of all the funds, properties, premises, accounts and other assets directly or indirectly owned, beneficially or otherwise, by the receivership defendant, with directions and authority to accomplish the following:

- A. Assume full control of the receivership defendant by removing defendants Marc Zimmerman, Victoria Zimmerman, and Eric Zimmerman, and any other officer, independent contractor, employee, or agent of the receivership defendant, from control and management of the affairs of the receivership defendant.
- B. Collect, marshal, and take custody, control and possession of all the funds, property, premises, accounts, mail and other assets of, or in the possession or under the control of, the receivership defendant, wherever situated, the income

and profits therefrom, and all sums of money now or hereafter due or owing to the receivership defendant, with full power to: collect, receive and take possession of all goods, chattels, rights, credits, monies, effects, lands, leases, books and records, work papers, and records of accounts, including computer-maintained information, contracts, financial records, monies on hand in banks and other financial institutions, and other papers and documents of the receivership defendant and business venture purchasers whose interests are now held by or under the direction, possession, custody or control of the receivership defendant;

- C. Perform all acts necessary to conserve, hold, manage, and preserve the value of those assets, in order to prevent any irreparable loss, damage and injury to business venture purchasers, and all acts incidental thereto, including the suspension of operations;
- D. Enter into such agreements in connection with administration of the receivership, including, but not limited to: (1) the retention and employment of investigators, attorneys or accountants of the receiver's choice, including without limitation members and employees of the permanent receiver's firm, to assist, advise, and represent the receiver, and (2) the movement and storage of any equipment, furniture, records, files or other physical property of the receivership defendant;
- E. Institute, prosecute, compromise, adjust, intervene in or become party to such actions or proceedings in state, federal or foreign courts that the permanent receiver deems necessary and advisable to preserve the value of the properties of the receivership defendant or that the permanent receiver deems necessary and

advisable to carry out the receiver's mandate under this Order, and likewise to defend, compromise or adjust or otherwise dispose of any or all actions or proceedings instituted against the permanent receiver or the receivership defendant that the permanent receiver deems necessary and advisable to preserve the properties of the receivership defendant or that the permanent receiver deems necessary and advisable to carry out the receiver's mandate under this Order.

#### IV.

**IT IS FURTHER ORDERED** that defendants, and any other person or entity served with a copy of this Order, if they have not already done so, shall forthwith or within such time as permitted by the permanent receiver in writing, deliver over to the permanent receiver:

(A) possession and custody of all funds, assets, property owned beneficially or otherwise, and all other assets, wherever situated, of the receivership defendant; (B) possession and custody of all 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 document and other papers of the receivership defendant; (C) possession and custody of all funds and other assets belonging to members of the public now held by the receivership defendant; (D) all keys, computer passwords, entry codes, combinations to locks required to open or gain access to any of the property or effects, and all monies in any bank deposited to the credit, of the receivership defendant, wherever situated; (E) information identifying the accounts, employees, properties, or other assets or obligations of the receivership defendant; (F) a statement providing the total number of franchises or business ventures sold by each of the defendants; and (G) a statement providing the names, addresses and

phone numbers of each person who purchased a franchise or business venture, whether directly from one or more of the defendants or through a broker or other entity, and the total dollar amount of money received from each purchaser.

V.

**IT IS FURTHER ORDERED** that, except by leave of this Court, during the pendency of the receivership ordered herein, 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 receivership defendant, or any of its subsidiaries or affiliates, 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:

- A. Commencing, prosecuting, continuing or enforcing any suit or proceeding against the receivership defendant, or any of its subsidiaries or affiliates, except that such actions may be filed to toll any applicable statute of limitations;
- B. Commencing, prosecuting, continuing or entering any suit or proceeding in the name or on behalf of the receivership defendant, or any of its subsidiaries or affiliates;
- C. Accelerating the due date of any obligation or claimed obligation, enforcing any lien upon, or taking or attempting to take possession of, or retaining possession of, a property of any of the receivership defendant, or any of its subsidiaries or affiliates or any property claimed by any of them or attempting to foreclose, forfeit, alter or terminate any of the receivership defendant's interests in property.

- including without limitation, the establishment, granting, or perfection of any security interest, whether such acts are part of a judicial proceeding or otherwise;
- D Using self-help or executing or issuing, or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with, or creating or enforcing a lien upon any property, wheresoever located, owned by or in the possession of any of the receivership defendant, or any of its subsidiaries or affiliates, or the permanent receiver appointed pursuant to this Order or any agent appointed by said receiver; and
- E. Doing any act or thing whatsoever to interfere with the permanent receiver taking control, possession or management of the property subject to this receivership, or to in any way interfere with the receiver, or to harass or interfere with the duties of the receiver; or to interfere in any manner with the exclusive jurisdiction of this Court over the property and assets of the receivership defendant, or its subsidiaries or affiliates, including the filing of a by the defendants of a petition for relief under the United States Bankruptcy Code, 11 U.S.C. § 101 et seq., as to the receivership defendant.

Provided, however, nothing in this Paragraph shall prohibit any federal or state law enforcement or regulatory authority from commencing or prosecuting an action against the receivership defendant.

**VI.**

**IT IS FURTHER ORDERED** that the permanent receiver and all personnel hired by the

permanent receiver as herein authorized, including counsel to the permanent 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 or in the possession or control of or which may be received by the receivership defendant. The permanent 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 days after the date of this Order. The permanent receiver shall not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

**VII.**

**IT IS FURTHER ORDERED** that the permanent receiver shall maintain the \$3,500 bond previously filed with the Clerk of this Court, with sureties to be approved by the Court, conditioned that the permanent receiver will well and truly perform the duties of the office and abide by and perform all acts the Court directs.

**VIII.**

**IT IS FURTHER ORDERED** that any financial or brokerage institution, business entity, or person that holds, controls or maintains custody of any account or asset of the defendants and their successors and assigns, or has held, controlled or maintained custody of any account or asset of the defendants and their successors and assigns at any time since January 1, 1994, shall:

- A. Prohibit the defendants and their successors and assigns from withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of any such asset except:

1. as directed by further order of the Court; or
2. for assets held in the name or for the benefit of the receivership defendant, as directed by the permanent receiver appointed herein;

Provided, however, that nothing in Paragraph VIII.A. shall affect accounts opened by defendants Marc Zimmerman and Eric Zimmerman at the Aventura South Branch of the First Union Bank pursuant to the Stipulated Order entered by this Court on December 13, 1996.

B. Deny the defendants and their successors and assigns access to any safe deposit box that is:

1. titled in the name of the defendants and their successors and assigns, either individually or jointly; or
2. otherwise subject to access by the defendants and their successors and assigns;

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

1. the identification number of each such account or asset titled in the name, individually or jointly, of any of the defendants and their successors and assigns, or held on behalf of, or for the benefit of, any of the named defendants and their successors and assigns;
2. the balance of each such account, or a description of the nature and value of such asset as of the time this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the

- total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and
3. the identification of any safe deposit box that is either titled in the name, individually or jointly, of the defendants and their successors and assigns, or is otherwise subject to access by the defendants and their successors and assigns;
- D. Upon the request by the permanent receiver or the Commission, promptly provide the permanent receiver and the Commission with copies of all records or other documentation pertaining to such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. Any such financial institution, account custodian, or other aforementioned entity may arrange for the Commission to obtain copies of any such records which the Commission seeks, provided that such institution or custodian may charge a reasonable fee not to exceed fifteen cents per page copied; and
- E. Cooperate with all reasonable requests of the permanent 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 their successors and assigns.

**IX.**

**IT IS FURTHER ORDERED** that defendants are hereby restrained and enjoined from:

- A. Failing to create and maintain books, records, accounts, and data which, in reasonable detail, accurately, fairly, and completely reflect their incomes, disbursements, transactions, and use of monies; and
- B. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer tapes, discs, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business cancelled checks and check registers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind which relate to their business practices or business or personal finances from January 1, 1994 to the present time.

**X.**

**IT IS FURTHER ORDERED** that the permanent receiver shall allow plaintiff's representatives, defendants' representatives and the defendants themselves to inspect and copy any and all books, records, accounts, and other property owned by or in the possession of the receivership defendant. The receiver shall have discretion to determine the time and manner of this access.

**XI.**

**IT IS FURTHER ORDERED** that agents of the Commission and the permanent

receiver may serve copies of this Order upon any financial institution or person or entity that may be in possession of any assets, property, or property rights of defendants or that may be subject to any provision of this Order.

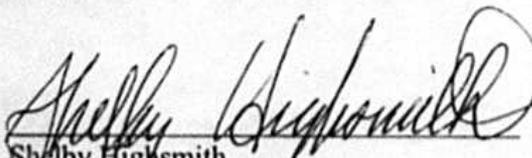
**XII.**

**IT IS FURTHER ORDERED** that, pursuant to Section 604 of the Fair Credit Reporting Act, 15 U.S.C. § 1681b, any consumer reporting agency may furnish the Commission or the permanent receiver with a consumer report concerning any defendant.

**XIII.**

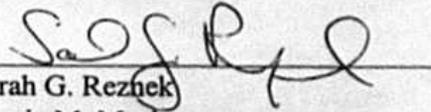
**IT IS FURTHER ORDERED** that this Court retains jurisdiction of this matter for all purposes.

**SO ORDERED**, this 7<sup>th</sup> day of January, 1997.

  
Shelby Highsmith  
United States District Judge

The parties hereby consent to the terms and conditions set forth above and hereby consent to the entry of this Stipulated Preliminary Injunction at the Court's convenience and without further notice to the parties.

FOR THE PLAINTIFF:



Sarah G. Reznick

Laurie M. Meehan

Attorneys for Plaintiff

Federal Trade Commission

Room 238

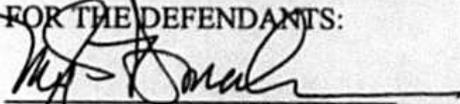
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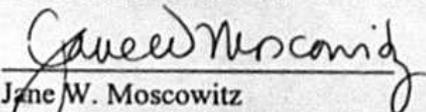
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FOR THE RECEIVER:



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