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ATTACHMENT A

**Settlement Agreement Between The Consumer
Protection and Safety Division of The California Public
Utilities Commission and OSP Communications LLC and
John Vogel, and Individual**

**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, an Individual, to Determine Whether OSP Communications LLC and John Vogel Have Violated the Laws, Rules, 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 Resources LLC dba Integretel, a California Corporation, Should Refund and Disgorge All Monies Billed and Collected on Behalf of OSP Communications LLC

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

**SETTLEMENT AGREEMENT BETWEEN
THE CONSUMER PROTECTION AND SAFETY DIVISION
OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION
AND OSP COMMUNICATIONS LLC AND
JOHN VOGEL, AN INDIVIDUAL**

The Consumer Protection and Safety Division (CPSD) of the California Public Utilities Commission (Commission), OSP Communications, LLC, its successor, affiliates, and assigns (OSP), and OSP's owner and president, John Vogel (Vogel), an individual, hereby agree on the following terms for the Settlement Agreement (Agreement) resolving issues raised in Commission Order Instituting Investigation 11-05-028, Order to Show Cause, and Notice of Hearing against OSP and John Vogel ("the OII" or I.11-05-028). All of the above-mentioned parties are sometimes individually referred to as "Party" and/or collectively referred to as "the Parties."

I. JURISDICTION

1. This Commission has jurisdiction of the subject matter and the parties thereto.

II. JOINT STIPULATION OF THE FACTS

The Parties, as defined by the signatories to this Agreement, hereby submit the following joint statement of the case:

2. On May 26, 2011, the Commission issued the OII which stated that the purpose of the Commission's investigation is to determine whether OSP and John Vogel 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 (cramming). The Commission's investigation also sought to determine whether OSP and Vogel operated calling card services in violation of Public Utilities Code Section 885, or any Commission rule, regulation, order, requirement, or other state law for their alleged provision of calling cards without Commission authorization.
3. The OII named The Billing Resource dba Integretel, a California corporation (Integretel) and The Billing Resource, LLC, a Delaware corporation (TBR), which served as billing aggregators for OSP, as relief respondents.
4. The Respondents OSP and John Vogel submitted responses to the questions set forth in Ordering Paragraph No. 1 of the OII, denying specifically and generally any and all allegations contained in the OII.
5. The Parties have agreed to settle this action on the terms set forth in this Agreement. The Parties believe that the resolution of the violations alleged in the OII is fair and reasonable and in the public interest. The Parties also believe that no further action against Respondents OSP and John Vogel is warranted concerning the specific violations alleged in the OII except as provided in this Agreement and that this Agreement is in the best interests of the general public.

6. CPSD Staff found that the Commission's Consumer Affairs Branch received 107 cramming complaints against OSP for the period 2007 through 2009.
7. CPSD Staff reviewed the quarterly cramming complaint reports that Integretel and TBR, which served as billing aggregators for OSP, submitted. In 2007, Integretel reported 901 complaints against OSP. In 2008, Integretel and TBR reported a combined 1,158 complaints against OSP. In 2009, TBR reported 10,691 complaints against OSP.
8. TBR reported an 823% increase in complaints in 2009 compared to the total combined complaints Integretel and TBR reported in 2008.
9. The Federal Trade Commission received 15 complaints from California consumers concerning OSP's alleged unauthorized charges.
10. Nearly all California consumers charged for OSP's allegedly unauthorized collect call services were billed on their local telephone bills from AT&T Communications of California, Inc. (AT&T) or Verizon California Inc. (Verizon) through a process known as "Local Exchange Carrier (LEC) billing."
11. LEC billing allows third-party service providers, here OSP, to place charges for their products and/or services on local telephone bills. Customers pay these third-party charges to their local exchange carrier, here AT&T and Verizon, who in turn remit the payments minus their service fee to a billing agent. The billing agent, here Integretel and TBR, then sends the payments to the third-party service provider after subtracting their own service fee.
12. OSP used the billing and collection services of Integretel from approximately June 1, 2007 through October 8, 2008 to place its charges on the telephone bills of AT&T and Verizon customers in California.
13. OSP used the billing and collection services of TBR from approximately October 9, 2008 through June 3, 2009 to place its charges on the telephone bills of AT&T and Verizon customers in California.

14. OSP submitted Exchange Message Interface (EMI) records to its billing agents Integretel and TBR in order to bill California consumers for OSP's alleged collect call services.
15. In turn, Integretel and TBR submitted OSP's billings to AT&T and Verizon to bill and collect OSP's charges directly from those LEC's end-use customers.
16. CPSD requested from AT&T and Verizon corresponding Automatic Messaging Accounting (AMA) records, also known as switch records, for a sample of 384 of OSP's EMI records submitted to TBR.
17. Neither AT&T nor Verizon could provide matching AMA records for the sample of 384 EMI records submitted by OSP.
18. CPSD alleges that AT&T's and Verizon California Inc.'s call records, i.e., AMA or switch records, do not appear to support OSP's collect call charges.
19. OSP charged 736,692 California customers \$8.1 million from June 2007 to April 2009 for collect calls that they allegedly did not authorize nor receive.
20. A total of approximately \$2.4 million was refunded to customers by TBR, OSP, and the LECs.
21. CPSD alleges that all of the 736,692 transactions were invalid and unlawful and any monies not already refunded (approximately \$5.7 million) should be refunded to customers.
22. Approximately \$5.1 million of the \$8.1 million in OSP billings was collected by Integretel, OSP's billing aggregator from approximately June 1, 2007 to October 8, 2008.
23. Integretel filed for Chapter 11 bankruptcy on or about September 16, 2007.
24. Integretel's Liquidating Trustee holds approximately \$1.2 million in reserves that it collected on behalf of OSP. Integretel claims that it does not have the ability to determine which part of these billings/revenues in reserves are associated with California.
25. On or about June 3, 2009, TBR terminated its billing and collection agreement with OSP for fraudulent billing activity.

26. Approximately \$3 million of the \$8.1 million in OSP California billings were collected by TBR.
27. TBR currently holds approximately \$1.1 million in reserves that it collected on behalf of OSP. TBR has claimed that approximately 30% of the reserves represent California billings, but has not provided any supporting documentation of such claims (i.e., the customer billing records) to CPSD or OSP.
28. The pending class action settlement in Moore et. al v. Verizon et al, Case No. 09-CV-1823 SBA (United States District Court for the Northern District of California) may impact any refunds due to California consumers as part of this proceeding.
29. The pending class action and any potential settlement reached in Nwabueze et. al v. AT&T et al, Case No. 09-CV-1529 SI (United States District Court for the Northern District of California) may impact any refunds due to California consumers as part of this proceeding.

IV. SETTLEMENT OF DISPUTED CLAIMS

30. The Parties, as defined as the signatories to this Agreement, enter into this Agreement pursuant to a compromise and settlement of disputed claims set forth in the OII. Respondents enter into this Agreement of their own volition and do not admit any issue of law or fact alleged in the OII, other than those admissions made herein. The Parties waive the right to appeal this Agreement both as to form and content.
31. By voluntarily entering into this Agreement, Respondents deny engaging in unfair, fraudulent or unlawful business practices. Without admitting fault, Vogel recognizes that erroneous charges may have been billed to California consumers on behalf of OSP.¹ Respondents enter into this Agreement to avoid the expense, delay, uncertainty, and burden of litigation.

¹ This practice is known in the industry as “cramming”.

32. It is understood and agreed that this Agreement involves a compromise of disputed claims brought by the Commission against Vogel individually and OSP. Neither this Agreement nor any payment of a sum of money in connection herewith shall constitute or be deemed or construed as an admission of liability, or guilt, on the part of any party mentioned in this Agreement.

33. In exchange for a full and complete release of all claims against Vogel, an individual, and OSP, the parties agree to the following terms:

V. TERMS OF AGREEMENT

34. Vogel agrees to personally pay \$100,000 for erroneous billing of California consumers for collect call charges that CPSD alleges were neither authorized nor received during the period of June 1, 2007 through June 3, 2009. An initial payment of \$20,000 is due and payable within 90 days after the Commission issues a decision adopting this settlement agreement. Eight additional monthly payments in the amount of \$10,000 are due and payable beginning 30 days after the initial payment. Payment shall be in the form of a cashier's check made payable to the California Public Utilities Commission. The payment described herein is an agreed amount to compensate for the pecuniary loss alleged in the OII.

35. Payment pursuant to this Agreement shall be delivered to the following address:

California Public Utilities Commission
Fiscal Office
505 Van Ness Ave.
San Francisco, California 94102-3214

36. OSP agrees to disgorge all profits for collect call charges that California consumers alleged were neither authorized nor received during the period June 1, 2007 through June 3, 2009.

37. OSP agrees to make full reparation to California consumers for \$5,700,000 (\$8.1 million billed less \$2.4 million already refunded to California

- consumers) billed to consumers for collect call charges that were alleged to be neither authorized nor received during the period of June 1, 2007 through June 3, 2009. Reparations will be made by OSP through the issuance of refunds to California consumers and will be completed within six (6) months after the Commission issues a decision adopting a refund methodology.
38. The parties acknowledge that the Commission will determine the appropriate method for issuing refunds to California consumers at a later time in this proceeding.
 39. OSP agrees that it will fully cooperate with all necessary parties involved in effectuating the refunds to California consumers.
 40. Respondents OSP and Vogel hereby release, remise, and forever relinquish any and all interest in any and all money, funds, or revenues collected on behalf of OSP by Integretel and TBR.
 41. OSP further stipulates that all such funds referenced in Paragraph 37 above include the amounts held in reserve by Integretel of \$1.2 million and TBR of \$1.1 million and should be remitted back to California consumers as part of OSP's agreement to make full reparation to California consumers. The parties acknowledge that the Commission will determine the appropriate method for issuing refunds held by Integretel and TBR to California consumers at a later time in this proceeding.
 42. Respondents OSP and Vogel and CPSD (hereinafter the "parties") acknowledge that some California consumers that were allegedly wrongfully or erroneously charged for OSP's services may receive refunds from Verizon for those charges as part of the global settlement reached in Moore et. al v. Verizon et al, Case No. 09-CV-1823 SBA (United States District Court for the Northern District of California). OSP may reduce the \$5,700,000 reparations amount it owes by the amount of refunds issued to California consumers by Verizon for OSP's charges as part of the global settlement.
 43. Respondents OSP and Vogel and CPSD acknowledge that some California consumers that were allegedly wrongfully or erroneously charged for OSP's

services may receive refunds from AT&T for those charges as part of a potential global settlement in *Nwabueze et. al v. AT&T et al*, Case No. 09-CV-1529 SI (United States District Court for the Northern District of California). OSP may reduce the \$5,700,000 reparations amount it owes by the amount of refunds issued to California consumers by AT&T for OSP's charges, if the parties in *Nwabueze et. al. v. AT&T et al.* reach and the Court adopts a global settlement similar to the one in *Moore et. al v. Verizon et al*, Case No. 09-CV-1823 SBA .

44. OSP agrees to pay a penalty of \$2,785,400 to the State of California General Fund for billing California consumers for collect call charges that were neither authorized nor received during the period of June 1, 2007 through June 3, 2009. Payments shall be in the form of a cashier's check made payable to the California Public Utilities Commission. An initial payment of \$130,400 is due and payable within 90 days after the Commission issues a decision adopting this settlement agreement. Fifty-nine (59) additional monthly payments in the amount of \$45,000 are due and payable beginning 30 days after the initial payment.
45. Respondents agree not to conduct any telecommunications business in the state of California for a period of twenty-five (25) years from the date the Commission approves this Agreement, including but not limited to the submission of any charges, directly or indirectly, to be billed to California consumers through a telephone bill.

VII. DISMISSAL AND SETTLEMENT

46. Approvals: After signing this Agreement, including prior to final approval from the Commission, the Parties shall actively support prompt approval of the Agreement including briefing, comments on the proposed decision, written and oral testimony, if necessary, appearances, and any other means as may be needed to obtain the necessary approval of the Commission. The Parties agree that upon signature of this Agreement that they shall be bound in regards to Paragraph 51 ("Entire Agreement") contained herein.

47. Compromise: The Parties agree that this Agreement represents a compromise.
48. Scope and Effect of Agreement: This Agreement represents a full and final resolution of the issues set forth in the OII, and the matters giving rise thereto, including, but not limited to, all potential claims, penalties, enforcement actions, or investigations.
49. Other Proceedings: The Parties agree that neither the Joint Statement of the Case nor anything contained in this Agreement constitutes a binding admission or concession in any other proceeding. The Parties have entered into this Agreement to effect a compromise and settlement of the contested matters pending before the Commission.

VII. GENERAL TERMS

50. Severability. No individual term of this Agreement is assented to by any Party except in consideration of the Parties' assent to all other terms. Thus, the Agreement is indivisible and each part is interdependent on each and all other parts. Any party may withdraw from this Agreement if the Commission modifies, deletes from, or adds to the disposition of the matters stipulated herein, subject to the good faith negotiations set forth in Paragraph 46.
51. Entire Agreement. This Agreement contains the entire Agreement and understanding concerning the subject matter hereof and supersedes and replaces all prior negotiations, proposed agreements, whether written or oral, express or implied, of any type whatsoever. No change, addition, waiver, amendment, or modification of any of the terms or conditions hereof shall be valid or binding on either Party unless it is memorialized in writing and signed by **all Parties**.
52. Authority. The undersigned representatives of the respective Parties hereby acknowledge that they are empowered and authorized by the Commission, in the case of CPSD or corporate entity, in the case of OSP, to execute this

Settlement Agreement and to make this Settlement Agreement binding on behalf of the Party they represent.

53. Successor and Assigns. This Agreement and all covenants set forth herein shall be binding upon and shall insure to the benefit of the respective Parties hereto, their successors, heirs, assigns, partners, representatives, executors, administrators, subsidiary companies, divisions, units, agents, attorneys, officers, and directors.
54. Interpretation. The Parties acknowledge and agree that each Party was represented by independent counsel with respect to the negotiation, preparation, and execution of this Agreement. In the event of an ambiguity in or dispute regarding the interpretation of this Agreement, such interpretation shall not be resolved by any rule for interpretation against the Party who causes the uncertainty to exist or against the draftsman.
55. Section Headings. The section headings contained in this Settlement Agreement are solely for the purpose of references, are not part of the agreement of the Parties, and shall not in any way affect the meaning of interpretation of this Settlement Agreement.
56. Further Documents. Each party shall execute, acknowledge, and deliver such other documents and instruments as are reasonably necessary to carry out the intents and purposes of this Agreement.
57. Any notice, report, request, or statement provided for in this Agreement shall be deemed sufficiently given when personally delivered, or sent by overnight delivery (e.g., Federal Express) or sent by certified or registered mail addressed to the Party for whom intended to the addresses set forth below.

If Addressed To

OSP or John Vogel

Send To


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2424 S.E. Bristol Street, Suite 300
Newport Beach, CA 92660-0764
(949) 852-1800
cspagnola@cwlawyers.com

Consumer Protection & Safety Division

Hien Vo Winter
Staff Counsel
Public Utilities Commission
320 West Fourth St., Ste 500
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**CALIFORNIA PUBLIC UTILITIES COMMISSION CONSUMER
PROTECTION AND SAFETY DIVISION**

DATED: 11.30.12

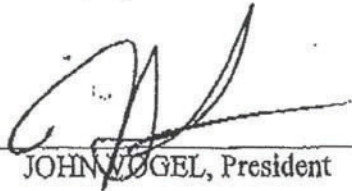
BY: 
BRIGADIER GENERAL (CA)
EMORY J. HAGAN, III
Director, CPSD

DATED: 1/7/13

BY: 
HIEN VO WINTER
Staff Counsel

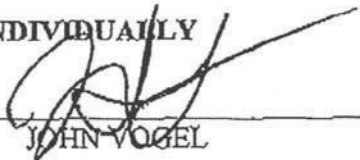
OSP COMMUNICATIONS, LLC

DATED: 11/26/12

BY: 
JOHN VOGEL, President

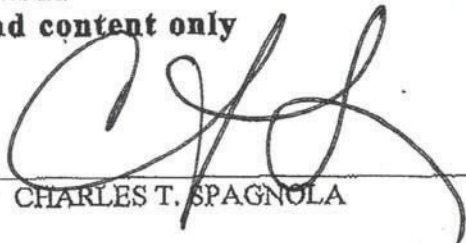
JOHN VOGEL, INDIVIDUALLY

DATED: 11/26/12

BY: 
JOHN VOGEL

**CUMMINS & WHITE, LLP
ATTORNEYS FOR RESPONDENTS
As to form and content only**

DATED: 11/29/12

BY: 
CHARLES T. SPAGNOLA

(END OF ATTACHMENT A)