

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

MIAMI DIVISION

Case No. 08-21433-CIV-Jordan/McAliley

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

ALTERNATEL, INC.; G.F.G. ENTERPRISES LLC,
also d/b/a MYSTIC PREPAID; VOICE PREPAID,
INC.; TELECOM EXPRESS, INC.; VOICE
DISTRIBUTORS, INC.; LUCAS FRIEDLAENDER;
MOSES GREENFIELD; NICKOLAS GULAKOS;
and FRANK WENDORFF,

Defendants.

**PLAINTIFF FEDERAL TRADE COMMISSION'S MEMORANDUM OF LAW
IN OPPOSITION TO THE MOTION TO DISMISS OF DEFENDANTS G.F.G
ENTERPRISES LLC, ALSO D/B/A MYSTIC PREPAID, VOICE PREPAID, INC.,
VOICE DISTRIBUTORS, INC., TELECOM EXPRESS, INC.,
AND LUCAS FRIEDLAENDER**

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Plaintiff Federal Trade Commission (“FTC”) respectfully submits this memorandum of law in opposition to the motion to dismiss under Rule 12(b)(2) of the Federal Rules of Civil Procedure filed by Defendants G.F.G. Enterprises LLC, also d/b/a Mystic Prepaid, Voice Prepaid, Inc., Voice Distributors, Inc., Telecom Express, Inc., and Lucas Friedlaender (collectively the “Movants”).¹

INTRODUCTION

The Movants’ contention that this Court lacks jurisdiction over them is fatally flawed because it rests on the misapprehension that the Florida long-arm statute is the basis for the Court’s personal jurisdiction in this matter. In fact, the statutory basis for the Court’s personal jurisdiction is Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), which authorizes nationwide service of process, and renders the Florida long-arm statute irrelevant to this case. In addition, with respect to the Due Process limits on this Court’s exercise of jurisdiction over the Movants, the operative question is not, as the Movants contend, whether they have minimum contacts with the State of Florida, but whether they have minimum contacts with the *United States*. Here, the defendants, including the Movants, have chosen to do business together to market prepaid calling cards in Florida, Massachusetts, New Hampshire, New Jersey, Pennsylvania, and Rhode Island as well as over the Internet. There is therefore no question that the Movants have more than sufficient contacts with the United States to satisfy Due Process. Nor have the Movants met their burden of presenting compelling evidence that litigating this case in Florida would be so gravely burdensome as to be unconstitutional. The Movants have similarly failed to show that the purported burden on them from litigating in this Court outweighs the federal interest in

¹ Defendants Alternatel, Inc., Nickolas Gulakos, Moses Greenfield, and Frank Wendorff have not challenged the Court’s personal jurisdiction over them.

maintaining this action in this Court against all the defendants. Accordingly, the motion to dismiss should be denied.

BACKGROUND²

The defendants market and sell on a wholesale basis prepaid calling cards that bear their own brand names (*e.g.*, “Tree Monkey” and “Aló Mamá”) and corporate logos.³ Defendant **Alternatel, Inc.** (“Alternatel”) is a Florida corporation based in Pembroke Pines, Florida.⁴ Defendant **G.F.G. Enterprises LLC, also d/b/a Mystic Prepaid** (“Mystic Prepaid”), is New Jersey limited liability company based in Hoboken, New Jersey.⁵ Defendants **Voice Prepaid, Inc., Voice Distributors, Inc., and Telecom Express, Inc.** (collectively “Voice Prepaid”) are Massachusetts corporations based in Medford, Massachusetts.⁶

Although the corporate defendants are based in different states, they have overlapping ownership and control. Defendant **Nickolas Gulakos** is the founder, sole owner, and President of Voice Prepaid;⁷ he is also an officer, director, and 50% owner of Alternatel, and an owner and Member/Manager of Mystic Prepaid.⁸ Defendant **Moses Greenfield** is an officer, director, and

² In support of this memorandum of law, the FTC relies on the exhibits submitted in support of its motion for a temporary restraining order. Exhibits are cited with the abbreviation “FTC Ex.” followed by the exhibit number. Declarations are then cited by paragraph number and attachments to declarations are cited by page number. The defendants’ exhibits submitted in support of their motion to dismiss are cited with the abbreviation “Def. Ex.” followed by the letter of the exhibit and the paragraph number of the affidavit.

³ FTC Ex. 1, ¶¶ 43, 58-62, Att. FF, GGG, III, JJJ, LLL, pp. 501, 660, 662, 663, 666; FTC Ex. 7, ¶ 3, Att. A, p. 3.

⁴ FTC Ex. 1, ¶ 4, Att. A, p. 28.

⁵ FTC Ex. 1, ¶¶ 6, 23, Att. C, N, pp. 48-50, 194.

⁶ FTC Ex. 1, ¶¶ 7-9, 21, Att. D, E, F, L, pp. 52, 56, 58, 60, 188.

⁷ FTC Ex. 1, ¶¶ 7-9, 41, Att. D, E, F, Z, BB, pp. 52, 56, 58-61, 286, 419; Def. Ex. A to Mtn. to Dismiss, ¶¶ 2-4.

⁸ FTC Ex. 1, ¶¶ 6, 41, Att. C, BB, pp. 48, 419; Def. Ex. A to Mtn. to Dismiss, ¶ 9.

50% owner of Alternatel, as well as an owner and a Member/Manager of Mystic Prepaid.⁹

Defendant **Lucas Friedlaender** is an owner, a Member/Manager, and the Chief Operating Officer of Mystic Prepaid,¹⁰ and has served as the Controller of Voice Prepaid.¹¹ Defendant **Frank Wendorff** is President and Chief Operating Officer of Alternatel,¹² and has served as a signatory on a bank account of Telecom Express, one of the Voice Prepaid companies.¹³ In addition to their common ownership and control, in many cases, Alternatel, Mystic Prepaid, and Voice Prepaid sell the same brands of cards (*e.g.*, “Aló Mamá,” “Tree Monkey,” “Voz do Brasil,” “Coffee Time, Call Me Time”), the trademarks and copyrights to which are owned by Voice Prepaid.¹⁴

In its complaint, the FTC charges that the defendants have engaged in deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C.

§ 45(a), by: (1) misrepresenting the number of calling minutes provided by the defendants’ calling cards and (2) failing to disclose, or to adequately disclose, fees and charges associated

⁹ FTC Ex. 1, ¶¶ 6, 41, Att. C, BB, pp. 48, 419; Def. Ex. A to Mtn. to Dismiss, ¶¶ 8-9.

¹⁰ FTC Ex. 1, ¶¶ 6, 23, 24, 41, Att. C, N, O, Z, pp. 48, 50, 194, 211, 304; Def. Ex. A to Mtn. to Dismiss, ¶ 9; Def. Ex. B to Mtn. to Dismiss, ¶ 1.

¹¹ FTC Ex. 1, ¶ 41, Att. Z, p. 304.

¹² FTC Ex. 1, ¶¶ 4, 25, Att. A, P, pp. 28, 30-31, 212; Def. Ex. A to Mtn. to Dismiss, ¶ 8.

¹³ FTC Ex. 1, ¶ 33, Att. W, p. 271.

¹⁴ FTC Ex. 1, ¶¶ 11-12, 14-20, 24-25, 31, 47, 51, 56, Att. P, p. 212 (Alternatel Aló Mamá, Tree Monkey, Coffee Time, Call Me Time, and Voz do Brasil cards), Att. O, p. 211 (Mystic Prepaid Aló Mamá, Tree Monkey, Coffee Time, Call Me Time, and Voz do Brasil cards), Att. MM, UU, EEE, pp. 640, 648, 658 (Voice Prepaid Aló Mamá, Tree Monkey, and Coffee Time, Call Me Time cards), Att. U, p. 251 (Translation of “Dangerous Minutes!” Radio Ad which states, in relevant part, “Voice Prepaid, the company that brings you the best cards like: Mass Connection, Bean Town, Coffee Time and Voz Du Brazil.”), Att. H, I, K, pp. 63-148 (trademark registrations), 185-86 (copyright registrations). *See also* Def. Ex. A. to Mtn. to Dismiss, ¶ 11 (“Voice Prepaid grants authorization to use artwork for prepaid calling cards to Mystic and Alternatel.”).

with their cards. On May 23, 2008, the Court issued a temporary restraining order (“TRO”) against all the defendants based on its findings that the FTC had demonstrated a likelihood of success on the merits and that entry of a TRO would be in the public interest. TRO, Findings, ¶¶ 2-5 [D.E. 25]. In entering a TRO, the Court also found that it had subject matter jurisdiction over the FTC’s lawsuit and that there was good cause to believe that it had personal jurisdiction over all of the defendants. TRO, Findings, ¶ 1.

ARGUMENT

Where there is a challenge to a court’s personal jurisdiction over a defendant, the court must determine: (1) “whether the applicable statute potentially confers jurisdiction” by authorizing service of process on the defendant, and (2) “whether the exercise of jurisdiction comports with due process.” *Republic of Panama v. BCCI Holdings (Luxembourg) S.A.*, 119 F.3d 935, 942 (11th Cir. 1997).¹⁵ In this case, the Court undoubtedly has jurisdiction over the Movants under the FTC Act, 15 U.S.C. § 53(b), and exercise of such jurisdiction clearly satisfies the Due Process Clause of the Fifth Amendment.

I. THE FTC ACT, WHICH AUTHORIZES NATIONWIDE SERVICE OF PROCESS, CONFERS JURISDICTION OVER THE MOVANTS.

The Movants discuss at great length the Florida long-arm statute, which they assert is the statutory basis for the Court’s personal jurisdiction in this case. Mtn. to Dismiss at 7-11. They

¹⁵ Where a district court does not conduct an evidentiary hearing on the question of personal jurisdiction, the plaintiff must merely establish a prima facie case of personal jurisdiction. *See Consol. Dev. Corp. v. Sherritt, Inc.*, 216 F.3d 1286, 1291 (11th Cir. 2000). Moreover, a district court must accept the allegations in the complaint as true, to the extent that they are uncontroverted by the defendant’s affidavits and depositions, and must construe all reasonable inferences in favor of the plaintiff. *See id.* In addition, as explained below, with respect to the Fifth Amendment Due Process analysis, once the plaintiff demonstrates a defendant’s minimum contacts with the United States, the burden shifts to the defendant to establish that litigating in a particular federal court would create “constitutionally significant inconvenience” that outweighs the federal interest in litigating in that court. *See infra* page 9.

are wrong. The applicable statutory provision authorizing service of process on the Movants is the statute cited as the basis for jurisdiction in the FTC's complaint: Section 13(b) of the FTC Act, 15 U.S.C. § 53(b).¹⁶ Section 13(b) states in relevant part: "In any suit under this section, process may be served on any person, partnership, or corporation *wherever it may be found.*" 15 U.S.C. § 53(b) (emphasis added). In 1993, Congress added this language to Section 13(b) for the express purpose of permitting the FTC to join individuals and companies based in multiple jurisdictions in a single action, rather than filing separate lawsuits in multiple jurisdictions:

One of the greatest difficulties identified by the FTC in combating consumer fraud is its inability to sue multiple defendants in a variety of jurisdictions . . . and the Committee believes that the expansion of venue and service of process in the reported bill should assist the FTC in its overall efforts.

S. Rep. No. 103-130, at 15-16 (1993), *reprinted in* 1994 U.S.C.C.A.N. 1776.¹⁷

As courts have consistently held, the plain language of Section 13(b) authorizes nationwide service of process. *See FTC v. Cleverlink Trading Ltd.*, No. 05-2889, 2006 WL 1735276, *4 (N.D. Ill. June 19, 2006); *FTC v. USA Beverages, Inc.*, No. 05-61682-CIV-Lenard/Klein, slip. op at 3-4 (S.D. Fla. Nov. 4, 2005);¹⁸ *FTC v. Seismic Ent'mt Prods., Inc.*, No.

¹⁶ Compl. ¶ 3 [D.E. 1].

¹⁷ Section 13(b) also contains a broad venue provision. It states in relevant part:

Any suit may be brought where such person, partnership, or corporation resides or transacts business, or wherever venue is proper under section 1391 of Title 28. ***In addition, the court may, if the court determines that the interests of justice require that any other person, partnership, or corporation should be a party in such suit, cause such other person, partnership, or corporation to be added as a party without regard to whether venue is otherwise proper in the district in which the suit is brought.***

15 U.S.C. § 53(b) (emphasis added).

¹⁸ A copy of the *FTC v. USA Beverages* opinion is provided in an addendum to this brief.

Civ. 04-377-JD, 2005 WL 2319944, *1 (D.N.H. Sept. 22, 2005); *FTC v. Bay Area Bus. Council, Inc.*, No. 05 C 2889, 2003 WL 21003711, *2 (N.D. Ill. May 1, 2003).

Likewise, in construing other statutes, the Eleventh Circuit and numerous other courts of appeals have interpreted language that is identical to the relevant language in Section 13(b) of the FTC Act to authorize nationwide service of process. *See, e.g., U.S. SEC v. Carrillo*, 115 F.3d 1540, 1544 & n.4 (11th Cir. 1997) (Securities and Exchange Commission Act, 15 U.S.C. § 78aa, which permits service of process on a defendant in any district “of which the defendant is an inhabitant *or wherever the defendant may be found*,” authorizes nationwide service of process) (emphasis added); *City of Monroe Employees Ret. Sys. v. Bridgestone Corp.*, 399 F.3d 651, 665 n.15 (6th Cir. 2005) (same); *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 369 (3d Cir. 2002) (same); *Trust Co. of La. v. N.N.P. Inc.*, 104 F.3d 1478, 1486-87 (5th Cir. 1997) (same); *Peay v. Bell-South Med. Assistance Plan*, 205 F.3d 1206, 1210 (10th Cir. 2000) (ERISA, 29 U.S.C. § 1132(e)(2), which provides that “process may be served in any other district where a defendant resides *or may be found*,” authorizes nationwide service of process) (emphasis added); *Go-Video, Inc. v. Akai Elec. Co., Ltd.*, 885 F.2d 1406, 1414 (9th Cir. 1989) (Clayton Act, 15 U.S.C. § 22, which provides that “all process in [anti-trust actions] may be served in the district of which [the corporation-defendant] is an inhabitant, or *wherever it may be found*,” authorizes nationwide service of process) (emphasis added).

The Eleventh Circuit has specifically held that where, as here, a “federal statute provides for nationwide service of process,” the federal statute — and not a state long-arm statute — “becomes the statutory basis for personal jurisdiction.” *Republic of Panama*, 119 F.3d at 942.¹⁹

¹⁹ *See also* FED. R. CIV. P. 4(k)(1)(C) (“Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant . . . when authorized by a federal statute.”).

In such a case, so long as the defendants are doing business in the United States, as they undisputedly are here,²⁰ the statutory basis for personal jurisdiction over them is satisfied. *See Republic of Panama*, 119 F.3d at 942 (“Because the First American defendants are domestic corporations doing business in this country, the statutory basis for personal jurisdiction over these defendants is satisfied.”).

II. THE COURT’S EXERCISE OF PERSONAL JURISDICTION OVER THE MOVANTS FULLY COMPORTS WITH DUE PROCESS.

The Movants also apply the wrong legal standard in support of their contention that Due Process prevents this Court from exercising personal jurisdiction over them. No consideration of the Movants’ contacts with the State of Florida is necessary. Under the Fifth Amendment, which is the applicable constitutional provision,²¹ the relevant consideration is the Movants’ aggregate contacts with the United States, which are undeniably substantial. The burden thus shifts to the Movants to present compelling evidence that litigating this matter before this Court would be of such grave difficulty as to rise to the level of constitutionally significant inconvenience, and that any such burden outweighs the federal interest in litigating this matter against them in this Court. The Movants have failed to satisfy this heavy burden.

A. The Movants Have Purposefully Availed Themselves of the Relevant Forum — the United States.

The Eleventh Circuit has held that in cases like this in which a court’s personal jurisdiction stems from a federal statute authorizing nationwide service of process, in

²⁰ *See* Def. Ex. A to Mtn. to Dismiss, ¶¶ 2-5; Def. Ex. B to Mtn. to Dismiss, ¶¶ 1-2.

²¹ The Movants assert that the Fourteenth Amendment forbids this Court from exercising jurisdiction over them. Mtn. to Dismiss at 11-13. However, because a federal statute confers jurisdiction in this case, the constitutional limits on the Court’s jurisdiction stem from the Due Process Clause of the Fifth Amendment, not the Fourteenth Amendment. *See Republic of Panama*, 119 F.3d at 942; *Carrillo*, 115 F.3d at 1543.

determining whether a defendant has “purposefully availed” himself of the forum, “the proper forum for minimum contacts analysis is the *United States*,” not the state where the federal court sits. *Carrillo*, 115 F.3d at 1544 (emphasis added). In such cases, a court must “examine a defendant’s *aggregate contacts with the nation as a whole* rather than his contacts with the forum state in conducting the Fifth Amendment analysis.” *Republic of Panama*, 119 F.3d at 947 (emphasis added); accord, e.g., *Pinker*, 292 F.3d at 369; *Busch v. Buchman, Buchman & O’Brien Law Firm*, 11 F.3d 1255, 1258 (5th Cir. 1994); *United Liberty Life Ins. Co. v. Ryan*, 985 F.2d 1320, 1330 (6th Cir. 1993); *United Elec., Radio & Mach. Workers of Am. v. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1085 (1st Cir. 1992); *Go-Video*, 885 F.2d at 1414. Significantly, “[b]ecause minimum contacts with the United States — the relevant sovereign — satisfy the ‘purposeful availment’ prong in federal question cases, *contacts with the forum state are not constitutionally required*.” *Republic of Panama*, 119 F.3d at 946 n.21 (emphasis added).

Here, there is no question that the Movants have ample contacts with the United States to justify this Court’s exercise of jurisdiction over them under the Fifth Amendment. Mystic Prepaid and Voice Prepaid admit that they are domestic corporations, distributing and marketing prepaid calling cards in the United States;²² likewise, Friedlaender has admitted that he is a United States resident engaged in the sale and marketing of prepaid calling cards in the United States.²³ On this basis alone, the Movants’ contacts with the United States are more than sufficient to satisfy Due Process. *See id.* at 945 n.16 (“Because the relevant forum under the Fifth Amendment is the United States, this ‘purposeful availment’ prong of due process will

²² Def. Ex. A to Mtn. to Dismiss, ¶¶ 2-5, 9; Def. Ex. B to Mtn. to Dismiss, ¶¶ 1-2.

²³ Def. Ex. B. to Mtn. to Dismiss, ¶¶ 1-2.

have no application in the case of domestic defendants, who, through their choice of residence or incorporation, have purposefully directed their activities at the United States.”).

B. Exercise of Jurisdiction Satisfies Fifth Amendment Requirements of Fairness and Reasonableness.

In *Republic of Panama*, the Eleventh Circuit held that, in addition to considering whether a defendant has minimum contacts with the United States, a court must consider whether exercise of personal jurisdiction over the defendant comports with traditional Fifth Amendment principles of fairness and reasonableness. *See* 119 F.3d at 946. In this regard, the burden shifts to the defendant to “demonstrate that the assertion of jurisdiction in the forum will make litigation ‘so gravely difficult and inconvenient’ that [the defendant] unfairly is at a ‘severe disadvantage’” relative to its opponent. *Id.* at 948 (citation omitted). The defendant must present a “compelling case” of any such “constitutionally significant inconvenience.” *Id.* at 946.

If, but only if, the defendant makes such a showing, the district court must then “balance the burdens imposed on the individual defendant against the federal interest involved in the litigation.” *Id.* (“Only when a defendant challenging jurisdiction has ‘present[ed] a compelling case that . . . would render jurisdiction unreasonable,’ should courts weigh the federal interests favoring the exercise of jurisdiction.”) (citation omitted); *id.* (“courts must engage in this balancing only if a defendant has established that his liberty interests actually have been infringed”). If the defendant establishes constitutionally significant inconvenience but the federal interest in litigating the dispute in the chosen court outweighs the burden on the defendant, the court’s exercise of jurisdiction satisfies Due Process. *See Republic of Panama*, 119 F.3d at 948.²⁴

²⁴ Indeed, in contrast to the Eleventh Circuit, a number of federal courts of appeals have held that where the plaintiff’s claim rests on a statute authorizing nationwide service of process, a
Footnote continued on next page

1. The Movants Have Failed to Offer Compelling Evidence of Constitutionally Significant Inconvenience.

The Movants have failed to satisfy their burden of presenting compelling evidence that litigating this action in Miami would impose such grave burdens as to put them at a severe disadvantage relative to the FTC. Their sole argument is that it would be inherently inconvenient for the Movants, because they are based in New Jersey and Massachusetts, to defend a case filed in Florida. Mtn. to Dismiss at 13. However, the Eleventh Circuit has flatly rejected the notion that requiring a defendant to cross state lines to defend an action rises to the level of a “constitutionally significant inconvenience.” *Republic of Panama*, 119 F.3d at 946. As it has explained, “a defendant’s contacts with the forum state play no magical role in Fifth Amendment analysis There is nothing inherently burdensome about crossing a state line.” *Id.* That is due, in part, to the fact that, “[m]odern means of communication and transportation have lessened the burden of defending a lawsuit in a distant forum.” *Id.* at 947-48 (quoting *Chase & Sanborn Corp. v. Granfinanciera, S.A.*, 835 F.2d 1341, 1346 (11th Cir. 1988), *rev’d on other grounds sub. nom, Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989)).

The Eleventh Circuit has “emphasize[d] that it is only in highly unusual cases that inconvenience will rise to a level of constitutional concern.” *Id.* at 947. Plainly, this is not such a case. The defendants have chosen to do business together to market prepaid calling cards in Florida, among other East Coast states.²⁵ Under a long line of cases, the corporate defendants

defendant’s minimum contacts with the United States are dispositive under the Fifth Amendment and obviate the need for any further inquiry as to the fairness or reasonableness of requiring a defendant to defend in the forum. *See Busch*, 11 F.3d at 1258; *Go-Video*, 885 F.2d at 1416; *Lisak v. Mercantile Bancorp, Inc.*, 834 F.2d 668, 671 (7th Cir. 1987).

²⁵ Bank records and other evidence demonstrate that Alternatel, Mystic Prepaid, and Voice Prepaid are commonly controlled, share officers and owners, commingle corporate funds, and engage in advertising using shared trademarks and copyrights. *See, e.g.*, FTC Ex. 9; FTC Ex. 1, Footnote continued on next page

should therefore be held accountable as a common enterprise for their deceptive conduct, despite that they are organized as separate corporate entities.²⁶ Moreover, as a consequence of their participation in a common enterprise that markets prepaid calling cards in Florida and elsewhere, *all* the defendants have directly or indirectly transacted business in Florida.²⁷ Under these circumstances, the Movants cannot demonstrate that litigating this case in Florida would offend the Fifth Amendment.

2. The Federal Interest in Litigating this Action Against All the Defendants in this Court Strongly Outweighs Any Burden on the Movants.

Finally, even if the Movants had made a compelling showing of constitutionally significant inconvenience, this Court's exercise of personal jurisdiction would still be appropriate

¶¶ 4-9, 11-12, 14-20, 33, 34, Att. A-F, H-I, K, W, X, pp. 28-61, 63-148, 185-86, 271, 273-77 (check nos. 1089, 2111, 2116, 2265 & 2428).

²⁶ See, e.g., *Zale Corp. & Corrigan-Republic, Inc. v. FTC*, 473 F.2d 1317, 1321-22 (5th Cir. 1973); *Sunshine Art Studios, Inc. v. FTC*, 481 F.2d 1171, 1175 (1st Cir. 1973); *Del. Watch Co. v. FTC*, 332 F.2d 745, 746-47 (2d Cir. 1964); *CFTC v. Int'l Berkshire Group Holdings, Inc.*, No. 05-61588, 2006 WL 3716390, *7 (S.D. Fla. Nov. 3, 2006); *FTC v. AmeriDebt, Inc.*, 343 F. Supp. 2d 451, 462-63 (D. Md. 2004); *FTC v. Capital Choice Consumer Credit, Inc.*, No. 02-21050 CIV, WL 5149998, *23-24 (S.D. Fla. Feb. 20, 2004); *FTC v. JK Publ'ns, Inc.*, 99 F. Supp. 2d 1176, 1201-02 (C.D. Cal. 2000); *FTC v. Para-Link, Inc.*, No. 8:00-CV-2114-T-17E, 2000 WL 33988084, *2 & n.3 (M.D. Fla. Nov. 21, 2000); *FTC v. Wolf*, No. 94-8119-Civ-Ferguson, 1996 WL 812940, *7 (S.D. Fla. Jan. 31, 1996); *FTC v. Jordan Ashley, Inc.*, No. 93-2257-CIV, 1994 WL 200775, *1 (S.D. Fla. Apr. 5, 1994).

²⁷ This conclusion applies to all the Movants, including Friedlaender. Friedlander's assertion in his affidavit that he has had no control, whether direct or indirect, over any of the corporate defendants other than Mystic Prepaid does not hold up to scrutiny. Def. Ex. B. to Mtn. to Dismiss, ¶ 3. First, e-mails demonstrate Friedlaender's active involvement in the creation of deceptive posters to advertise *Voice Prepaid* calling cards. FTC Ex. 1, ¶ 42, Att. EE, p. 494 (e-mail from Friedlaender discussing marketing of Voice Prepaid cards which he wrote "24" delivered? Or prompted? *if it's 24" delivered, let's put 36" on poster. If it's only delivering 18" then 32".*") (emphasis added). Consistent with such e-mails, Defendant Gulakos testified in 2007 that Friedlaender serves as Voice Prepaid's Controller and participates in the company's marketing activities, among other things. FTC Ex. 1, ¶ 41, Att. Z, p. 304.

because the federal interest in litigating this dispute in this Court against all the defendants greatly outweighs the purported burden on the Movants.

The Eleventh Circuit has held that, in evaluating the federal interest, courts should examine “the federal policies advanced by the statute, the relationship between nationwide service of process and the advancement of these policies, the connection between the exercise of jurisdiction in the chosen forum and the plaintiff’s vindication of his federal right, and concerns of judicial efficiency and economy.” *Republic of Panama*, 119 F.3d at 948. Notably, in cases like this one in which Congress has provided for nationwide service of process, the Eleventh Circuit has specifically directed courts to “presume that nationwide personal jurisdiction is necessary to further congressional objectives.” *Id.*

This presumption applies with particular force here. The Movants would require the FTC to file three separate lawsuits — one in Florida, one in Massachusetts, and one in New Jersey — to challenge the marketing practices of companies with common ownership and control that have used the same deceptive means to market many of the same calling cards. As discussed above, that is precisely the result that Congress sought to avoid when it amended Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), by adding the provision for nationwide service of process. *See supra* page 5. Requiring the FTC to file multiple lawsuits against the defendants would strongly disserve the significant federal interests in judicial economy and efficient and effective law enforcement actions by the FTC. Accordingly, the federal interests served by allowing this Court to exercise jurisdiction over all the defendants powerfully outweigh any burden on the Movants. For this reason as well, the Movants’ Due Process argument fails.

CONCLUSION

For the foregoing reasons, the Court should deny the motion to dismiss of Defendants G.F.G. Enterprises LLC, also d/b/a Mystic Prepaid, Voice Prepaid, Inc., Voice Distributors, Inc., Telecom Express, Inc., and Lucas Friedlaender.

Dated: June 9, 2008

Respectfully submitted,

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Certificate of Service

I hereby certify that on **June 9, 2008**, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Janis C. Kestenbaum
Janis C. Kestenbaum

SERVICE LIST

FTC v. Alternatel, Inc., et al., Case No. 08-21433-CIV-JORDAN/McALILEY

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