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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the Commission's Own Motion Into the Operations, Practices, and Conduct of OSP Communications LLC, and John Vogel, to Determine Whether OSP Communications LLC and John Vogel Have Violated the Laws, Rules and Regulations of this State in the Provision of Operator and Calling Card Services to California Consumers; and Whether The Billing Resource LLC, a Delaware Corporation, and The Billing Resource d/b/a Integretel, a California Corporation, Should Refund and Disgorge All Monies Billed on Behalf of OSP Communications LLC.

**I.11-05-028
(Filed May 26, 2011)**

MOTION OF THE BILLING RESOURCE, LLC

FOR A PROTECTIVE ORDER

DICKS & WORKMAN, APC
Joseph G. Dicks
2720 Symphony Towers
750 "B" Street
San Diego, CA 92101
Phone: 619-685-6800
Fax: 619-557-2735
E-mail: jdicks@dicks-workmanlaw.com

July 15, 2011

Attorneys for The Billing Resource, LLC

Pursuant to Public Utilities Code § 583 and General Order 66-C, relief respondent, The Billing Resource, LLC (“TBR”), through its undersigned counsel, submits its motion for a protective order to preserve the confidentiality of certain information submitted by TBR to the Public Utilities Commission (“PUC”).

I. BACKGROUND

Commencing on or about May 10, 2010, TBR produced confidential documents and proprietary information to the PUC pursuant to compulsory process in response to Data Requests and subsequent questions raised by the PUC relating to TBR’s former customer, respondent OSP Communications LLC (“OSP”). The PUC instituted its formal investigation into OSP Communications and John Vogel by Order dated May 26, 2011, and filed its public investigative report in connection therewith.

In electronic correspondence dated June 17, 2011, the PUC indicated: “Staff has determined that the redacted information in the current public version of the Staff Report attached to the OII, pertaining to OSP Communications’ revenue and refund data provided by TBR, should be made public. That data is critical to the Commission’s determination of the extent of any wrongdoing by Respondents and necessary for the Commission to adopt an appropriate financial remedy should the Commission find that Respondents violated any rules, statutes, or orders.” The PUC further disputes the confidentiality of certain attachments to its OSP report, as discussed more fully below. However, at this time, the PUC does not contest the confidentiality of the three (3) agreements submitted to it by TBR (listed as Attachments 9C (Tabs 1-3) in the PUC Table of Contents, Staff Report List of Attachments (“TOC”)). It is undisputed that these documents will remain confidential and will not be subject to public disclosure.

In addition to those portions of the proposed confidential PUC report that reflect information relating to or produced by TBR that were redacted from the public report filed on May 26, 2011, the following documents are the subject of the instant motion:

1. Copies of The Billing Resource Letters to CPUC Consumer Affairs Branch (CAB), listed as Attachment 4CX-Redact in the TOC;
2. TBR e-mail dated April 1, 2011 concerning OSP's calling card service, listed as Attachment 5CX in the TOC;
3. TBR Response dated May 10, 2011 and CPSD DR, listed as Attachment 9CX in the TOC;
4. Tab 1 – TBR Response dated May 10, 2011 and CPSD DR, listed as Attachment 9CX in the TOC;
5. Tab 5 – OSP Billings in California (Integretel and TBR), listed as Attachment 9CX in the TOC;
6. Tab 6 – OSP Complaints, listed as Attachment 9CX in the TOC;
7. Tab 7 – OSP Refunds in California, listed as Attachment 9CX in the TOC; and
8. TBR CD Response dated June 15, 2010 (concerning EMI records) to CPSD DR No. TBR TEL277-002 dated May 11, 2010, listed as Attachment 25CX in the TOC.

Disclosure of these documents and information would cause significant harm to TBR by affirmatively providing proprietary and confidential data to TBR's competitors and class action attorneys. For the reasons set forth more fully below, it is respectfully submitted that the PUC enter a protective order to maintain the confidentiality of these documents and place them under seal.

II. ARGUMENT

“Pursuant to the terms of General Order 66-C, a protective order is appropriate when an applicant would be placed at an unfair business disadvantage as a result of public disclosure of financial data required by the Commission.” *In re: Option One Telecom, Inc.*, 2003 Cal. PUC LEXIS 323, Decision 03-05-052, *6 (Cal. PUC May 22, 2003).

TBR is a privately held limited liability company. Its financial documents and customer information, among other items, are confidential, proprietary and not publicly available. The PUC seeks to disclose certain financial information relating to TBR and its former customer, OSP, to the public (including, but not limited to, those documents listed as Nos. 5 and 7 above)(this data also is contained in the Confidential PUC Report in table format located on page 23, Table 4). The PUC also seeks to disclose EMI records submitted to TBR by OSP (No. 8 above) that contain personally identifiable information (“PII”), namely billing telephone numbers of the California consumers billed by OSP. These highly sensitive documents must be protected from public disclosure because, otherwise, they would fall into the hands of competitors and class action attorneys seeking their next case.

With respect to the remaining documents that the PUC seeks to publicly disclose, TBR’s position is as follows:

- Copies of The Billing Resource Letters to CPUC Consumer Affairs Branch (CAB), listed as Attachment 4CX-Redact in the TOC: TBR consents to the disclosure of these two documents upon the redaction of the identifying customer information contained therein, which includes the name, telephone number and address of the customers in TBR’s responses dated April 1, 2009 and March 2, 2009, as recommended by the PUC.

- TBR e-mail dated April 1, 2011 concerning OSP’s calling card service, listed as Attachment 5CX in the TOC: TBR objects to the public disclosure of this document, as the response of TBR’s counsel, explaining customer EMI records, may serve to “open the door” to public disclosure of such EMI records containing the PII.
- TBR Response dated May 10, 2011 and CPSD DR, listed as Attachment 9CX in the TOC: TBR seeks a protective order with respect to its response and the documents it produced therewith, as they include proprietary, highly sensitive information relating to TBR and its former customer.
- Tab 1 – TBR Response dated May 10, 2011 and CPSD DR, listed as Attachment 9CX in the TOC: *See id.* This appears to be the same as the previous documents and TBR reiterates its response seeking a protective order.
- Tab 6 – OSP Complaints, listed as Attachment 9CX in the TOC: TBR objects to the public disclosure of this document, as it is precisely the sort of information that would be utilized by a class action attorney to craft a class action complaint against TBR and others.

The basis set forth by the PUC for the disclosure of all the above-listed information is that the “data is critical to the Commission’s determination of the extent of any wrongdoing by Respondents and necessary for the Commission to adopt an appropriate financial remedy should the Commission find that Respondents violated any rules, statutes, or orders.” A protective order, however, would not affect any determination of wrongdoing by OSP or the ability of the PUC to make such a determination. Further, keeping such documents under seal from public disclosure would not hinder the PUC’s ability to adopt a financial remedy for consumers, as the PUC has unfettered access to all of the data previously produced by TBR. The PUC has all of

this data available to it and, therefore, public disclosure will not aid or otherwise affect its determination. Disclosure of this information would be extremely detrimental to TBR because, among other reasons, competitors and class action attorneys would be able to retrieve and distort it to their own purposes. It would put TBR at a competitive disadvantage with its competitors and subject it to the scrutiny of class action attorneys seeking their next “cash cow.”

TBR produced all of the data and documents discussed herein to the PUC in response to PUC Data Requests and follow-up informal requests for information. TBR acted in good faith in responding to the PUC’s multiple requests and did not withhold proprietary or otherwise confidential information. Such information, if made publicly available, would – in effect – provide: (i) advanced discovery to class action attorneys (that they otherwise would not have access to); and (ii) information that could directly be plugged into class action complaints against TBR and others. In the ordinary course of litigation, the disclosure of such information could (and would) be objected to during the discovery process. If a protective order is not entered herein, the PUC will affirmatively make this data public to the great harm of TBR. Such harm significantly outweighs any potential benefit to the PUC, which is able to review and analyze all such information under seal in order to make any determination in this proceeding.

Accordingly, it is respectfully submitted that the PUC issue a protective order to guard the confidentiality of this sensitive data. *See, e.g., In re: Windstream NuVox, Inc.*, 2011 Cal. PUC LEXIS 294, *8-*9, Decision 11-05-040 (Cal. PUC Feb. 1, 2011)(granting request for protective order as it “granted similar requests in the past”); *In re: 5LINX Enters., Inc.*, 240 Cal. PUC LEXIS 454, *6-*7 (Cal. PUC Aug. 25, 2010)(same).

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III. CONCLUSION

For the foregoing reasons, TBR respectfully requests that the PUC issue a protective order to maintain the confidentiality of the majority of the documents submitted by TBR to the PUC in connection with its OSP investigation, along with those corresponding portions of the CPUC OSP report.

Dated: July 15, 2011

Respectfully Submitted,

By: /s/ Joseph G. Dicks

Joseph G. Dicks
DICKS & WORKMAN, APC
2720 Symphony Towers
750 "B" Street
San Diego, CA 92101
Phone: 619-685-6800
Fax: 619-557-2735
E-mail: jdicks@dicks-workmanlaw.com

Attorneys for The Billing Resource, LLC