

BEFORE THE PUBLIC UTILITIES COMMISSION OF 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, an Individual, 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 LLC d/b/a/ Integretel, a California Corporation, Should Refund and Disgorge All Monies Billed and Collected on Behalf of OSP Communications LLC.

**FILED**  
**PUBLIC UTILITIES COMMISSION**  
**MAY 26, 2011**  
**SAN FRANCISCO OFFICE**  
**I.11-05-028**

**ORDER INSTITUTING INVESTIGATION**  
**ORDER TO SHOW CAUSE; NOTICE OF HEARING**

**I. INTRODUCTION**

By this Order, the Commission institutes an investigation to determine whether OSP Communications, LLC ("OSP") and its alleged owner John Vogel ("Vogel") (collectively "Respondents") have violated Public Utilities Code Section 2890 or any Commission rule, regulation, order, requirement, or other state law by allegedly placing unauthorized collect call charges on California consumer telephone bills.<sup>1</sup> The practice of placing unauthorized charges on phone bills is known as "cramming" and is

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<sup>1</sup> Hereinafter, all section references are to the Public Utilities Code unless otherwise specified.

prohibited by Section 2890.<sup>2</sup> We will additionally determine whether these Respondents operated calling card services in violation of Section 885, or any Commission rule, regulation, order, requirement, or other state law for its alleged provision of calling cards without Commission authorization.

By this Order, the Commission also names The Billing Resource LLC (“TBR”), a Delaware corporation, and The Billing Resource LLC d/b/a Integretel LLC (“Integretel”), a California corporation, as “Relief Respondents” with respect to the charges they billed and collected on behalf of OSP. The Commission directs TBR and Integretel to place all monies in its possession related to any OSP charges in an interest-bearing escrow or trust account pending resolution of this Investigation.

We are prompted to take this action by a large number of complaints lodged against Respondents by consumers. Respondent OSP’s billing agents reported to the Commission receiving 12,750 complaints from Californians concerning OSP’s charges on their telephone bills. Further, the suspicious nature of OSP’s billing transactions caused OSP’s billing agent, TBR, to terminate billing and collection services for OSP and to withhold approximately \$1.2 million in funds collected on behalf of OSP.

The Commission’s Consumer Affairs Branch (“CAB”) and the Federal Trade Commission (“FTC”) have also received a number of complaints about OSP’s alleged unauthorized charges. All of these complainants deny authorizing the OSP charge and Staff believes that the same is true for the majority of complaints reported by its billing agents. We further note that Respondents’ activities have spurred consumer allegations of fraud as reflected on various internet websites like [www.ripoffreport.com](http://www.ripoffreport.com) and [www.complaintsboard.com](http://www.complaintsboard.com).

The Commission’s Consumer Protection and Safety Division (“CPSD”) Staff has prepared an investigative report (Staff Report) documenting these allegations,

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<sup>2</sup> See, e.g., D.02-10-059 (*Qwest*), Slip Op. at 3 (“caus[ing] various unauthorized charges to be added to the customers’ telephone bills” is “known as ‘cramming’ [and] is unlawful”).

including declarations obtained from victims.<sup>3</sup> Staff's report also documents the suspicious activity with respect to OSP's billings. For example, from a random sample of the call "records" generated by OSP, neither of the local exchange carriers (AT&T and Verizon) that would have terminated the collect calls purportedly received by OSP's "customers" could locate validating Automatic Messaging Accounting ("AMA") call records, commonly referred to as switch records. The lack of switch records corroborates the universal sentiment by consumers that they never received nor authorized the collect calls billed by OSP. Further, OSP's significantly high refund rates, 53% in 2009 alone and 35% from 2007 to 2010, also raises serious doubts as to the legitimacy of OSP's billings.

As explained herein, Staff has produced substantial evidence which appears to show that OSP crammed over 250,000 unauthorized collect call charges on California customer telephone bills, totaling over \$8 million. Therefore, this Order provides notice that a hearing will be held on the matter, and we direct Respondent OSP to show cause as to why the Commission should not find violations of section 2890, and accordingly section 451 (for unjust and unreasonable charges) in this matter, and why the Commission should not impose penalties, and or any other forms of relief for the apparent violations.

## **II. RESPONDENTS**

### **A. OSP Communications LLC**

OSP is a Nevada-based limited liability corporation, with its principal place of business located at 1100 S. 10<sup>th</sup> Street, Las Vegas, Nevada. OSP stands for "Operator Service Provider." It is a telecommunications company which purports to provide collect call operator service.<sup>4</sup> John Vogel appears to own OSP.<sup>5</sup> According to Mr. Vogel, OSP

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<sup>3</sup> Staff's Report contains attachments submitted by entities to the Commission as confidential pursuant to section 583 and therefore a Public Version of the Staff Report is attached to this Order.

<sup>4</sup> Staff Report at 3.

<sup>5</sup> *Ibid.* at 3-5.

began providing collect call services on July 1, 2007 and ceased providing the same in May or June of 2009.<sup>6</sup> However, OSP may have been operating as early as June 1, 2007 because OSP executed a billing and collection agreement with billing agent Integretel on June 1, 2007.<sup>7</sup>

In addition, OSP may have provided prepaid calling card service without Commission authorization. As set forth below, Staff discovered that OSP marketed its collect call service on the back of calling cards. Customers who ran out of minutes on the calling card could call OSP's toll-free number to continue their call as a collect call. OSP did not register with the Commission for its provision of prepaid calling cards.<sup>8</sup>

### **B. John Vogel**

John Vogel is and has been the sole officer and managing member of OSP.<sup>9</sup> In addition to OSP, Mr. Vogel operated and/or held various positions with numerous telecommunications companies, one of which Staff previously investigated for cramming allegations similar to the ones made against OSP.<sup>10</sup>

From 2006 to 2007, Staff investigated Link Systems, Inc., a telecommunications company providing collect call service, which staff alleges was principally no different than OSP. John Vogel acted as president and CEO of Link Systems at all times.<sup>11</sup> Staff's investigation arose from tens of thousands of complaints of unauthorized charges for collect calls billed by Link Systems. The complaints consisted of those made by consumers to Link Systems' billing aggregator, ILD Telecommunications, Inc. ("ILD"), and those filed with the Commission's Consumer

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<sup>6</sup> *Ibid.* at 4, 6.

<sup>7</sup> *Ibid.* at 7.

<sup>8</sup> *Ibid.* at 4-5.

<sup>9</sup> *Ibid.* at 3.

<sup>10</sup> *Ibid.* at 9.

<sup>11</sup> *Id.*

Affairs Branch (“CAB”), the bulk of which came from ILD.<sup>12</sup> Subsequently, ILD suspended its billing and collection service for Link Systems in January 2007.<sup>13</sup> After monitoring Link Systems for nearly a year, Staff closed its investigation in June 2007 as it appeared that Link Systems ceased operating.<sup>14</sup>

Further, in 2009 the Commission revoked the license of another John Vogel entity, Global Access LD, LLC (“Global Access”), utility (U.) number 6855, for its failure to comply with Commission filing requirements.<sup>15</sup> The Commission had previously granted Global Access authority to operate as a switchless reseller of inter-Local Access and Transport Area (LATA) and intra-LATA telecommunications services through Decision (D.) 04-02-043.<sup>16</sup>

Table 1 below lists all of the telecommunications entities discovered thus far that are associated with John Vogel.

**Table 1**  
**Entities Associated with John G. Vogel**

	Name of Entity	State	John Vogel's Role
1	Biznet USA, Inc.	AZ	President/CEO
2	CCI Communications, Inc.	AZ	Owner
3	Creative Communications, Inc.	AK	Director
4	Communications Worldwide Network, Inc.	AZ	Secretary
5	Enlace Communications International Inc.	AZ	President/CEO
6	Global Access LD, LLC (U-6855)	UT	Not indicated
7	Hola Latino Tarjeta Telefonica Prepagada	AZ	Not indicated
8	La Conexion Internacional, Inc.	AZ	Secretary
9	Link Systems, Inc.	AZ	President/CEO
10	Telplex, Inc.	AZ	Statutory Agent
11	True LD, LLC	AZ	Manager

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Ibid.* at 9-10.

<sup>16</sup> *Ibid.* at 9.

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### C. Relief Respondents

#### 1. The Billing Resource LLC

The Billing Resource LLC (“TBR”) is a Delaware-based limited liability corporation with its principal place of business located at 302 Enzo Drive, Ste. 162, San Jose, California. According to TBR, it is a separate and distinct entity from The Billing Resource d/b/a Integretel (“Integretel”) although they provided OSP with similar services under the same legal name. On or about October 9, 2008, Technologies Solutions, Inc. purchased the operating assets of Integretel from Integretel’s bankruptcy estate and then subsequently transferred those assets to a newly formed separate entity it named TBR.<sup>17</sup> According to TBR, TBR retained a derivative of the TBR name “for the convenience of the parties and customers thereof...although ownership had changed.”<sup>18</sup>

TBR acts as a billing agent in a common billing method known as “LEC (Local Exchange Carrier) billing.” LEC billing allows third party service providers to place charges for their products and/or services on telephone bills. Customers pay these third party charges to their local exchange carrier, i.e., local telephone company, who in turn remit the payments minus their service fee to a billing agent. The billing agent then sends the payments to the third party service provider after subtracting their own service fee. LEC billing is discussed in further detail in Section III. below.

A billing agent, also known as a billing aggregator, is any entity which provides billing services for service providers, like OSP, directly or indirectly through a billing telephone company.<sup>19</sup> A billing telephone company is a telephone corporation

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<sup>17</sup> *Ibid.* at 7.

<sup>18</sup> *Id.*

<sup>19</sup> See D.10-10-034, Attachment A, *Revised General Order 168, Part 4*, Rule 2.1, at p. 1.

pursuant to section 234 that bills a subscriber for products and services, e.g., AT&T and Verizon.<sup>20</sup>

Here, through a contract with OSP, TBR facilitated the placement of OSP's charges onto California customer telephone bills and collected those charges from the billing telephone companies on behalf of OSP.<sup>21</sup> After collecting the OSP charges from the billing telephone companies, TBR would then pass the payments along to OSP, minus its own service fee.<sup>22</sup> According to TBR, it acted as OSP's billing agent from October 9, 2008 through June 3, 2009.<sup>23</sup> As a result of both TBR's belief that OSP's billing transactions were fraudulent and Commission staff investigation of OSP, TBR has been holding approximately \$1.2 million of OSP's billings.<sup>24</sup>

**a) Lawsuit over OSP Funds Held by TBR**

On September 22, 2010, in *mCapital, LLC and CardinalPointe Capital Group v. The Billing Resource, LLC; OSP Communications, LLC; and John Vogel*, (Case No. 37-2010-00100830-CU-BC-CTL), two telecommunications financing companies ("factors")<sup>25</sup> sued all Respondents in the San Diego County Superior Court

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<sup>20</sup> See *Ibid.*, Rule 2.4, at p. 2.

<sup>21</sup> Staff Report at 7.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Ibid.* 25-28.

<sup>25</sup> Factors play a large role in the streams of billing and payment in the LEC billing process. In D.01-04-035, *infra*, at 9-10, the Commission described factoring: "Factoring is defined as "[t]he buying of accounts receivable at a discount. The price is discounted because the factor (who buys them) assumes the risk of delay in collection and loss on the accounts receivable....Despite the high cost, many businesses use factoring service to finance business expansion....Unfortunately, the use of multiple billing agents and factors creates a situation that facilitates cramming by carriers and service providers. On the basis of invalid authorizations, such carriers and service providers are able to generate accounts receivable to sell to factors before the end-use customers are even billed. Once these customers are billed, many of them unwittingly (or out of fear of losing their telephone service) pay the unauthorized charges. In addition, the multiple levels of billing agents provide distance between the LEC and the carrier or service provider, and help the carrier or service provider to conceal or misrepresent its identity. In short, a carrier or service provider that wishes to engage in cramming has ready means available to (1) gain access to end-user telephone bills, and (2) convert the unauthorized billings quickly into cash. The crammer may then dissipate these funds and declare bankruptcy." (Citations omitted.)

for, among other things, breach of contract relating to the OSP funds in TBR's possession. According to the complaint, the plaintiffs had previously purchased from OSP all of its telecommunications accounts and therefore alleges that all of OSP's revenue belong to them.<sup>26</sup> The Commission has a significant interest in the outcome of this court case because there is a question as to whether the funds in TBR's possession rightfully belong to telecommunications consumers in California.

On February 25, 2011, the Court stayed the complaint case and ordered the parties into arbitration in San Jose. On April 26, 2011, the Commission filed an Amicus Letter with the Court requesting that the Court hold the case in abeyance and order TBR to place all OSP funds in an interest-bearing escrow account, under court supervision, pending resolution of the matter at the Commission and in the Court. That matter is still pending before the Court.

## **2. The Billing Resource LLC d/b/a Integretel**

The Billing Resource LLC d/b/a Integretel ("Integretel") is a California corporation with its principal place of business located at 5883 Rue Ferrari, San Jose, California.<sup>27</sup> Integretel acted as OSP's billing agent from approximately June 1, 2007 to October 8, 2008, thereafter TBR resumed as OSP's billing agent.<sup>28</sup>

According to TBR, on or about September 16, 2007, Integretel filed a voluntary petition for a Chapter 11 Bankruptcy in the United States Bankruptcy Court for the Northern District of California, San Jose Division, Case No. 07-52890-ASW. TBR also states that it believes Integretel "is still holding significant reserves relating to OSP," amounting to approximately \$1.1 million.<sup>29</sup>

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<sup>26</sup> Staff Report at 26.

<sup>27</sup> *Ibid.* 6.

<sup>28</sup> *Ibid.* at 7.

<sup>29</sup> *Ibid.* at 7, 26.

### III. OSP'S COLLECT CALL OPERATOR SERVICE

Respondent OSP claims that it offered consumers a service that allowed them to make collect calls. According to OSP, it provided collect call service in the following manner:

Customers would dial a toll free access number that was provided on the back of the debit card which was purchased from convenience store locations. The instructions on the back of the debit card would inform that if they no longer had any usage minutes left they could still place a collect call by dialing the toll free number. Upon calling the toll free access number, they would be prompted to enter a destination number to be called and prompted to speak their name. The switching platform would then place a call to the desired destination and inform the answering party that had a collect call from, (play the originator's recorded name), and ask them to press "1" to accept the call or deny the call. If accepted the parties would be connected and end party would be billed.<sup>30</sup>

Based on this explanation, Staff alleges that OSP set up its switching platform in a deceptive way.<sup>31</sup> It appears that OSP could still bill the called party for denying the call because it provides the same option, to press "1", to either deny or accept the collect call.

According to OSP, it would bill the called party for the following items per collect call: \$2.50 operator charge, \$1.00 surcharge, \$1.05 per minute, and an 11% Universal Service Fund fee.<sup>32</sup> OSP also states that it marketed the toll-free number for its collect call service on the back of a calling card which could be purchased from convenience stores.<sup>33</sup> OSP further states that a majority of its customers used its collect call services from payphones and residences.<sup>34</sup>

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<sup>30</sup> *Ibid.* at 5.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Ibid.* at 4.

<sup>34</sup> *Ibid.* at 5.

OSP utilized LEC billing to bill all of its supposed customers for collect calls. In *FTC v. Inc21.com Corp.*, the Court explained how LEC billing works in practice and described it as a “fraud-friendly” practice:

Four entities are typically involved in the LEC-billing process: (1) local exchange carriers (or “LECs”), (2) billing aggregators (also called “clearinghouses”), (3) third-party vendors (like defendants), and (4) customers. In exchange for fees, LECs allow preapproved third-party vendors to place charges for their products and services onto their customers’ telephone bills. Although charges from third-party vendors are listed separately on these telephone bills from LEC-related charges, the “total amount due” presented to customers *includes* third-party vendor charges []. Billing aggregators act like “middle men” in this process. They contract directly with third-party vendors to facilitate the placement of their charges onto customer telephone bills. They also aid in the collection of these charges from LECs []. Customers pay third party vendor charges directly to the LECs by simply paying the “total amount due” on their phone bills. After subtracting fees, the LECs then pass the payments along to the billing aggregators. The billing aggregators then pass the payments along to the appropriate third-party vendors, minus their own service fees.<sup>35</sup>

Here, OSP used the billing and collection services of Integretel from approximately June 1, 2007 to October 8, 2008 to place its charges on the telephone bills of AT&T and Verizon customers in California. During that time, OSP generated over \$5 million in revenue, which Integretel billed and collected on behalf of OSP.<sup>36</sup>

After TBR purchased Integretel’s assets from its bankruptcy estate, TBR became OSP’s billing agent from approximately October 9, 2008 through June 3, 2009. During the time TBR acted as OSP’s billing agent, TBR facilitated the placement of OSP’s charges onto AT&T and Verizon California customers’ telephone bills. OSP

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<sup>35</sup> *FTC v. Inc21.com Corp.*, 745 F. Supp. 2d 975, 982, 994-995 (N.D. Cal. 2010).

<sup>36</sup> Staff Report at 23.

generated approximately \$3 million in revenue, which TBR billed and collected on behalf of OSP.<sup>37</sup> Of that amount, TBR is still holding approximately \$1.2 million.<sup>38</sup>

On June 3, 2009, TBR terminated its billing and collection agreement with OSP for fraudulent billing activity.<sup>39</sup> As described below, TBR did not remit the monies it billed and collected on behalf of OSP because it suspected OSP generated invalid and fraudulent charges, which OSP could not validate with call records from Verizon.

#### **IV. RESPONDENT OSP'S BILLING AGENT FINDS OSP BILLINGS WERE INVALID AND LIKELY FRAUDULENT**

TBR states that it “has significant reason to believe that the billing transactions processed by OSP were invalid and likely fraudulent.”<sup>40</sup> During the approximate seven months that TBR acted as OSP's billing agent, it made several requests of OSP to confirm the validity of its billing transactions.<sup>41</sup> When OSP did not or could not validate its billings, TBR investigated further.<sup>42</sup> TBR found OSP submitted fictitious call detail records to validate its collect call billings.<sup>43</sup> Moreover, OSP had an extraordinarily high refund or adjustment rate of over 20% at any given time, and, as of January 2011, has an adjustment rate exceeding 33%.<sup>44</sup> However, according to TBR, operator service providers who provide collect call services, such as OSP, should only experience 4% to 6% total adjustments.<sup>45</sup> Based on its investigation, TBR terminated

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<sup>37</sup> *Id.*

<sup>38</sup> *Ibid.* at 26.

<sup>39</sup> *Ibid.* at 25.

<sup>40</sup> *Ibid.* at 27.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

billing and collection service for OSP on or about June 2009 and since then has held in reserve 100% of the funds paid to TBR on behalf of OSP.<sup>46</sup>

Nelson Gross, TBR's managing member, filed a declaration in *mCapital, LLC et al. v. The Billing Resource, LLC; OSP Communications, LLC; and John Vogel* attesting to TBR's investigation of OSP:

21. Over time, TBR made several requests of OSP to confirm the validity of its billing transactions, specifically, the billing of collect calls. As TBR's questions became more focused, OSP was unable or unwilling to respond appropriately. This prompted TBR to send a sampling of OSP's call records to Verizon for validation. [] The sample contained call detail records for collect calls that were supposedly dialed by a third party as a collect call to Verizon customers which purportedly resulted in the collect calls, and their associated charges, being accepted by said Verizon customers. These calls would have been transmitted through Verizon's switches to connect the call. Upon review of the call detail records provided by OSP, Verizon found that none of the call detail records were valid – meaning that none of the calls were never (sic) placed. The call detail records provided by OSP were fictitious. In my professional opinion, this is conclusive evidence that the call detail records and their associated billing transactions were fraudulent.

22. Suspicions were also raised by the fact that OSP was experiencing extraordinarily high adjustment rates. Operator service providers who provide collect call services, such as OSP, should only experience 4% to 6% total adjustments. OSP experiencing well over 20% in adjustments at any given time and, to date, has an adjustment exceeding 33%. These numbers are simply off the charts for any type of LEC billing service provider and more than enough cause to suspect fraud. OSP's adjustment rate is conservatively 4 to 6 times higher than should be. Further, OSP's dilution experience to date is at 39% dilution, way off the charts for a legitimate operator service provider and the net monetary proceeds

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<sup>46</sup> *Ibid.* at 25, 27.

generated by OSP's billing transactions are slightly more than half of what it should be.<sup>47</sup>

TBR states that customers continue to request refunds for OSP billings directly from TBR as well as from the LECs.<sup>48</sup> As of January 24, 2011, TBR has refunded approximately \$376,000 to customers as a result of OSP billings, while the LECs have made adjustments totaling over \$544,000.<sup>49</sup> According to TBR, "OSP has issued its own refunds to customers in an amount exceeding \$2,030,000."<sup>50</sup> Thus, OSP's refunds total approximately \$2.9 million.

## V. CONSUMER COMPLAINTS OF UNAUTHORIZED CHARGES FOR OSP COLLECT CALLS

OSP's conduct has generated a large number of complaints to various entities. From 2007 through 2009, OSP's billing agents, Integretel and TBR, reported to the Commission receiving 12,750 cramming complaints regarding OSP's billings.<sup>51</sup> During that same period, the Commission received 107 complaints directly from consumers with all complainants universally denying receipt or acceptance of the collect calls for which OSP charged them.<sup>52</sup> Staff further found that consumers complained about OSP to the Federal Trade Commission ("FTC") as well, and some posted complaints on the internet at various consumer complaint websites.<sup>53</sup> These complainants also consistently denied receiving or authorizing any OSP collect call.<sup>54</sup>

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<sup>47</sup> *Ibid.* at 28.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Ibid.* at 12.

<sup>52</sup> *Id.*

<sup>53</sup> *Ibid.* at 15.

<sup>54</sup> *Id.*

### A. Complaints to OSP's Billing Agents

Billing agents report to the Commission on a quarterly basis the number of cramming complaints they receive from California customers.<sup>55</sup> Just a month after OSP stated it began operating in July 2007, customers began complaining about unauthorized OSP charges on their phone bills to OSP's billing agent Integretele.<sup>56</sup> Every month thereafter customers lodged complaints with Integretele and then billing agent TBR, with a surge in cramming complaints from 901 in 2007, 1,158 in 2008, to 10,691 in 2009.<sup>57</sup> Table 2 below provides a breakdown of the complaints by month and year.<sup>58</sup>

**Table 2**  
**OSP Communications Complaints**  
**(Integretele and TBR Data: 2007-2009)**

	<b>Integretele</b>	<b>Integretele/TB</b>	<b>TBR</b>
	<b>I</b>	<b>R</b>	
<b>Month</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>
January		339	92
February		57	62
March		63	382
April		52	2,213
May		46	6,475
June		107	1,197
July		146	173
August	156	122	45

<sup>55</sup> See D.10-10-034.

<sup>56</sup> Staff Report at 12.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

September	277	28	26
October	247	93	11
November	96	61	7
December	125	44	8
Sub-Total	<b>901</b>	<b>1,158</b>	<b>10,691</b>
<b>Total</b>			<b>12,750</b>

**Sources:** Integretel and TBR Quarterly Reports

## B. Complaints to the Commission

From 2007 through 2009, 107 customers filed complaints directly with the Commission's Consumer Affairs Branch ("CAB") regarding OSP billings.<sup>59</sup> Staff reviewed every CAB complaint and found that each complainant complained he or she received a charge for a collect call that was neither received nor authorized.<sup>60</sup> In several instances the complainant was not home when the supposed OSP collect call occurred.<sup>61</sup> In other instances, the complainant's line that OSP charged was connected to a fax or Digital Video Recorder ("DVR")<sup>62</sup> machine.<sup>63</sup> The OSP collect call charges ranged from \$7.38 to \$20.20.<sup>64</sup>

Staff attempted to interview all CAB complainants and succeeded in completing 11 interviews. These 11 complainants signed declarations attesting to their complaints.<sup>65</sup>

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Ibid.* at 12-14.

<sup>62</sup> A Digital Video Recorder is basically a VCR that uses a hard drive instead of video tapes. It can be used to record, save and play back television programs. Unlike a VCR, however, a DVR can also pause live TV by recording the current show in real time. The user can choose to fast forward (often during commercials) to return to live television. See [http://www.iwebtool.com/what\\_is\\_dvr.html](http://www.iwebtool.com/what_is_dvr.html).

<sup>63</sup> Staff Report at 12-14.

<sup>64</sup> *Ibid.* at 12.

<sup>65</sup> *Id.*

### C. Complaints to the Federal Trade Commission

Staff found 15 California complaints regarding unauthorized charges for collect calls billed by OSP filed at the Federal Trade Commission (“FTC”).<sup>66</sup> The OSP collect call charges ranged from \$7 to \$1,554.<sup>67</sup>

Staff attempted to interview all FTC complainants and succeeded in completing 2 interviews. These 2 complainants signed declarations attesting to their complaints.<sup>68</sup>

### D. Complaints on the Internet

Staff also found various internet websites where consumers posted complaints about OSP billing them for unauthorized collect calls.<sup>69</sup> These complaints were consistent with the complaints filed with OSP’s billing agents, the Commission, and the FTC.<sup>70</sup> Table 3 below lists the different websites posting OSP complaints.<sup>71</sup>

**Table 3**  
**OSP Communications Internet Complaints**

Source	Number of Complaints/Entries / Comments	Duration	State
Ripoff Report ( <a href="http://www.ripoffreport.com">http://www.ripoffreport.com</a> )	25	Jun 2008 - Jun 2009	Various
800 Notes (OSP #: 877-491-5506) ( <a href="http://800notes.com">http://800notes.com</a> )	23	Dec 2007 - May 2009	Unknown
800 Notes (Billing Resource #: 888-296-8079) ( <a href="http://800notes.com">http://800notes.com</a> )	10	Oct 2008 – May 2009	Unknown

<sup>66</sup> *Ibid.* at 15.

<sup>67</sup> *Id.*

<sup>68</sup> *Ibid.* at 16.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

Complaints Board ( <a href="http://complaintsboard.com">http://complaintsboard.com</a> )	11	Oct 2008 – May 2009	Various
Flickr ( <a href="http://www.flickr.com">http://www.flickr.com</a> )	8	(25 months ago = 2009)	Various
Consumerist ( <a href="http://www.consumerist.com">http://www.consumerist.com</a> )	1	Feb 2009	Unknown

## VI. OSP COLLECT CALLS COULD NOT BE VALIDATED WITH CALL RECORDS FROM AT&T OR VERIZON

For every call that takes place, telecommunications providers record certain data about that call in order to appropriately bill the telephone customer for the call.<sup>72</sup> LECs, like AT&T and Verizon, maintain Automatic Messaging Accounting (“AMA”) call records, also known as switch records. These AMA records contain detailed information about the call, including but not limited to the connect date and time, disconnect time, originating and terminating telephone numbers, dialed number, elapsed minutes for the call, and Carrier Identification Code (CIC).<sup>73</sup> LECs automatically capture this data at their end office switch,<sup>74</sup> which is a telephone central office switch that connects directly to the customer and where most of the call recording and billing are performed.<sup>75</sup> Accordingly, each and every collect call for which OSP billed its “customers” should have an associated AMA call record from AT&T or Verizon.

However, as discussed below, from a random sample of 384 billing “records” submitted by OSP, representing a 95% confidence level, neither AT&T nor

<sup>72</sup> *Ibid.* at 17-18.

<sup>73</sup> *Ibid.* at 18.

<sup>74</sup> A switch is defined as: In communications systems, a mechanical, electro-mechanical, or electronic device for making, breaking, or changing the connections in or among circuits. 2. *Deprecated synonym* for **central office, switching center**. 3. In communications systems, to transfer a connection from one circuit to another. 4. In a computer program, a conditional instruction and a flag that is interrogated by the instruction. 5. In a computer program, a parameter that controls branching and that is bound, prior to the branch point being reached. Synonym **switchpoint**. 6. In computer programming, a programming technique or statement for making a selection, such as a conditional jump. 7. In computer software applications, a functional unit, such as a toggle button, used to make selections. See <http://www.atis.org/glossary/definition.aspx?id=1208>.

<sup>75</sup> Staff Report at 18.

Verizon could validate with their own AMA records the existence of the OSP collect calls.<sup>76</sup>

**A. No Matching AMA Records for “Records” Submitted by OSP**

For all of its billings, OSP provided to its billing agents supposed billing “records” known as Exchange Message Interface (“EMI”) records, which if legitimate would show that a customer authorized or received a collect call serviced by OSP.<sup>77</sup> EMI records adhere to certain technical standards, and are generally used by third party vendors, like OSP, for billing purposes.<sup>78</sup> With LEC billing, third party vendors provide their billing agents with EMI records so the billing agents know what to bill and collect on behalf of the third party vendor. In turn, the billing agents forward the EMI records to the appropriate LEC to bill and collect the third party charges directly from their customers.

A legitimate EMI record should have a matching AMA call record and should also contain data similar to what is included in AMA call records.<sup>79</sup>

As explained below, Staff randomly selected a sample of 384 of OSP’s EMI “records” it submitted to billing agent TBR and attempted to validate them with AT&T and Verizon AMA call records. However, neither AT&T nor Verizon could match OSP’s EMI “records” with their own AMA call records. From this, Staff infers that none of OSP’s EMI “records” were valid. Thus, Staff alleges that OSP fabricated all of its EMI “records” and fraudulently billed customers for collect calls that never took place.

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<sup>76</sup> A confidence level is a measure of the reliability of a result. A confidence level of 95 per cent or 0.95 means that there is a probability of at least 95 per cent that the result is reliable. See <http://www.thefreedictionary.com/confidence+level>.

<sup>77</sup> Staff Report at 17.

<sup>78</sup> The EMI standards are established by the Alliance for Telecommunications Industry Solutions (ATIS) Ordering and Billing Forum (OBF). Full copies of the EMI standards are available through ATIS at <http://www.atis.org>.

<sup>79</sup> Staff Report at 18.

### 1. AT&T's AMA Records

As part of its investigation, Staff requested from TBR all OSP-related EMI “records” that served as TBR’s basis for billing on behalf of OSP between October 9, 2008 and August 31, 2009.<sup>80</sup> TBR provided 252,694 EMI “records.”<sup>81</sup> From these 252,694 “records,” Staff randomly selected a sample of 384 “records,” which represents a 95% confidence level. Of the 384 sample EMI “records,” 293 were associated with telephone numbers of AT&T’s customers; the other 91 were associated with Verizon customers’ telephone numbers.

Using as a search criteria the date and time of each call identified in the 293 EMI “records,” AT&T could not find one matching AMA call record.<sup>82</sup> In addition, AT&T analyzed the top 100 originating telephone numbers with high volumes from the total 252,694 EMI “records” and similarly could not find one matching AMA call record for these either.<sup>83</sup> In some cases, AT&T found that the telephone numbers associated with these EMI “records” were not in service at the time of the purported collect calls.<sup>84</sup>

With regard to the thirteen complainants who provided declarations to Staff, AT&T could not locate any validating AMA call records for twelve of the complainants.<sup>85</sup> As for the remaining complainant, AT&T could not locate any billing statement for this person, which means that this complainant may not have been an AT&T customer.<sup>86</sup>

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<sup>80</sup> *Ibid.* at 18-19.

<sup>81</sup> *Id.*

<sup>82</sup> *Ibid.* at 20.

<sup>83</sup> *Ibid.* at 80.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

## 2. Verizon's AMA Records

With respect to the 91 EMI "records" associated with Verizon customers, Verizon could not locate any completely matching AMA record.<sup>87</sup> Verizon attempted to match its terminating usage data for these calls and conducted searches using three different sets of matching criteria. In the first search, Verizon attempted to match four attributes (to number, date, time, and from number), but did not locate any matching AMA call records. In the second search, Verizon attempted to match three attributes (to number, date, and time), but did not find any matching AMA call records. Finally, in the third search, Verizon attempted to match two attributes (to number and date) and found 72 matching AMA call records; however, the "time" and "from number" attributes substantially differed from OSP's EMI information, even with Verizon adjusting the time zone based on the originating point of the call.<sup>88</sup>

Staff further requested that Verizon recheck the 91 Verizon telephone numbers utilizing OSP's access numbers (877-487-9455 and 866-697-2198) as the originating numbers, in the event that these numbers may have been signaled as the originating point rather than the "from number" in OSP's EMI "records." However, Verizon found nothing different from its earlier searches.<sup>89</sup>

Moreover, since the "connect time" in the OSP EMI "records" is based on Pacific Time, they should match the local switch time in any of Verizon's terminating AMA call records.<sup>90</sup> However, in yet another search attempting to match three attributes (date, time, and terminating number), Verizon still could not locate any matching AMA records.<sup>91</sup>

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<sup>87</sup> *Ibid.* at 21-22.

<sup>88</sup> *Ibid.* at 21.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

## VII. HIGH REFUND RATE FOR OSP BILLINGS

As part of its investigation, Staff reviewed the California billing revenues and refunds associated with OSP. During its operations, OSP generated over \$8 million in total California revenue from its collect call billings.<sup>92</sup> Of that amount, OSP, either directly or indirectly through its billing agents and the LECs, issued approximately \$2.9 million in refunds to California customers from August 2007 through January 2011.<sup>93</sup> As of January 2011, however, customers continued to request refunds for OSP billings from TBR.<sup>94</sup> Thus, OSP had an average refund rate of approximately 35%.

In 2009 alone, OSP experienced an annual refund rate of 53%.<sup>95</sup> With regard to a monthly refund rate -except for the month of August 2007- OSP's monthly refund rate ranged from 14% to 43%.<sup>96</sup> As TBR noted, operator service providers, such as OSP, should only experience a 4% to 6% refund rate; a refund rate beyond this range would raise suspicion as to the presence of fraudulent activities.<sup>97</sup>

## VIII. DISCUSSION

### A. Jurisdiction

OSP, a third party service provider, and Integretel and TBR, both billing agents, are subject to the Commission's jurisdiction because they place charges on California telephone bills. Pursuant to section 2890(a), "[a] telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized." Section 2889.9(b) provides the Commission with the authority to enforce section 2890 against "a person or corporation or its billing agent that is a nonpublic utility" and to impose penalties against those entities as if they were a public utility if

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<sup>92</sup> *Ibid.* at 23.

<sup>93</sup> *Ibid.* at 28.

<sup>94</sup> *Id.*

<sup>95</sup> *Ibid.* at 23.

<sup>96</sup> *Id.*

<sup>97</sup> *Ibid.* at 27-28.

they have violated section 2890. In Decision (D.) 06-03-013, we addressed the expansive scope of our jurisdiction to combat violators of section 2890, even if suspected violators are not normally subject to our jurisdiction:

In enacting the laws, the Legislature stipulated that P.U. Code sections 2889.9 and 2890 apply not only to utilities, but also to non-utility billing agents and other persons or corporations responsible for generating a charge on a subscriber's phone bill. Thus the commission may impose penalties on persons or corporations that violate the cramming statutes, even if the violators typically are not subject to our jurisdiction.<sup>98</sup>

Here, the Commission is called upon to determine whether OSP violated section 2890 by placing unauthorized charges for collect calls on California telephone bills. Thus, the Commission has jurisdiction over OSP. The Commission also has jurisdiction over Integretel and TBR as billing agents who facilitated the placement of OSP charges on California telephone bills.

**B. Violation of Section 2890**

As stated above, section 2890 prohibits the placement of unauthorized charges for products or services on a telephone bill. Based on the evidence presented in the Staff Report, it appears that OSP violated section 2890 by systematically placing unauthorized charges on consumers' telephone bills.

The evidence appears to show that OSP charged customers for collect calls that did not occur. We seriously question the validity of any of OSP's EMI "records" it submitted to billing agents to bill customers, as neither AT&T nor Verizon could validate one single EMI "record" from the random sample Staff selected. Moreover, there were no matching AMA call records for any of the thirteen complainants that provided declarations attesting that OSP billed them for unauthorized collect calls. Furthermore, OSP's own billing agent, TBR, concluded that OSP's "call detail records and their

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<sup>98</sup> D.06-03-013, *Decision Issuing Revised General Order 168, Market Rules to Empower Telecommunications Consumers and to Prevent Fraud*, Slip. Op. at 76.

associated billing transactions were fraudulent” based on its inability to validate its own sample of OSP’s billings with any AMA records from Verizon.

Based on this overwhelming evidence, Staff infers that OSP provided fabricated EMI “records” to its billing agents for all of its billings and consequently caused California consumers to be billed for fictitious collect calls in apparent violation of section 2890. We agree. The large number of complaints lodged against OSP and OSP’s extraordinarily high refund rate, on average 35% and as high as 53% for 2009, further substantiates this allegation. Staff has thoroughly investigated and corroborated its allegation against OSP for violating section 2890. Therefore, by this Order we will provide an opportunity for OSP to appear before us and show cause why it should not be fined or have any other sanctions imposed as a result of the alleged cramming.

**C. Violation of Section 451**

Section 451 makes every unjust or unreasonable charge demanded or received by a public utility unlawful. In D.01-04-035, the Commission found that “placing charges on a person’s local telephone bill based on an invalid ‘authorization’ is unreasonable.”<sup>92</sup> As demonstrated above, because it appears that none of OSP’s supposed customers authorized the collect calls for which OSP charged them, all of OSP’s charges were, therefore, unreasonable and unlawful. As with the apparent section 2890 violation, we will provide an opportunity for OSP to appear before us and show cause why it should not be fined or have any other sanctions imposed as a result of its apparent violation of section 451.

**D. Violation of Section 885**

Pursuant to section 885, “[a]ny entity offering the services of telephone prepaid debit cards is subject to the registration requirements of Section 1013, commencing January 1, 1999, unless that entity is certificated by the commission to

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<sup>92</sup> D.01-04-035 (*Coral Investigation*), Slip. Op. at 27.

provide telephone service.”<sup>100</sup> OSP may have violated this section because it did not register with the Commission to provide prepaid calling card service. Staff alleges that OSP offered prepaid calling card services in conjunction with its collect call service. While OSP appears to claim that it merely used the prepaid debit cards to market its collect call service,<sup>101</sup> its billing agent stated otherwise. In a data response to Staff, TBR stated that OSP “is an operator service provider for collect calls and also offers calling card services.”<sup>102</sup> Therefore, whether OSP provided prepaid calling card services is a question of fact in this case the Commission will consider.

#### **E. John Vogel Liability**

Staff alleges that John Vogel was an alter ego of OSP, and should therefore be held jointly and severally liable with it for violations of pertinent statutes and regulations. Alternatively, personal liability may be predicated on a showing that Mr. Vogel “participated directly in the practices discussed above, and had the authority to control them.”<sup>103</sup> John Vogel was the sole officer and managing member of OSP. Therefore, Staff alleges that he participated directly in the cramming practices demonstrated above and had the authority to control them.

The alter ego doctrine is grounded in equity, and said to apply only where two general requirements are met: first, there must be such a unity of interest and ownership that the separate personalities of the corporation and the controlling individuals or companies no longer exist; and, second, a failure to disregard the corporate entity must sanction a fraud or promote injustice.<sup>104</sup> The officer, director or shareholder

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<sup>100</sup> P.U. Code § 885(a).

<sup>101</sup> Staff Report at 4-5.

<sup>102</sup> *Ibid.* at 4.

<sup>103</sup> *FTC v. Inc21, supra*, 688 F.Supp.2d 929, 939-940 (N.D. Cal. 2010), *citing FTC v. Publishing Clearing House, Inc.*, 104 F.3d 1168, 1170 (9<sup>th</sup> Cir. 1997).

<sup>104</sup> *Watson v. Commonwealth Ins. Co.*, (1936) 8 C2d 61, 68.

may also be personally liable where he “specifically directed or authorized the wrongful acts.”<sup>105</sup>

Whether the corporate entity should be disregarded, and personal liability attached, depends on the facts of a particular case.<sup>106</sup> Courts have considered an array of factors in analyzing alter ego problems, including but not limited to: commingling of funds and other assets; the unauthorized diversion of corporate funds or assets to other than corporate uses; the treatment by an individual of the assets of the corporation as his own; sole ownership of all of the stock in a corporation by one individual or the members of a family; the employment of the same attorney; common addresses and business models; and the diversion of assets from a corporation by or to a stockholder or other person or entity, to the detriment of creditors.<sup>107</sup> Common ownership and a common business plan may also be predicates of individual liability for corporate misfeasance.<sup>108</sup>

The Commission believes there is good reason for further investigation of this issue, and will allow staff to complete discovery on the alter ego issue in this proceeding.

Staff further recommends that the Commission consider imposing restrictions on John Vogel, including permanently enjoining him from billing customers, either directly or through an intermediary, by placing any charges on any telephone bill. These restrictions would run against any business or operation John Vogel currently

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<sup>105</sup> *Wyatt v Union Mortgage Co.*, 24 C3d 773, 785 (2007) (“Directors and officers of a corporation are not rendered personally liable for its torts merely because of their official positions, but may become liable if they directly ordered authorized or participated in the tortious conduct”).

<sup>106</sup> D.03-01-079 (*Titan* Investigation), Slip Op. at 16, citing *Alexander v. Abbey of the Chimes*, 104 CA3d 39, 46 (1980). In *Titan*, the *alter ego* theory was rejected on due process grounds, because the individual alleged to be the alter ego of the corporation had not been named in the original order instituting investigation. *Id.*, Slip Op. at 16-17.

<sup>107</sup> *Id.*, citing *Associated Vendors, Inc. v. Oakland Meat Co., Inc.*, 210 CA2d 825, 838-840 (1962) (citations omitted); other factors include: failure to maintain an arm's-length relationship among related entities. the concealment and misrepresentation of the identity of the ownership, management, and financial interest of the business, and use of same address. *Id.* at 839-40.

<sup>108</sup> *Wyatt v. Union Mortgage*, *supra*, 24 C3d at 785-86 (“tightly knit, family-oriented business operation” where one individual “owned all or a controlling interest in each of the affiliated corporations”).

owns or operates as well as any future endeavors. Based on the history of cramming allegations against another Vogel-run entity (Link Systems), the egregious nature of the cramming allegations in this case against OSP, and the Commission's revocation of a license for Global Access, another Vogel entity, the Commission will also consider this recommendation.

**F. Relief Respondents TBR and Integretel**

We expect that billing agent/aggregators, as well as the billing telephone companies, will fully cooperate in this Investigation, as they are required to do.<sup>109</sup> In D.99-08-017, the Commission ordered OAN and several other billing agents to

file with the Commission's Docket Office and serve on all parties, a full accounting of their respective transactions with, or on behalf of, Coral Communications, Inc. . . . Such accountings shall include, without limitation, a statement of all amounts billed for Coral/Easy Access, amounts actually collected, amounts refunded to customers, amounts disbursed to Coral/Easy Access, and amounts retained by the billing agent.<sup>110</sup>

Pursuant to our authority under P.U. Code § 2889.8(g), we order the billing agents and billing telephone companies involved in this case to provide a similar accounting, including total billings, collections, and refunds associated with Respondent OSP's charges. We ask staff to inform us of whether that has occurred.

In order to preserve the Commission's authority pursuant to section 734 to order refunds to aggrieved customers should the Commission ultimately find OSP violated section 2890, the Commission directs OSP's past and present billing agents, specifically Integretel and TBR, within 30 days of this Order to place all monies in its

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<sup>109</sup> P.U. Code § 2889.8(g) ("... billing agents, and telephone corporations billing for these products or services shall cooperate with the commission in the commission's efforts to enforce the provisions of this article ..."); D.99-08-917 (*In re Coral Communications*), 1999 Cal. PUC LEXIS 519, \*4 ("We put on notice all entities which provide billing and collection services, including LECs and billing agents, that the Commission may direct them to provide information on billing services provided to respondents in future proceedings").

possession related to any OSP charges in an interest-bearing escrow or trust account pending resolution of this Investigation. Integretel and TBR shall provide CPSD with the escrow or trust account information upon CPSD's request.

### **G. Remedies**

Upon proof of a cramming or related violation, the Commission has the authority to order restitution to any consumer who has been victimized by Respondents or their billing agents, to make that consumer whole pursuant to section 734. Staff may recommend, and the Commission may consider, penalties pursuant to P. U. Code §§ 2107 and 2108 in the amount of \$500 to \$20,000 per offense per day. In addition, we may consider whether John Vogel, including any current or future entities he runs, should be permanently enjoined from placing charges on the telephone bills of California customers.

For purposes of enforcement, the Public Utilities Code extends the Commission's jurisdiction over nonpublic utilities that generate a charge on a subscriber's telephone bill. Where the Commission finds that "a person or corporation" has violated §§ 2890 and/or 2889.9, the Commission is authorized to treat that person or corporation as if it were a public utility for purposes of fines, contempt citations, and other penalties.<sup>111</sup> The Commission also has explicit authority to order any billing telephone company to "terminate the billing and collection services" for any person or corporation failing to comply with these statutory sections.<sup>112</sup> Finally, the Commission may "adopt rules, regulations and issue decisions and orders, as necessary, to safeguard

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*(Continued footnote from previous page)*

<sup>110</sup> D.99-08-017 (*Coral Investigation*), Interim Opinion, Ordering Paragraph 1.

<sup>111</sup> P.U. Code § 2889.9(b).

<sup>112</sup> P.U. Code § 2889.9(c).

the rights of consumers and to enforce the provisions” of Article 2, including sections 2889.9 and 2890.<sup>113</sup>

Based on the Commission’s broad remedial authority pursuant to section 2889.9, the Commission may order the billing agents TBR and Integretel to return funds retained from any of OSP’s unauthorized billings, as well as to order these billing agents to disgorge all proceeds retained from OSP’s unauthorized billings.<sup>114</sup>

#### **H. Categorization**

This proceeding is categorized as adjudicatory. Pursuant to Rule 8.2(b) of the Commission’s Rules of Practice and Procedure, *ex parte* communications are prohibited. The determination as to category is appealable under Rule 7.6.

Therefore, **IT IS ORDERED** that:

1. Pursuant to Rule 5.1 of the Commission’s Rules of Practice and Procedure, an Investigation on the Commission’s own motion is instituted into the operations of OSP and its owner John Vogel (collectively, Respondents), and specifically whether:
  - a. Respondents violated P.U. Code § 2890 by causing charges to be placed on consumers’ bills for products or services which the consumers did not request or authorize;
  - b. OSP violated P.U. Code § 451 by placing unjust or unreasonable charges on consumers’ telephone bills;
  - c. OSP violated P.U. Code § 885 by offering prepaid calling cards in California without Commission authorization;
  - d. OSP violated P.U. Code §§ 270, 431-435, 702, 739, 879 and 2881 for its failure to remit regulatory fees and surcharges on intrastate revenue for the prepaid calling cards; and
  - e. John Vogel is an alter ego of Respondent OSP, or so directed and authorized the acts alleged by Staff, such that his personal liability is equitable and appropriate.

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<sup>113</sup> See P.U. Code § 2889.9(i).

<sup>114</sup> See e.g., D.01-04-035 (*Coral Investigation*), *supra*, Slip. Op. at 29-34.

2. The Commission will consider whether, pursuant to §§ 701, 734, and 1702 of the Public Utilities Code, any of the following remedies are warranted:

- a. Respondents, including Relief Respondents, be ordered to disgorge all profits obtained illegally, and pay reparations, restitution, and/or refunds, pursuant to P.U. Code § 734, to California consumers in the total amount collected from them for OSP's collect call services and related charges, where consumers had not knowingly authorized the services or the amounts charged;
- b. Respondents be fined pursuant to P.U. Code §§ 2107 and 2108 for the above-described violations of the Public Utilities Code and related Orders, Decisions, Rules, directions, demands and requirements of this Commission; and/or
- c. Respondent John Vogel be permanently enjoined from billing customers, either directly or through an intermediary, by placing any charges on any telephone bill. This injunction would also run against any business or operation Respondent John Vogel currently owns or operates as well as any future endeavors.

3. To facilitate the completion of this investigation, and consistent with the provisions of P.U. Code §§ 311, 314, 581-82 and 584, Respondents are ordered to provide the information requested in Attachment 1 hereto within forty-five (45) days of service of this OII.

4. We direct the Process Office to add the following as "interested parties" to the service list of this proceeding: Pacific Bell Telephone (AT&T), Verizon, mCapital, LLC, and CardinalPointe Capital Group.

5. Respondents and interested parties are ordered to preserve for the pendency of this action all documents which might relate to this action, including but not limited to EMI records, reports based on EMI records, switch records, reports based on switch records, contracts (including contracts with billing agents/aggregators and third parties relative to Respondents' services and billing), invoices, correspondence, intra- and inter-office memoranda, intra- and inter-office email, electronic archives, all websites and

electronic archives of information from past company websites, and consumer complaints and other expressions of dissatisfaction from California consumers. Respondents and interested parties are ordered to cooperate with staff in its investigation.

6. Billing agents Integretel and TBR and billing telephone companies AT&T and Verizon are ordered to file with the Commission's Docket Office and serve on all parties, within forty-five (45) days of service of this OII, a full accounting of their respective transactions with, or on behalf of, Respondents. Such accountings should include, without limitation, a statement on an annual basis of all amounts billed on behalf of Respondent OSP, amounts collected on behalf of Respondent OSP, amounts refunded or credited back to customer accounts, amounts retained by the billing agents and billing telephone companies for their services, amounts paid to public purpose funds (universal service and the like), and any other amounts paid out of Respondent OSP's revenue stream, i.e., out of amounts collected on behalf of Respondent OSP for the collect call services described herein. We request, to the extent possible, that the billing agents and telephone companies specify the amounts in each of these categories attributable to collect call service, administrative fee, and universal service fees or the like.

7. Staff shall continue to monitor consumer complaints against Respondents. We expect staff to bring additional evidence of any related and potentially harmful business practices to our attention. We grant staff leave to propose the addition of other parties, factual allegations, and potential violations that may arise from this additional evidence. Such proposals shall be presented to the Assigned Commissioner and Assigned Administrative Law Judge in the form of a motion to amend the OII, and shall be accompanied by a staff declaration supporting the proposed amendments. The cutoff date for advancing evidence of additional violations, for responses if appropriate, for the exchange of testimony, and other procedures as necessary shall be determined by the Assigned Commissioner or Assigned Administrative Law Judge.

8. Many of the attachments to the Staff Report were submitted as confidential material pursuant to P.U. Code § 583. The Commission authorizes the publication of information from those attachments, to the limited extent that information is found in this

OII. As to the attachments themselves, staff shall prepare and serve on Respondents and interested parties by June 17 proposed public and (to the extent appropriate) proposed confidential versions of its Staff Report, and may prepare those in several iterations to the extent that multi-party confidentiality claims must be accommodated. If Respondents or interested parties assert that any portion of the proposed public report should remain unavailable for public review, or that confidential materials should not be provided to other parties, they shall file a written motion for protection of specifically identified portions of the report and attachments, and provide legal support for these assertions, no later than July 15, 2011. CPSD shall reply by July 29, 2011.

9. The attached Consumer Protection and Safety Division Staff Report is hereby entered into the record for this proceeding.

10. Staff shall be subject only to that discovery relating to the specific violations alleged in this Order, described in the Staff Report, or added to the scope of this proceeding by subsequent motion.

11. These ordering paragraphs suffice for the “preliminary scoping memo” required by Rule 6 (c) of the Commission’s Rules of Practice and Procedure.

12. This proceeding is categorized as an adjudicatory proceeding and is expected to require an evidentiary hearing. Pursuant to Rule 8.2(b) of the Commission’s Rules of Practice and Procedure, *ex parte* communications are prohibited. The determination as to the category is appealable under Rule 7.6.

13. A prehearing conference shall be scheduled for the purpose of setting a schedule for this proceeding, including dates for discovery, amendment to the OII as necessary, exchange of written testimony, disclosure of witnesses, hearings, and briefing as appropriate in this matter.

14. The Executive Director shall cause a copy of this Order to be personally served on the Respondents’ designated agent for service in California:

OSP Communications LLC  
Business Filings Incorporated  
311 S. Division St.  
Carson City, Nevada 89703

John Vogel  
1100 South 10<sup>th</sup> Street  
Las Vegas, Nevada 89104

Robert N. Hocker, Esq.  
Hocker & Nalu  
Counsel for OSP and John Vogel  
1230 Columbia Street, Suite 650  
San Diego, CA 92101  
rhocker@hockernalu.com

The Billing Resource LLC  
National Registered Agents, Inc. (C1941323)  
2875 Michelle Drive, Suite 100  
Irvine, CA 92606

The Billing Resource LLC d/b/a Integretel  
Attn: Ken Dawson  
5883 Rue Ferrari  
San Jose, CA 95138

The Billing Resource LLC d/b/a Integretel  
c/o Gail S. Greenwood, Esq.  
Pachulski Stang Ziehl and Jones  
150 California St. 15th Floor  
San Francisco, CA 94111

and by delivering by Federal Express, Certified, and/or Priority Mail (such that confirmation of delivery may be verified) copies of the Order to Respondents' principal place of business, at the following addresses:

John Vogel  
OSP Communications LLC  
1100 S. 10<sup>th</sup> Street  
Las Vegas, Nevada 89104

The Billing Resource LLC

302 Enzo Drive, Suite 162  
San Jose, CA 95138

The Billing Resource LLC d/b/a Integretel  
Attn: Ken Dawson  
5883 Rue Ferrari  
San Jose, CA 95138

In addition, a copy of this Order shall be served on local counsel for  
Respondents:

Robert N. Hocker, Esq.  
Hocker & Nalu  
Counsel for OSP and John Vogel  
1230 Columbia Street, Suite 650  
San Diego, CA 92101  
rhocker@hockernalu.com

Joseph G. Dicks, Esq.  
Dicks & Workman, APC  
Counsel for The Billing Resource LLC  
750 B Street, Ste 2720  
San Diego, CA 92101-8122  
jdicks@dicks-workmanlaw.com

Michael H. Ahrens, Esq.  
Counsel for The Billing Resource d/b/a Integretel  
Sheppard, Mullin, Richter & Hampton LLP  
4 Embarcadero Center, 17th Floor  
San Francisco, CA 94111-4106

In addition, copies of this Order shall be served on the following interested parties, by Federal Express, Certified, and/or Priority Mail (such that confirmation of delivery may be verified):

Pacific Bell Telephone Company d/b/a AT&T California  
Eric Batongbacal, Executive Director  
525 Market Street, Room 1944  
San Francisco, CA 94105

Verizon California, Inc.  
Margo Ormiston  
Specialist-State Gov't Relations  
711 Van Ness Avenue, Suite 300  
San Francisco, CA 94102

mCapital, LLC and CardinalPointe Capital Group  
c/o Dana M. Perlman, Esq.  
Perlman and Associates, A Law Corporation  
9454 Wilshire Boulevard, Ste. 500  
Beverly Hills, CA 90212  
dperlman@perlmanlaw.com

15. Respondents OSP and John Vogel are ordered to answer or otherwise respond to this Order within thirty (30) days of service. Respondents and any other person filing a response to this Order shall state in the response any objections to the order regarding the need for hearings, issues to be considered, or proposed schedule.

This order is effective today.

Dated: May 26, 2011, in San Francisco, California.

MICHAEL R. PEEVEY  
President  
TIMOTHY ALAN SIMON  
MICHEL PETER FLORIO  
CATHERINE J.K. SANDOVAL  
MARK J. FERRON  
Commissioners

**ATTACHMENT 1**  
**OII DATA REQUESTS TO RESPONDENTS OSP AND JOHN VOGEL**

Unless stated otherwise, the following requests seek information and documents for years 2007-2009 inclusive, including any documents created or in effect during that time.

1. Please identify all factual statements in the above OII with which you disagree, and provide documents and evidence supporting your disagreement.
2. Please provide every script used by OSP with respect to the recording(s) played on OSP's collect call service access numbers, and identify as clearly as possible during what period of time the script was used.
3. Please state the total monies or revenues collected from California consumers in each of these five categories: operator charge; surcharge; minute usage charge; USF fee; and administrative fees. If OSP collected a charge not listed in the aforementioned categories, please also include that charge in this response. From these totals, please state all amounts paid to billing telephone companies, billing agents, universal service funds, or any other third parties.
4. Please provide California tax returns and any explanation of a discrepancy between the numbers provided in response to OII DR 3.
5. Please provide all routing instructions provided by OSP or any of its affiliates in conjunction with the access numbers it controls and/or uses in marketing its collect call services.
6. With regard to all OSP billings that Integretel billed and collected on behalf of OSP, please provide the EMI records and the associated complete AMA or switch records (containing all data fields).
7. Please provide all invoices sent by EKC, relating in whole or in part to the provision of OSP's collect call service.
8. Please provide any contract, letter agreement, email, memoranda or other documents setting forth the terms of any OSP and EKC agreement.

9. Please provide any memoranda or other documents setting forth OSP's policy regarding refunds or credits back to California (and other) consumers, which policy or policies were in effect at any time during OSP's years of operations.

10. Please provide any contracts, manuals, memoranda, product descriptions, or other documents relating to the servers and other equipment that constitute the switching platform OSP used to provide its collect call service, including contracts with EKC.

11. Please provide any memoranda, correspondence (email or otherwise), or other documents relating to OSP's use of EMI records as a defense to customer complaints, including but not limited to correspondence between or among billing agent/aggregators Integretel or TBR, OSP, EKC, AT&T, Verizon, or any of them.

12. Please provide any correspondence between or among billing agent/aggregators Integretel or TBR, OSP, EKC, AT&T, Verizon, or any of them and government agencies, regulators or prosecutors, or any of them, relating to allegations of unauthorized charges on telephone bills.

13. Please provide the transcripts of any depositions given by John Vogel relating to allegations of unauthorized charges on telephone bills.

14. Please provide any correspondence between or among billing agent/aggregators Integretel or TBR, OSP, EKC, any billing telephone company, or any of them, relating to the handling of customer complaints.

15. Please provide any regulatory complaints, inquiries, or civil complaints received by OSP over the last 5 years related to more than one allegation of unauthorized charges for collect call service, or an allegation of a pattern of conduct that was alleged to be misleading or fraudulent.

16. With regard to the debit and prepaid calling cards OSP used to market its collect call service, please provide the following:

- a. A clear copy of the every calling card(s) used to advertise OSP's collect call operator service. Provide both sides of each card;
- b. Legal company name(s) of the underlying calling card service providers(s);

- c. Name(s) of the owners *and* officers of the calling card companies;
- d. Name(s) of the persons in the company most knowledgeable about the calling card service;
- e. Date each the company listed in response to (b) initiated its calling card service;
- f. Places or locations, including addresses, where customers could purchase these debit/prepaid calling cards;
- g. The amounts or denominations (i.e., \$10, \$20, etc.) of the calling cards;
- h. State and fully discuss the business relationship between OSP Communications, LLC and the companies offering these debit/prepaid calling cards;
- i. Provide the contract between OSP and the companies offering these of debit/prepaid calling cards;
- j. The contract amount that OSP paid the calling card companies for advertising it's collect call services;
- k. Duration period (provide month, day and year) OSP advertised its collect call service on the debit/prepaid calling cards;
- l. If the OSP advertisement still appears on the debit/prepaid calling cards, explain in detail why the advertisement continues to appear on the cards if OSP ceased operating in 2009;
- m. State whether the companies offering the debit/prepaid calling cards are currently registered with the California Public Utilities Commission.

17. With regard to the entities identified in Table 1 of the OII, provide the following information:

- a. Business address for principle place of business;
- b. Indicate whether they are still in operation;

- c. Duration of service (month, date and year);
- d. List services provided;
- e. Update John Vogel's official role(s);
- f. List John Vogel's duties and responsibilities;
- g. List other telecommunications-related entities not already listed in Table 1.
- h.
- i. I1105028 Agenda OII PUBLIC Staff Report on OSP