

2008CI08148

CAUSE NO. _____

DISTRICT CLERK
BEXAR CO. TEXAS

STATE OF TEXAS,
Plaintiff

v.

NEXT-G COMMUNICATION,
INC., TAJ KHWAJA,
INDIVIDUALLY,
Defendants

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IN THE DISTRICT COURT

285th

DEPUTY JUDICIAL DISTRICT CLERK

BEXAR COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION AND APPLICATION FOR
TEMPORARY AND PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff the STATE OF TEXAS, acting by and through Attorney General of Texas Greg Abbott, complains of NEXT-G COMMUNICATIONS, INC. ("NEXT-G"), and TAJ KHWAJA, INDIVIDUALLY, Defendants, and for cause of action would respectfully show as follows:

DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 2 pursuant to TEX. R. Civ. P. 190.3.

AUTHORITY

2. This action is brought by Attorney General Greg Abbott, through his Consumer Protection and Public Health Division, in the name of the State of Texas and in the public interest under the authority granted to him by §17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* (the "DTPA") upon the ground that Defendants have engaged in false, deceptive, and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by, §§17.46(a) and 17.46(b) of the DTPA.

DEFENDANTS

3.1 Defendant, NEXT-G COMMUNICATION, INC., a Texas Corporation whose registered office is 6200 Savoy Street, Suite 520, Houston, TX 77036, may be served with process by serving its registered agent Taj Khwaja, 6161 Savoy Street #850, Houston, TX 77036.

3.2 Defendant, TAJ KHWAJA, is an individual who may be served at his residence, 5202 Westwind Court, Sugar Land, Texas 77479.

VENUE

4. Venue of this suit lies in BEXAR COUNTY, Texas for the following reasons:

A. Under TEX. CIV. PRAC. & REM. CODE §15.002 (a)(1), venue is proper because all or a substantial part of the events or omissions giving rise to the claim occurred in BEXAR County, Texas.

B. Under the DTPA §17.47(b), venue is proper because Defendants have done business in BEXAR County, Texas as follows: Defendants solicited transactions made the subject of the suit in BEXAR County, Texas. More specifically, Defendants offered for sale their calling cards in stores in BEXAR County, Texas. Defendants advertised their calling cards, and solicited and received money from BEXAR County consumers.

PUBLIC INTEREST

5. Because Plaintiff State of Texas has reason to believe that Defendants have engaged in, and will continue to engage in, the unlawful practices set forth below, Plaintiff State of Texas has reason to believe Defendants have, by means of these unlawful acts and practices, caused damage to and acquired money from persons of this State and caused and will continue to cause adverse effects to legitimate business enterprises which lawfully conduct trade and commerce in the State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of the

State of Texas believes and is of the opinion that these proceedings are in the public interest.

TRADE AND COMMERCE

6. Defendants have, at all times described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by §17.45(6) of the DTPA.

ACTS OF AGENTS

7. Whenever in this petition it is alleged that Defendants did any act, it is meant that:
- A. Defendants performed or participated in the act; or
 - B. Defendants’ officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

NATURE OF DEFENDANT’S OPERATION

8.1 Defendants sell prepaid calling cards which consumers can use to call domestic or international destinations. Defendants advertise the number of minutes that are available to different destinations on these cards through store posters. When a call begins, Defendants offer a voice prompt which informs the consumer how many minutes he or she has on the card to the chosen destination. However, Defendants’ cards fail to deliver either the number of minutes promised on the posters or the number of minutes prompted at the beginning of the call.

8.2 In addition, Defendants’ prepaid calling cards and the posters that advertise those cards contain line after line of vague disclosures about fees and additional charges that are confusing and misleading.

SPECIFIC FACTUAL ALLEGATIONS

9.1 NEXT-G COMMUNICATIONS, INC., is a telecommunications company that provides prepaid calling card services to consumers. Consumers usually purchase Defendants’ cards at convenience or grocery stores.

9.2 Some stores have posters which advertise the cost per minute for the calling cards to several popular international destinations.

9.3 These posters contain vague disclosures such as :

No Connection Fee. Rates and Fees Are Subject To Change Without Notice. Rounding May Apply. 0.65¢ Weekly Fee Applies. 20% Service Fees apply To Each Call. All Calls Made From A Payphone Are Subject To A 0.65¢ Charge. International Cellular Billed At Higher Rate. This Card Is Not For Emergency Use.

9.4 Defendants' prepaid calling cards generally come in two parts: a top portion and a bottom portion.

9.5 The top portion is a piece of paper that states on the front: the name of the calling card and the value of the card. The back of the top portion includes access numbers to call to use the calling card, and contains disclosures in both English and Spanish which state:

No connection fee. Rates and fees are subject to change without notice. Rounding in increments of 1 and 3 minutes apply. .049¢ to 0.99¢ weekly maintenance fee applies after first call. All calls made from a payphone are subject to a 0.99¢ charge. Card Expires in 6 months after first use. Service fee of 25% applies. An additional charge per minute applies when using toll free number. International cellular may bill at higher rate. This card is not for emergency use. Service provided by Next-G Communication, Inc.

9.6 The bottom portion of the calling card is often the size of a credit card and it separates from the top portion by a perforation. This is the actual "calling card."

9.7 After a consumer purchases the card, the consumer dials a PIN number located on the back of the card which activates the card. The consumer will also input the telephone number they wish to call, and a "prompt" will tell the consumer how many minutes he or she has on the card to call that

destination.

9.8 Defendants have failed to adequately disclose their fees, which reduce the value of the prepaid calling card and the number of minutes a consumer is likely to receive.

9.9 Calling cards sold, produced, and/or distributed by NEXT-G COMMUNICATION fail to deliver the promised or prompted minutes.

FALSE, MISLEADING, AND DECEPTIVE ACTS AND PRACTICES

10. Defendants, as alleged above and detailed below, have in the course of trade and commerce engaged in false, misleading, and deceptive acts and practices declared unlawful in §§17.46(a) and 17.46(b)(5),(7),(9),(12) & (24) of the DTPA. Such acts include:

A. Engaging in false, misleading, or deceptive acts or practices in the conduct of any trade or commerce, as alleged more specifically herein, in violation of §17.46(a) of the DTPA.

B. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have, as alleged more specifically herein, in violation of §17.46(b)(5) of the DTPA.

C. Representing that goods and services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another, as alleged more specifically herein, in violation of §17.46(b)(7).

D. Advertising goods or services with intent not to sell them as advertised, as more specifically alleged herein in violation of §17.46(b)(9) of the DTPA.

E. Representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve or which are prohibited by law, as set forth herein in violation of §17.46(b)(12) of the DTPA.

F. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, in violation of DTPA §17.46(b)(24).

DISGORGEMENT

11. All of Defendants' assets are subject to the equitable remedy of disgorgement, which is the forced relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains and benefits or profits that result from Defendants putting fraudulently converted property to a profitable use. Defendants should be ordered to disgorge all monies fraudulently taken from individuals and businesses together with all of the proceeds, profits, income, interest and accessions thereto. Such disgorgement should be for the benefit of victimized consumers and the State of Texas.

REPATRIATION OF ASSETS

12. After due notice and a hearing, this Honorable Court should order that all of Defendants' assets situated outside the jurisdiction of this Court be deposited or repatriated into an appropriate financial institution within the jurisdiction of this Court.

REQUEST TO CONDUCT DISCOVERY PRIOR TO TEMPORARY INJUNCTION HEARING

13. Plaintiff requests leave of this Court to conduct telephonic, oral, written and other depositions (containing requests for production) of witnesses prior to any scheduled Temporary Injunction hearing. There are a number of witnesses who may need to be deposed prior to any scheduled Temporary Injunction hearing. Some of these witnesses live outside of San Antonio and thus cannot appear at any scheduled Temporary Injunction hearing. Any depositions, telephonic or otherwise, would be conducted with reasonable, shortened notice to Defendants and their attorneys, if known.

TRIAL BY JURY

14. Plaintiff herein requests a jury trial and tenders the jury fee to the Bexar County District Clerk's office pursuant to TEX. R. CIV. P. 216 and TEX. GOV'T. CODE §51.604.

INJURY TO CONSUMERS

15. Defendants have, by means of these unlawful acts and practices, obtained money or other property from identifiable persons to whom such money or property should be restored or who, in the alternative, are entitled to an award for damages.

REQUEST FOR DISCLOSURE

16. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendants disclose, within 50 days of service of this request, the information or material described in Rule 194.2(a)-(l).

**APPLICATION FOR
TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

17. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and will continue to violate the law as alleged in this Petition. Unless enjoined by this Honorable Court, Defendants will continue to violate the laws of the State of Texas and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public. Therefore, Plaintiff requests a Temporary Injunction and Permanent Injunction as indicated below.

PRAYER

18.1 WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendants, Defendants' successors, assigns, officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendants from engaging in the following acts or

practices:

A. Manufacturing, advertising, promoting, selling, distributing, or providing telecommunications services for prepaid telephone calling cards for which:

(1) a voice prompt announces and informs a consumer of the number of minutes of telecommunications service available for a call, including but not limited to any voice prompt stating that “you have X minutes for this call,” “your current balance will allow you to talk for X minutes,” “you have X minutes remaining,” “you have X minutes,” “you have X minutes before applicable service fees,” “you have X minutes subject to the terms on the back of your card,” “you have X minutes and application of surcharges and fees will have the effect of reducing total minutes actually received from the minutes announced,” or any similar language, unless the prepaid telephone calling cards are capable of delivering and are programmed to deliver for that call talk time equal to the minutes (the “X” in the above examples) that have been announced on that call’s voice prompt;

(2) advertisements via posters, point of purchase displays, television, radio, print, newspapers, Internet or any other medium (collectively “Advertisements”) which advertise, announce and/or inform consumers of the number of minutes of telecommunications service available to a consumer for a call on a prepaid telephone calling card to a destination referred to in any such Advertisement, regardless of any disclaimer (including but not limited to disclaimers stating that “the advertised minutes are subject to application of fees or surcharges,” “the advertised minutes are before application of fees or surcharges,” “the advertised minutes are subject to change ,” “application of surcharges and fees will have the effect of reducing total

minutes actually received,” or similar language), unless the prepaid telephone calling card is capable of delivering and is programmed to deliver talk time equal to the minutes advertised to that destination. Further, any limitation on the dates or dates and times for which the minutes advertised or promoted in an Advertisement are available to the consumer shall be clearly and conspicuously displayed or stated in the Advertisement.

B. Assisting, aiding, or abetting another person or business entity in engaging in or performing any of the activities from which Next-G is enjoined;

C. Transferring, concealing, destroying, or removing from the jurisdiction of this Court any books, records, documents, invoices or other written or computer generated materials relating to the business of Defendants currently or hereafter in their possession, custody, or control except in response to further orders or subpoenas in this cause;

D. Transferring, spending, hypothecating, concealing, encumbering, or removing from the jurisdiction of this court any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal, or mixed, wherever situated, belonging to or owned by, in possession of, or claimed by Defendants, insofar as such property relates to, arises out of, or was derived from the business operation of Defendants without further order of this Court;

E. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing, or allowing the transfer, removal, or withdrawal, from any financial institution or from the jurisdiction of this Court, any money, stocks, bonds, assets, notes, equipment, funds, accounts receivable, policies of insurance, trust agreements, or other property, real, personal, or mixed, wherever situated, belonging to or owned by, in the possession of, or claimed by

said Defendants without notice to Plaintiff and the approval of this Court.

F. Destroying, altering, mutilating, concealing, transferring, or otherwise disposing of or changing any records related to any defendant or entity in which any defendant has an ownership interest.

18.2 In addition, Plaintiff State of Texas respectfully prays that this Court will:

A. Adjudge against Defendants civil penalties in favor of Plaintiff State of Texas in an amount of not more than \$20,000 per violation of the DTPA;

B. Order Defendants to restore all money or property taken from identifiable persons by means of unlawful acts or practices, or in the alternative, award judgment for damages to compensate for such losses;

C. Order Defendants to pay Plaintiff State of Texas' attorneys fees and costs of court pursuant to TEX. GOV'T CODE §402.006(c);

D. Order Defendants to pay pre-judgment interest on all awards of restitution, damages, civil penalties, and attorney fees as provided by law; and

E. Grant all other relief to which Plaintiff State of Texas may show itself entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

JEFF L. ROSE
Deputy First Assistant Attorney General

PAUL D. CARMONA
Chief, Consumer Protection and Public Health Division



LARA M. JOHNSON
SBN 24036099

Assistant Attorney General
Consumer Protection and Public Health Division
115 E. Travis, Suite 925
San Antonio, Texas 78205-1615
Telephone 210-225-4191 ext. 1107
Facsimile 210-225-1075

JOHN OWENS
SBN 15379200
Assistant Attorney General
Consumer Protection and Public Health Division
P.O. Box 12548
Austin, Texas 78711-2548
Telephone 512-463-2185
Facsimile 512-473-8301

**ATTORNEYS FOR PLAINTIFF,
THE STATE OF TEXAS**