



CALIFORNIA PUBLIC UTILITIES COMMISSION

CONSUMER PROTECTION & SAFETY DIVISION

INVESTIGATIVE REPORT

ON

OSP COMMUNICATIONS, LLC

(PUBLIC VERSION)

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**SAN FRANCISCO
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I. SUMMARY

The Utility Enforcement Branch (UEB or “Staff”) of the California Public Utilities Commission’s (Commission) Consumer Protection and Safety Division (CPSD) initiated in October 2009 an investigation into the operations and practices of OSP Communications, LLC (OSP) in response to the significant number of cramming complaints reported by OSP’s billing aggregator.¹ Cramming is referred to as the placement of unauthorized charges on a consumer’s telephone bill. Results of Staff’s investigation support the following conclusions:

1. OSP crammed more than 250,000² California consumers and billed them over \$8 million³ for collect calls they neither received nor authorized in violation of Public Utilities (P.U.) Code §2890(a).

2. None of OSP’s billing transactions was authorized or valid.

- Staff randomly selected a sample of 384 “records,” from OSP, representing a 95% confidence level, and asked AT&T (293 records) and Verizon (91 records) to validate them. Neither AT&T nor Verizon could locate matching call records to validate OSP’s “records.”⁴ In short, they could not verify that the calls occurred.
- OSP’s billing aggregator, The Billing Resource (TBR) found, through its own testing of a sample of “records” OSP submitted, that OSP submitted fictitious call detail records for billing. Thus, TBR terminated billing for OSP. As a result of TBR’s finding and

¹ The billing aggregators report cramming allegations by consumers in compliance with P.U. Code Section 2889.9(d).

² See discussion below in Section IV.A., concerning OSP’s Exchange Message Interface (EMI) call records.

³ See discussion below in Section IV.C., concerning OSP’s revenues.

⁴ See discussion below in Section IV.A.1., and 2 concerning the verification of call records conducted by AT&T and Verizon.

in light of CPSD's ongoing investigation, TBR currently holds approximately \$1.2 million in revenues collected on OSP's billings.⁵

- Consumers who filed complaints with the Consumer Affairs Branch (CAB) and Federal Trade Commission (FTC) and who posted complaints on the internet claim that they neither received nor authorized the collect calls OSP billed them.⁶
- OSP's extraordinarily excessive refund rates of 53% in 2009 and approximately 35% during its entire collect call operations suggest widespread fraudulent billing transactions, especially given that its billing agent TBR considers a 4% - 6% refund rate an acceptable range for collect call services. Despite OSP's refunds to California consumers of approximately \$2.9 million, OSP still received about \$5 million (approximately 65% of billed revenue) of potentially ill-gotten monies that should be returned to California consumers whom OSP apparently crammed.⁷
- After holding key positions at another telecommunications company (Link Systems, Inc.) suspected of similar collect call cramming violations as OSP, OSP's apparent owner, John Vogel, continued the collect call cramming scheme by creating OSP and utilizing different billing aggregators.⁸
- OSP failed to fully comply with Staff data requests to provide a legible contract that details the precise services that its underlying carrier EKC Telecom, Inc. (EKC) purportedly provided OSP.⁹

⁵ See discussion below in Section V., concerning Nelson Gross' (TBR's Managing Director) Declaration dated January 24, 2011 filed with the San Diego County Superior Court of the State of California.

⁶ See discussion below in Section IV.B., concerning the issue or concern raised by complainants.

⁷ See discussion below in Section IV.C., concerning OSP's excessively high rate of refunds.

⁸ See discussion below in Section IV.D., concerning John Vogel and Link Systems.

⁹ See discussion below in Section IV.E., concerning OSP and EKC.

3. OSP may have operated prepaid calling card services without Commission authority.

4. OSP failed to remit regulatory fees to the Commission for its operations as a prepaid calling card service provider.

CPSD requests that the Commission open an Order Instituting Investigation (OII) into OSP's actions. If the Commission finds that OSP violated any laws, rules or regulations of this State as described in this report, the Commission should impose penalties against OSP and its apparent owner, John Vogel. Staff is extremely concerned by the findings detailed in this report and strongly questions the integrity and fitness of John Vogel, OSP's sole officer and employee. Staff doubts whether Mr. Vogel should be allowed to operate a telecommunications company or place charges on telephone bills in this State. The Commission should also consider whether Mr. Vogel should be held personally liable because he had the power to control and participated directly in the alleged cramming of over 250,000 California consumers. CPSD asks that the Commission consider Mr. Vogel's integrity and fitness and whether the Commission should also impose sanctions upon Mr. Vogel to protect California consumers.

II. COMPANY BACKGROUND

OSP is a Nevada Domestic Limited Liability Company with its principal place of business listed at 1100 S. 10th Street, Las Vegas, Nevada.¹⁰ The records of the Nevada Secretary of State indicate John G. Vogel is the sole officer and managing member of OSP. In response to Staff's inquiry, Mr. Vogel confirmed his role as the Managing Member of OSP.¹¹ In his e-mail response dated October 15, 2009, Mr. Vogel stated, "I, John Vogel, am and was the only member of OSP Communications, LLC."¹²

¹⁰ Attachment 1 (Printout of information from the State of Nevada website: <https://nvsos.gov>).

¹¹ Attachment 2 (OSP Response, received March 8, 2011, to CPSD Data Request No. 4 dated January 11, 2011).

¹² Attachment 3 (OSP Response dated October 15, 2009 to CPSD Data Request No. 1.0 dated October 12, 2009).

A. OSP

1. OSP Provides Collect Call and Prepaid Phonecard Services

Based on the information that Staff received from OSP and its current billing aggregator (TBR), OSP provides operator collect call and prepaid phonecard services. According to Mr. Vogel, OSP provides “collect call servicing” initiated on July 1, 2007.¹³ When Staff questioned the meaning of the acronym “OSP,” Mr. Vogel stated it stood for “Operator Service Provider.”¹⁴ TBR provided a clearer description and stated, “OSP Communications is an operator service provider for collect calls and also offers calling card service.”¹⁵ TBR, however, could not provide further details regarding OSP’s calling card services except to say that OSP had provided the above description of OSP’s services to TBR.¹⁶

In response to Staff’s further request for a clearer description of its target customers,¹⁷ Mr. Vogel indicated OSP targeted prepaid calling card customers and that its service provided convenience to the prepaid card customers because they are allowed another calling option once their prepaid card minutes expire.¹⁸

Mr. Vogel stated:

Collect call option was printed on the back of the pre-paid calling cards, where customers were told if they run out of time they could use a toll free number to make calls. Details included toll free number, costs per minute, and customer service number if questions.¹⁹

¹³ *Id.*

¹⁴ Attachment 2 (OSP Response, received March 8, 2011, to CPSD Data Request No. 4 dated January 11, 2011).

¹⁵ Attachment 4C (Copies of TBR letters to CPUC Consumer Affairs Branch). Attachments with “C” after the attachment number indicates that the attachment contains confidential material.

¹⁶ Attachment 5C (TBR e-mail Response dated April 1, 2011).

¹⁷ Attachment 2 (CPSD Data Request No. 4 dated January 11, 2011).

¹⁸ *Ibid.* (OSP Response received on March 8, 2011 by CPSD).

¹⁹ *Id.*

Based on OSP's representations to TBR and Mr. Vogel's statement above, it appears OSP offered prepaid calling card services in addition to its collect call service.

According to Mr. Vogel, a majority of its customers used OSP's services from pay phones and their residences, and that OSP's charges included the following: \$2.50 operator charge, \$1.00 surcharge, \$1.05 per minute, and 11% Universal Service Fund fee.²⁰

2. OSP's Marketing Strategy is Inherently Fraudulent

As to how customers could access OSP's collect call services, Mr. Vogel stated:

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.²¹

Based on Mr. Vogel's explanation above, it appears that there was only one option, number one ("1"), for a caller to press to either accept or deny the call. Ostensibly, because of the way OSP set up the prompt, the caller is billed even if the caller denied the collect call. This platform is inherently fraudulent and therefore, likely resulted in millions of dollars in unauthorized charges.

²⁰ *Id.*

²¹ *Id.*

3. OSP Is Purportedly No Longer In Operation

Mr. Vogel informed Staff that OSP has been closed since the first quarter of 2009,²² and that it has ceased all business operations since May/June 2009.²³ Staff has received information from AT&T that it stopped receiving billing data from OSP's billing aggregator on or about April 4, 2009.²⁴ In addition, Verizon stated that it last processed billing charges on behalf of OSP in April 2009.²⁵ AT&T's and Verizon's assertions are consistent with the information provided by OSP's billing aggregator, which shows no billed revenues on behalf of OSP subsequent to April 2009 (see Table 4 below).

B. ENTITIES ASSOCIATED WITH OSP

1. Billing Aggregators: The Billing Resource, LLC (TBR) and The Billing Resource dba Integretel (Integretel)

TBR is a Delaware limited liability company with its principal place of business located at 302 Enzo Drive, Suite 162, San Jose, California 95138. TBR is a billing aggregator (or a billing agent)²⁶ and provides billing services to OSP through a process commonly referred to as third-party billing by local exchange carriers (LECs).²⁷ In this

²² Attachment 3 (OSP Response dated Oct 15, 2009 to CPSD Data Request No. 1.0 dated October 12, 2009). Staff, however, found information on the website of the Nevada Secretary of State that states OSP remains an active company. (See Attachment 1 for a printout of information from the State of Nevada website: <https://nvsos.gov>).

²³ Attachment 6 (OSP e-mail Response dated February 2, 2011).

²⁴ Attachment 7C (AT&T Response dated June 17, 2010).

²⁵ Attachment 8C (Verizon Response dated March 10, 2011).

²⁶ A billing agent or a billing aggregator is any entity that provides billing services to service providers directly or indirectly through a billing telephone company. A billing telephone company is a telephone corporation pursuant to Section 234 that bills a subscriber for products and services. (Source: Decision 10-10-034, Attachment A, *Revised General Order 168, Part 4*, Rule 2.1, at p.1.).

²⁷ As an alternative to in-house billing, certain communications providers (or third party vendors) may choose to have the local exchange carrier (LEC) bill and collect for them for a fee. Typically, this process involves four entities: (1) LECs, (2) billing aggregators (also called "clearinghouses"), (3) third party vendors (such as OSP), and (4) customers. For a fee, the LECs allow preapproved third party vendors to place the charges for their products and services in the LECs' telephone bills. Although, these third party vendors' charges are generally listed separately from the LEC charges on the telephone bills, the "total amount due" presented to customers includes third party vendor charges. In this process, the billing

(Footnote continued on next page)

process, TBR contracts with LECs (or local telephone companies) to include OSP's collect call charges as a line item in the telephone bills that LECs send to their customers. After receipt of customers' payments, the LECs would pass to TBR the OSP related payments. TBR in turn would pass the payments, less its fees, to OSP. (See also Section IV. for additional discussion on third party billing.)

TBR took over Integretel as OSP's billing aggregator on or about October 9, 2008, when Technologies Solution purchased the operating assets of Integretel from Integretel's bankruptcy estate (see discussion below) and then transferred the assets to a newly formed separate entity it named The Billing Resource (TBR). According to TBR, it kept the name TBR for customers' and parties' convenience. TBR terminated its contract with OSP effective June 3, 2009.²⁸ (See discussion in Section V below regarding TBR's OSP investigations and current lawsuit over revenues collected on OSP billings held by TBR.)

Integretel is a California corporation with its principal place of business located at 5883 Rue Ferrari, San Jose, California 95138. Integretel also acted as OSP's billing aggregator from approximately June 1, 2007 to October 8, 2008.²⁹ According to TBR, on or about September 16, 2007, Integretel filed a voluntary petition for Chapter 11, Title 11 of the United States Code in the United States Bankruptcy Court for the Northern Division of California, San Jose Division (Case No. 07-52890-ASW). According to a declaration in a case discussed in Section V below, Integretel may also possess a significant amount of revenues it collected on OSP's behalf.

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aggregators act as "middle men" between the third party vendors and LECs and contract directly with these two parties to facilitate the placement of the third party vendors' charges onto the telephone bills sent by LECs to their customers. The LECs receive the customers' "total payments" which include the third party vendors' charges. After deducting their fees, the LECs pass the payments for the third party vendors' products or services to the billing aggregators, who in turn pass the payments to the third party vendors. Like the LECs, the billing aggregators would pass along the payments after they have deducted their service fees. (Source: FTC v INC.21.COM; <http://ftc.gov/os/caselist/0923171/100930inorder.pdf>)

²⁸ Attachment 9C (TBR Response dated May 10, 2010 to CPSD's Data Request No. TBR TEL277-001 dated April 1, 2010).

²⁹ *Id.* The contract between Integretel and OSP indicates a June 1, 2007 initial contract date.

2. Underlying Carrier Purportedly Providing Dial Tone: EKC Telecom, Inc. (EKC)

EKC was a California corporation incorporated on July 27, 2005.³⁰ The California Secretary of State's website indicates EKC's current status as "suspended."³¹ The company was located at 3580 Wilshire Boulevard, Suite 1622, Los Angeles, CA 90010. Jin Ra was listed as EKC's president. Staff found no evidence that the Commission ever granted operating authority to EKC.

In response to Staff's data request, Mr. Vogel indicated EKC acted as its underlying carrier and submitted a copy of their contract.³² The contract, however, was mostly illegible³³ and Staff could not verify the services EKC provided to OSP. Staff thrice (on January 11, 2011, April 14, 2011 and May 6, 2011)³⁴ requested a legible copy, but Mr. Vogel could or did not produce one.³⁵ In reply to Staff's April 14, 2011 e-mail inquiry as to whether EKC would have a legible copy of the contract,³⁶ Mr. Vogel indicated EKC closed in 2009. Mr. Vogel also stated that the e-mail he sent to EKC's president came back undelivered and EKC's numbers have been disconnected.³⁷

In another e-mail request sent on May 6, 2011,³⁸ Staff asked OSP to submit a list and an explanation of the specific services that EKC provides or provided OSP in accordance with the EKC/OSP contract, including the records and reports that EKC

³⁰ Attachment 12C (Printout of results of LexisNexis search about EKC Telecom, Inc.).

³¹ Attachment 13 (California Secretary of State document).

³² Attachment 10 (OSP Response to CPSD Data Request No. TEL-277-003 dated September 23, 2010).

³³ *Ibid.* (See Contract between OSP and EKC, Inc.).

³⁴ Attachment 2 (See CPSD Data Request No. 4 dated January 11, 2011); Attachment 11 (See CPSD , April 14, 2011 and May 6, 2011).

³⁵ Attachment 2 (OSP Response, received on March 8, 2011, to CPSD Data Request No. 4 dated January 11, 2011); OSP e-mail dated April 14, 2011 and April 15, 2011 to CPSP e-mail request dated April 14, 2011) On May 6, 2011, CPSD sent another follow up e-mail As of this writing, OSP has not provided a legible copy of the contract between OSP and EKC.

³⁶ Attachment 11 (Staff e-mail dated April 14, 2011).

³⁷ *Ibid.* (See OSP e-mail dated April 14, 2011).

³⁸ *Ibid.* (See CPSD e-mail dated May 6, 2011).

provided OSP in the course of their contract. To date, Mr. Vogel has not replied to this request.

**C. OSP'S SOLE OFFICER JOHN G. VOGEL IS ASSOCIATED WITH
NUMEROUS TELECOMMUNICATIONS COMPANIES, ONE OF
WHICH WAS THE SUBJECT OF NUMEROUS CRAMMING
COMPLAINTS FOR UNAUTHORIZED COLLECT CALLS**

In the course of its investigation, Staff found Mr. Vogel, OSP's sole officer and managing member, held various positions and responsibilities in numerous telecommunications companies. For example, Mr. Vogel acted as the president, vice president, CFO and director of Link Systems, Inc. (Link),³⁹ a company that appeared to have also provided collect call services like OSP, based on the CAB complaints that Staff reviewed.⁴⁰ Additionally, CPSD investigated Link beginning September 2006 because of tens of thousands of cramming allegations reported by its billing aggregator, ILD, Telecommunications, Inc. (ILD). Subsequently, ILD suspended its billing for Link in January 2007 and the 2007 total complaints decreased considerably. (AT&T also informed CPSD it had stopped receiving Link billing from ILD in January 2007.)⁴¹ CPSD monitored the billing aggregator reports for several months to ensure Link was no longer billing California consumers, and then closed its investigation in June 2007 without further action.

Staff also noted Mr. Vogel was associated with Global Access LD, LLC (Global), which was granted authority by the Commission through Decision 04-02-043⁴² to operate as a switchless reseller of inter-Local Access and Transport Area (LATA) and intra-LATA telecommunications services (to the extent authorized by Decision 94-09-065). However, Global failed to comply with Commission filing requirements and

³⁹ Attachment 26C (AT&T e-mail Response dated March 4, 2011).

⁴⁰ Attachment 15 (Complaints against Link Systems).

⁴¹ Attachment 26C (AT&T e-mail Response dated March 4, 2011).

⁴² Attachment 16 (Copy of Decision 04-02-043).

consequently the Commission revoked its operating authority through Resolution T-17228,⁴³ dated November 20, 2009.

Mr. Vogel also served as the manager of True LD, LLC (True), which is a prepaid calling card service provider that registered with the Utah Department of Commerce⁴⁴ and Arizona Corporation Commission.⁴⁵ True and STi Prepaid, LLC filed an application with the Federal Communications Commission to transfer True's assets related to the provision of prepaid calling card services to STi Prepaid.⁴⁶ This demonstrates Mr. Vogel's experience with prepaid calling cards.

Table 1 below⁴⁷ list the telecommunications companies associated with Mr. Vogel that Staff has been able to find thus far. Through associations with these entities, Staff believes Mr. Vogel acquired knowledge and familiarity with the operations and practices of the telecommunications industry, including third party billing by local exchange carriers. As explained in greater detail below (see Section IV), Staff believes OSP and Mr. Vogel took advantage of the third party billing process, which the Court in *FTC v. Inc21.com Corp*, *supra*, described as "fraud friendly."⁴⁸

⁴³ Attachment 17 (Copy of Resolution T-17228).

⁴⁴ Attachment 18 (Printout of information from Utah Department of Commerce).

⁴⁵ Attachment 19 (Printout of information from Arizona Corporation Commission).

⁴⁶ Attachment 20 (Printout of Public Notice from the Federal Communications Commission).

⁴⁷ Attachment 14C (Printout of the results of LexisNexis search).

⁴⁸ *FTC v. Inc21.com Corp.*, *supra*, 745 F. Supp. 2d 975, 982 (N.D. Cal. 2010).

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

Source: Lexis Nexis

III. CRAMMING COMPLAINTS AGAINST OSP

A. CAB AND TBR RECORDS SHOW SUBSTANTIAL NUMBERS OF COMPLAINTS FROM CALIFORNIA CONSUMERS AGAINST OSP

Staff reviewed OSP's complaint data from the Commission's CAB database⁴⁹ and found a total of 107 cramming complaints against OSP for the period 2007 through 2009. Additionally Staff reviewed the quarterly cramming complaint reports that Integretel and TBR submitted to CPSD in compliance with P.U. Code §2889.9(d).⁵⁰ Table 2 below

⁴⁹ Attachment 21 (Complaints Data from CAB database).

⁵⁰ P.U. Code §2889.9(d) states: "The Commission shall establish rules that require each billing telephone company, billing agent, and ... to provide the commission with reports of complaints made by subscribers regarding the products or services that are charged on their telephone bills as a result of billing and collection services that the billing telephone company provides to third parties, including affiliates of the billing telephone company."

illustrates an **823% increase** in complaints TBR reported in 2009 compared to 2008 (from 1,158 to 10,691), which resulted in millions of dollars in refunds to consumers (see Table 4).

Table 2
OSP Communications Complaints
CAB and TBR Data: 2007-2009

	CA B	Integretel	CA B	Integretel/TB R	CA B	TBR
Month	2007	2007	2008	2008	2009	2009
January			9	339	7	92
February			3	57	4	62
March			3	63	9	382
April			1	52	12	2,213
May			2	46	3	6,475
June			5	107	2	1,197
July			5	146	1	173
August	3	156	7	122	2	45
September	2	277	3	28	0	26
October	1	247	5	93	0	11
November	3	96	5	61	0	7
December	6	125	4	44	0	8
Sub-Total	15	901	52	1,158	40	10,691
Total					107	12,750

Sources: CAB Database and TBR Quarterly Reports

(In reading Table 2, please note that from August 2007 – October 8, 2008 Integretel acted as OSP's billing aggregator; from October 9 – December 2009, TBR acted as OSP's billing aggregator.)

After reviewing the details of the complaints made by consumers to CAB, Staff noted consumers consistently complained of receiving a charge for a collect call that the consumer neither received nor authorized. Below are excerpts of California consumers' complaints (transcribed here as found in the CAB database), which indicate collect call charges that ranged from \$7.38 to \$20.20.

CAB Complaint Number 11514: *unauthorized charge for collect call from OSP Communications. AT&T can't do anything about it because regulation requires them to put third party billings on their bill, but can't do anything to dispute the charge. Change regulation so I can deal with utility company directly for charges on my bill instead of calling third party that initiated fraudulent charge who may or may not actually process and reverse the charge would be nice.*⁵¹

CAB Complaint Number 15607: *Fraudulent third-party service billing on home landline telephone. AT&T is the carrier. Third-party biller OSP Communications billed \$9.71 plus tax = \$10.58 for a Collect Day Operator-Dialed call from Dodge City KS at 4:45 p.m. December 8, 2008. This charge appears on my December 25, 2008 bill from AT&T. It is not possible that I received this call - I was at work at that time on that date, not at home....*⁵²

CAB Complaint Number 14160: *AT&T phone company has billed me twice in the past six months on behalf of OSP Communications for collect calls I never accepted/received. It seems OSP is adding fraudulent charges to my phone bill in hopes of them going unnoticed. AT&T encouraged me to report the company for fraud. OSP immediately knew why I was calling and removed the charge the first time. In the second instance, I left a message on their machine regarding removing the charge. I would like to know that I am not going to continue to be susceptible to OSP adding fake charges to my account.*⁵³

CAB Complaint Number 23626: *OSP Communications billed me for a collect call on a phone line only connected to my DVR. They said there was nothing they could do but give me the 800 # for the do not call line. When I asked "Debbie" on 2/16/09 if I could block the calls she said no. Then I asked what about blocking calls from jail? (I have volunteered at a jail for the past 14 years and I know collect calls can be blocked.) Debbie said that I could block would have to block ALL collect calls. I said that was fine, since the line was only attached to my DVR. This Debbie isn't stupid, just has been told NOT to give all the options to*

⁵¹ Attachment 21 (Complaints from CAB database).

⁵² *Id.*

⁵³ *Id.*

*those who call. That is wrong. Have CPUC instruct AT&T to discuss all options available when a fraudulent call is made, including blocking ALL collect calls. Attached you will find numerous complaints against the firm, there are other firms. What can CPUC do about this? What can I do about this?*⁵⁴

CAB Complaint Number 33858:

*OSP communications has put a fraudulent charge on my AT&T monthly bill. They had a \$ 20.20 charge for a collect call, from a line in my office that only has a fax machine with no handset plugged into it. the phone jack is behind a 1000 lb book case, so I know no one plugged a phone into it. That's not the most troubling part, when i called, the woman on the phone at OSP, didn't even ask why I was calling, she just asked my phone number, then said that she would credit the amount. Sound like a scam? You call the "billing questions" line and she supposedly issues a credit, before you even ask for one. Then i looked up OSP Communications online, it seems they have been scamming people all over the country. all (sic)I could find about them online, was scam stories, no website. I would like to see them waterbaorded (sic) if that is within your jurisdiction.*⁵⁵

CAB Complaint Number 29987: AT&T IS MY LOCAL PHONE COMPANY WHO BILLS ME FOR MY TELEPHONE SERVICE. HOWEVER, THERE IS A 3RD PARTY COMPANY CALLED OSP COMMUNICATIONS WHICH HAS FRAUDULENTLY BILLED ME \$14.07 FOR AN 8 MINUTE CALL, WHICH I DID NOT INITIATE. OSP COMMUNICATIONS IS DEFRAUDING PEOPLE AND AT&T IS ASSISTING THEM. AT&T REPRESENTATIVE DID NOT TAKE MY COMPLAIN SERIOUSLY AND DIRECTED ME TO CALL OSP COMMUNICATIONS. I HAVE ATTEMPTED TO CALLED OSP COMMUNICATIONS AND HAVE BEEN ON HOLD FOR LENGTHY PERIOD OF TIME WITH NO ONE WHO WOULD SPEAK TO ME. I AM GETTING THE RUN-AROUND. INVESTIGATE OSP COMMUNICATIONS. THIS COMPANY IS DEFRAUDING CUSTOMERS. I DID A SEARCH ON THE INTERNET ABOUT THIS COMPANY AND THERE ARE MANY COMPLAINTS AGAINST THIS COMPANY FROM CONSUMERS WHO EXPERIENCED THE SAME THING I DID. THIS IS "SERVICE CRAMMING" FRAUD. AT&T SHOULD ALSO BE INVESTIGATED FOR ABETTING AND ENABLING OSP COMMUNICATIONS IN COMMITTING CONSUMER FRAUD.⁵⁶

CAB Complaint Number 42688: I need help in having a charge removed from my phone bill. I am enclosing a copy of my AT&T phone bill showing

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ Id.

a charge from a third party-OSP Communications in the amount of \$7.38. To begin with this is a fax number with no phone....⁵⁷

CAB Complaint Number 39568: *Allowing OSP COMMUNICATIONS" to make collect random phone calls from my landline. The phone call was supposedly made at 3:04pm on Tuesday April 7. Impossible because I was at work. This company engages in the practice of cramming. AT& T states I have to deal with OSP regarding these charges. But it is impossible to reach a human at so called OSP communications.⁵⁸*

**B. FEDERAL TRADE COMMISSION RECORDS CONTAIN
CONSUMER COMPLAINTS AGAINST OSP FOR UNAUTHORIZED
COLLECT CALL CHARGES**

Staff reviewed the OSP complaint data contained in the FTC Sentinel database for the period October 2007 through June 2009 and noted complaints from 15 California consumers that are similar to the CAB complaint alleging OSP charged them for collect calls that they neither received nor authorized.⁵⁹ The California consumers complained of charges ranging from \$7.00 to \$1,554.00 (a business line).

**C. WEBSITES SHOW CONSUMER COMPLAINTS OF
UNAUTHORIZED COLLECT CALL CHARGES FROM OSP**

Staff searched the internet and found various websites that detailed complaints regarding OSP (see Table 3 below). Similar to the CAB and FTC complainants, these consumers complained of charges for collect calls that they did not authorize.⁶⁰

**Table 3
OSP Communications Website Complaints**

Source	Number of Complaints/Entries / Comments	Duration	State
Ripoff Report (http://www.ripoffreport.com)	25	Jun 2008 - Jun 2009	Various

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Attachment 22C (Printout of Complaint Data from the Federal Trade Commission).

⁶⁰ Attachment 23 (Printout of Complaint Data from the Internet).

800 Notes (OSP #: 877-491-5506) (http://800notes.com)	23	Dec 2007 - May 2009	Unknown
800 Notes (Billing Resource #: 888-296-8079) (http://800notes.com)	10	Oct 2008 – May 2009	Unknown
Complaints Board (http://complaintsboard.com)	11	Oct 2008 – May 2009	Various
Flickr (http://www.flickr.com)	8	(25 months ago = 2009)	Various
Consumerist (http://www.consumerist.com)	1	Feb 2009	Unknown

D. DECLARATIONS FROM COMPLAINANTS SHOW OSP CRAMMED THEM

In view of the complaints Staff found in the CAB and FTC databases and the internet, Staff attempted to contact complainants to verify the complaint details and to obtain copies of their telephone bills. Using the list of complainants from the CAB and FTC databases, Staff was able to interview 13 complainants about their experiences with OSP (11 from CAB and 2 from FTC).⁶¹ Staff also obtained from these complainants declarations attesting that they did not authorize the collect calls OSP charged them. Staff was able to verify, through a review of the customers' telephone bills that except for one complainant, OSP's charges were placed on their bills. The consumers' declarations support Staff's conclusion that OSP placed unauthorized charges on their telephone bills. (See further discussion in Section IV.A.1., regarding the absence of supporting call records for the collect calls charged to these declarants.)

IV. STAFF'S ANALYSIS AND FINDINGS

In its investigation, Staff analyzed 1) the results of AT&T's and Verizon's research to determine whether OSP's billings match their call records; 2) the declaration of OSP's billing aggregator attesting that OSP's call records were fictitious; and 3) OSP's

⁶¹ Attachment 24 (Declarations of Complainants).

revenues and excessive refund amounts (compared to its revenues) issued to California customers.

As discussed in *FTC v. Inc21.com Corp*, *supra*,⁶² third-party billing by local exchange carriers (LECs) is “fraud-friendly” and could lead to deceptive billing of tens of thousands of businesses and consumers via their telephone bills. As mentioned earlier, with Mr. Vogel’s (OSP’s sole officer) knowledge and familiarity with the industry’s operations and practices, Staff suspects he took advantage of the third-party billing system to defraud California consumers. Some consumers may not scrutinize the bills received from their own telephone companies and thereby miss noticing the unauthorized OSP charges. Staff believes that even though OSP made refunds to the consumers who complained, OSP stands to profit from many others who do not detect the unauthorized charges and thus, do not complain about them. As can be seen in Table 4 below, although OSP refunded well over \$2 million, it still received approximately 65% of the over \$8 million it generated in billing revenues.

Based on the analysis detailed below, none of OSP’s collect call charges proved legitimate. Staff believes OSP crammed more than 250,000⁶³ California consumers and unlawfully collected over \$8 million⁶⁴ from California consumers.

**A. THE LACK OF SUPPORTING CALL RECORDS FROM
TELEPHONE COMPANIES CALLS INTO QUESTION THE
EXISTENCE OF OSP’S COLLECT CALLS**

Telecommunications companies utilize a standard format called Exchange Message Interface (EMI)⁶⁵ to exchange messages or information for billing purposes, among other things. Third parties (i.e., OSP) – who would like LECs (i.e., AT&T and

⁶² *FTC v. Inc21.com Corp.*, *supra*, 745 F. Supp. 2d 975, 982 (N.D. Cal. 2010).

⁶³ Attachment 25C (TBR CD Response dated June 15, 2010 to CPSD Data Request No. TEL-277-002 dated May 11, 2010).

⁶⁴ Attachment 9C (TBR Response dated May 10, 2010 to CPSD Data Request No. TEL-277-001 dated April 1, 2010).

⁶⁵ Formerly called Exchange Message Record (EMR). The EMI adheres to certain standards 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>

Verizon) to bill and collect for them – have to use the EMI standard format to provide their customer billing information. Here, for billing purposes, first OSP had to provide the customer billing information (i.e., EMI “records”) to its billing aggregator,⁶⁶ TBR, who generally ensured the required data fields were properly filled in. TBR would then forward the EMI “records” to the appropriate LECs.

Also, for billing purposes, the telecommunications companies’ end office switch⁶⁷ automatically collects customer’s phone call information. These call records are called Automatic Messaging Accounting (AMA) or switch records.

Both EMI and AMA records have numerous data fields that contain, among other things, the following information:⁶⁸

- Connect date and time
- Disconnect time
- Time zone
- Originating country and number
- Terminating country and number
- Dialed number
- Elapsed Minutes
- Called code
- Answer Indicator

A legitimate EMI record should have a matching AMA call record maintained by the LEC terminating the call. Therefore, a reliable way to verify whether OSP’s collect calls in fact occurred is to check whether AT&T and Verizon have AMA call records on OSP’s billings, as their switches would have automatically captured the call information for the collect calls OSP purportedly serviced. As discussed below, both AT&T and Verizon could not locate the accompanying AMA call records for the sample of EMI

⁶⁶ Attachment 37 (OSP Response dated August 15, 2010 to CPSD Data Request OSP TEL-277-002 dated August 13, 2010).

⁶⁷ An end office switch is a telephone central office switch that connects directly to the customer. Most of the call recording and billing are performed in end office switches. (<http://pcmag.com/encyclopedia>).

⁶⁸ Attachment 26C (AT&T e-mail Response dated March 4, 2011).

billing “records” Staff randomly selected. From this finding, Staff infers that none of the EMI “records” for which OSP based its collect call billings was valid.

1. AT&T call records do not support OSP’s collect call charges.

As part of its review process, Staff requested TBR submit all OSP-related EMI “records” that served as TBR’s basis for billing between October 9, 2008 and August 31, 2009.⁶⁹ In response, TBR provided an electronic file containing 252,694 EMI “records” covering the period October 9, 2008 through April 18, 2009.⁷⁰ These EMI “records” represent only TBR’s records, excluding Integretel’s records. (Staff is awaiting reply from TBR regarding Integretel’s EMI “records” for OSP’s billings.)

Staff asked TBR whether each EMI “record” represents one specific consumer. In response to Staff’s inquiry, TBR clarified that more than one call could have been billed to a single California consumer and the total number of records does not necessarily equal to the total number of California consumers billed.⁷¹ Still, Staff believes it is likely OSP billed more than 250,000 California consumers during its 21 months of billing and collection operations. It is because the 252,694 EMI “records” represent only 7 months’ of billing (from October 2008 through April 2009) and it is reasonable to assume that OSP illegally billed other consumers during its earlier 14 months of operations (from August 2007 through September 2008). This is because of the numerous complaints discussed above that resulted from OSP billings during that earlier period. Moreover, the 252,694 EMI “records” represent only 38% of OSP’s over \$8 million total billed revenues, compared to 62% that OSP collected during its earlier 14 months of operations.

From these EMI “records,” Staff randomly selected a sample of 384 records⁷² (which represents a 95% confidence level),⁷³ that Staff initially forwarded to AT&T to

⁶⁹ Attachment 25C (CPSD Data Request No. TEL-277-002 dated May 11, 2011).

⁷⁰ *Ibid.* (TBR Response dated June 15, 2011; TBR provided a CD).

⁷¹ Attachment 5C (TBR e-mail Response dated April 1, 2011).

⁷² Attachment 27 (Printout of 384 EMI records and method employed by Staff to randomly select the sample).

verify the corresponding AMA records. According to AT&T, its analysis of the 384 EMI “records” indicated Verizon would have provided dial tone associated with 91 EMI “records” (in other words, they are EMI “records” related to Verizon customers’ telephone numbers), and AT&T would have provided dial tone (or AT&T’s customers) associated with 293 EMI “records.”⁷⁴ Utilizing a search of switch records (AMA) associated with collect calls based solely on the **date and time of each call** identified in OSP’s EMI “records,” **AT&T was unable to identify switch records (AMA) for the 293 EMI “records” that OSP submitted.**⁷⁵

In response to Staff’s inquiry, using the 252,694 EMI “records,” AT&T reviewed the high volume originating telephone numbers (i.e., top 100)⁷⁶ from its network and again could not locate AMA records for these numbers. In some cases, the telephone line was not in service at the time of the calls.⁷⁷ This result substantiates Staff’s claim that OSP fabricated its call records because there is no way a collect call could be made if the telephone line is not in service.

With regard to the thirteen complainants who provided declarations (see Section III above), Staff requested that AT&T provide their billing statements that contained an OSP charge and the corresponding AMA record for the charge made by OSP. AT&T provided the billing statements for only twelve complainants. AT&T found no billing statements or AMA record for one of the thirteen complainants.⁷⁸ (Complainant has three telephone numbers. AT&T provides service to two of the telephone numbers and Verizon provides service to the 3rd telephone number, which is a wireless line. Staff is

(Footnote continued from previous page)

⁷³ 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. (<http://www.thefreedictionary.com/confidence+level>)

⁷⁴ Attachment 28C (AT&T Response dated September 10, 2010 to CPSD Data Request No.TEL-277-002 dated June 30, 2010).

⁷⁵ *Id.*

⁷⁶ *Ibid.* (See AT&T Response dated September 10, 2010).

⁷⁷ *Id.*

awaiting reply from Verizon.) As to the corresponding AMA records, **AT&T found no switch records (AMA) associated with the OSP charges that appeared on the billing statements of the twelve declarants.** Again, Staff believes this demonstrates that these customers did not receive or authorize the collect call charges.

2. Verizon call records do not support OSP's collect call charges

Staff requested Verizon verify its AMA records for 91 Verizon telephone numbers out of the 384 randomly selected EMI “records.”⁷⁹ According to Verizon, it attempted to locate Verizon-recorded terminating usage data for these calls and it conducted three different sets of matching criteria. For the first search, it attempted to match four attributes, (To number, Date, Time, and From number), and found no matching AMA call records. For the second search, it attempted to match three attributes, (To number, Date, and Time), and found no matching AMA call records. For the third search, it 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 even with time zone adjustment based on the originating point of the call.⁸⁰

In addition, Staff requested Verizon recheck the 91 Verizon telephone numbers using OSP's access numbers (877-487-9455 and 866-697-2198) as the originating numbers, in case these numbers may have been signaled as the originating point rather than the “From Number” from the EMI “records.” According to Verizon, it found no changes from its earlier response.⁸¹ Since the “connect time” in the EMI “records” is based on Pacific Time, Verizon stated that the EMI “records” would match the local switch time in any of its terminating AMA records.⁸² Using a search that attempted to

(Footnote continued from previous page)

⁷⁸ *Id.*

⁷⁹ Attachment 29C (CPSD Data Request No. TEL-277-002 dated September 20, 2010).

⁸⁰ *Ibid.* (Verizon Response dated October 7, 2010).

⁸¹ *Ibid.* (Verizon Response dated October 25, 2010).

⁸² *Id.*

match three attributes, (Date, Time and Terminating Number), **Verizon did not find any match in its records.** From the lack of validating AMA records for any of the sample of OSP's EMI "records," Staff infers that none of AT&T's nor Verizon's customers received (and therefore could not have authorized) the collect calls for which OSP billed them.

3. Approximately all of OSP's billing transactions for collect calls are invalid.

As discussed above, all of the 384 EMI "records" randomly selected from billings submitted by OSP do not have supporting AMA call records from AT&T and Verizon. This suggests with a 95% confidence level that the collect calls did not occur. Thus, extrapolating the sample to the total population, Staff concludes with 95% confidence that OSP fabricated approximately all of the 252,694 EMI "records" used to bill California consumers.

B. COMPLAINANTS CLAIM THEY NEITHER RECEIVED NOR AUTHORIZED OSP'S COLLECT CALLS

As detailed earlier in Section III, consumers claim they did not receive or authorize the collect calls because OSP charged their phone line dedicated to a DVR⁸³ or TIVO,⁸⁴ or a fax machine with no handset plugged into it, or they were at work. Moreover, Staff observed that the CAB/FTC/internet complainants raised only one issue or concern: OSP's collect calls were not received or authorized. Once more, Staff believes this demonstrates OSP fabricated its call records and defrauded consumers.

⁸³ A DVR stands for "Digital Video Recorder." A DVR 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. (Source: http://www.iwebtool.com/what_is_dvr.html)

⁸⁴ TiVo is a digital video recorder developed and marketed by TiVo, Inc. TiVo provides an electronic television programming schedule, whose features include "Season Pass" schedules which record every new episode of a series, and "Wish List" searches which allow the user to find and record shows that match their interests by title, actor, director, category or keyword. (Source: <http://en.wikipedia.org/wiki/TiVo>)

C. OSP EXPERIENCED EXCESSIVELY HIGH REFUND RATES

As part of its investigation, Staff also reviewed the billing revenues and refunds associated with OSP's California billings provided by TBR. The following Table 4 shows that OSP experienced an approximate 30% refund rate from August 2007 to March 2010. Further, adding the \$544,000 in refunds made by the LECs brings the refund rate to approximately 35%, for a total of nearly \$2.9 million in refunds. (See Section V.)

Table 4
OSP Communications
Revenues, Refunds and Refund Rate
((2007-2009)⁸⁵

**

****Source:** The Billing Resource Response dated May 10, 2010.

In 2009 alone, OSP experienced an abnormally high annual refund rate of 53%. With regard to OSP's monthly refund rates – except for the month of August 2007 – it ranged from 14% to 43% (see Table 4 above). According to TBR, operator service providers, such as OSP, should only experience a 4% to 6% refund rate; a refund rate beyond this range raises the suspicion of fraudulent activities.⁸⁶ (See Declaration of Nelson Gross in Section V.)

Based on the discussion above regarding the absence of supporting call records from AT&T and Verizon, OSP's significantly high refund rate, and the discussion below regarding TBR's declaration that its sampling of OSP's collect calls proved fictitious (i.e., fabricated), Staff suspects that none of the over \$8 million in billings OSP generated

⁸⁵ The grand total refund amount of \$** (January, February and March).

** includes \$**

** total refunds in 2010

⁸⁶ Attachment 30 (Declaration of Nelson Gross).

are legitimate because the collect calls apparently never happened. Therefore, the remaining approximate 65% of revenue collected by OSP should be returned to California customers whom OSP appeared to have defrauded.

**D. OSP BEGAN OPERATING A SIMILAR COLLECT CALL SCHEME
SHORTLY AFTER LINK SYSTEMS CEASED OPERATIONS
BECAUSE OF CPSD’S INVESTIGATION.**

As discussed and illustrated in Section II.C. above, Mr. Vogel held key positions as Link’s president, vice president, CFO and director. It appears that he also acted as Link’s sole officer, similar to OSP. In addition, as with OSP, California consumers filed complaints against Link for charging them for collect calls, which they neither received nor authorized.⁸⁷ When CPSD’s investigation led to Link ceasing its operations in 2007, OSP shortly thereafter began providing what appears to be the same collect call service. This time John Vogel utilized different billing agents. CPSD believes that OSP simply took over where Link left off. Approximately a month after OSP started operating, its billing agent began receiving complaints of unauthorized collect call charges. Consumers also began complaining about OSP’s collect call charges to CAB. See Table 2.

**E. OSP FAILED TO PROVIDE A LEGIBLE CONTRACT THAT
DETAILS THE PRECISE SERVICES PERFORMED BY EKC, ITS
SUPPOSED UNDERLYING CARRIER.**

As mentioned earlier (Section II.B.), Mr. Vogel – acting as the sole officer and employee of OSP Communications – indicated that EKC served as OSP’s underlying carrier providing dial tone. Although Mr. Vogel submitted a copy of its contract with EKC in response to Staff’s request, he provided an illegible copy that prevented Staff from confirming its exact relationship with EKC. Furthermore, Staff gave Mr. Vogel several opportunities to produce a legible copy but he failed to provide one.⁸⁸ Therefore,

⁸⁷ Attachment 15 (Complaint Data from CAB about Link Systems).

⁸⁸ Attachment 2 (OSP Response, received on March 8, 2011, to CPSD Data Request No. 4 dated January 11, 2011); Attachment 11 (OSP e-mail response dated April 14, 2011).

Staff suspects EKC never provided any service to OSP and they never had any valid contract. Once again, this confirms Staff's belief that none of the collect calls billed by OSP in fact occurred.

V. OSP'S BILLING AGGREGATOR ATTESTED OSP CALL RECORDS ARE INVALID AND FRAUDULENT AND CONTINUES TO HOLD REVENUES COLLECTED ON OSP BILLINGS IN VIEW OF CPSD'S INVESTIGATION

According to the response provided to Staff, both Integretel and TBR investigated OSP on several occasions due to complaints and suspicions of anomalies in OSP's billing records.⁸⁹ Integretel, who initially served as OSP's billing aggregator in June 2007, questioned OSP's billings and requested written evidence for each billing transaction for certain months be provided by a third party, which was provided by EKC (OSP's supposedly underlying dial tone provider). However, from the explanation provided by TBR,⁹⁰ Staff noted Integretel did not ask for the telephone companies' switch records (AMA) to verify whether OSP's collect calls actually occurred.

Similarly, when TBR served as OSP's billing aggregator beginning in October 2009 it requested evidence for each billing transaction for certain months. In addition, TBR asked for information regarding terminating carriers (i.e., the telephone companies who received OSP's collect calls). However, OSP could not provide TBR the terminating carriers' information, and consequently TBR sent OSP a letter terminating their agreement effective June 3, 2009.

In response to Staff's request, TBR provided additional details regarding the legitimacy of the charges made by OSP in the form of a declaration (by Nelson Gross, Managing Director of TBR)⁹¹ that TBR submitted to the California Superior Court (in *mCapital, LLC and CardinalPointe Capital Group v. The Billing Resources, LLC; OSP*

⁸⁹ Attachment 9C (TBR Response dated May 10, 2010 to CPSD Staff Data Request No. TBR TEL 277-001 dated April 1, 2010).

⁹⁰ *Id.*

⁹¹ Attachment 30 (Declaration of Nelson Gross).

*Communications, LLC; and John Vogel; Case No. 37-2010-00100830-CU-BC-CTL).*⁹²

In this case, on September 22, 2010, two telecommunications financing companies sued all Respondents in the San Diego County Superior Court for, among other things, breach of contract relating to the revenues collected on OSP billings in TBR's possession (currently at approximately \$1.2 million total and it appears Integretel also holds approximately \$1.1 million in revenues collected on OSP billings).⁹³ According to the complaint, the plaintiffs had previously purchased from OSP all of its telecommunications accounts receivable and therefore alleges that all of OSP's revenue belong to it. On February 25, 2011, the Court stayed the case and ordered the parties into arbitration in San Jose.⁹⁴ On April 26, 2011, the Commission filed an Amicus Letter with the San Diego Superior court in this case to request the Court hold the case in abeyance and order TBR to place all revenues collected on OSP billings in an interest-bearing escrow account, under court supervision, pending resolution of the matter at the Commission and in the Court.⁹⁵ On May 10, 2011 the Court accepted the Commission's Amicus Letter and scheduled a status conference hearing on May 27, 2011 and invited the Commission to participate and to determine whether the Commission intends to intervene in this case.⁹⁶

TBR filed the aforementioned declaration of Nelson Gross in opposition to an Ex Parte Application for Temporary Restraining Order and Order to Show Cause Re Issuance of a Preliminary Injunction.⁹⁷ In the declaration, Mr. Gross explained that

⁹² Attachment 31 (Copy of Case No. 37-2010-00100830-CU-BC-CTL filed in the Superior Court of the State of California, County of San Diego, Central Division).

⁹³ Attachment 32 (Declaration of Dana M. Perlman in Case No. 37-2010-00100830-CU-BC-CTL. On pg. 2 of this declaration, Ms. Perlman mentioned that an additional sum of approximately \$1.1 million is being held by the Bankruptcy estate (Old TBR).

⁹⁴ Attachment 34 (Copy of Court Order).

⁹⁵ Attachment 35 (Copy of the Amicus Letter).

⁹⁶ Attachment 36 (Copy of Court's Acceptance of the Amicus Letter).

⁹⁷ Attachment 33 (Copy of Ex Parte Application for Temporary Restraining Order and Order to Show Cause Re Issuance of a Preliminary Injunction; Case No. 37-2010-00100830-CU-BC-CTL).

currently TBR continues to retain the reserve funds in view of the (1) continuing refunds being made on OSP's billings, and (2) regulatory actions that TBR could face if it could not issue refunds to customers.⁹⁸ Furthermore, Mr. Gross stated:

20. **New TBR has significant reasons to believe that the billing transactions processed by OSP where [sic] invalid and likely fraudulent.** The plaintiffs are aware of New TBR's concerns related to the validity of OSP's billing transactions, thus it is absurdly counter-intuitive for the plaintiffs to expect New TBR to release any of the reserves prior to the conclusion of the CPUC's investigation.⁹⁹ (Emphasis added.)
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...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 placed. [sic]** 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.¹⁰⁰ (Emphasis added.)
22. Suspicions were also raised by the fact that OSP was experiencing extraordinary 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%. (sic)** These numbers are simply off the charts for any type of LEC billing

⁹⁸ Attachment 30 (Declaration of Nelson Gross, at p. 6).

⁹⁹ *Ibid.* at p. 7.

¹⁰⁰ *Ibid.* at pp. 7-8.

service provider and more than enough cause to suspect fraud...¹⁰¹ (Emphasis added.)

23. As part of our further investigation, I had several calls placed to OSP customer service call center by people posing as the customers who were billed by OSP...Nothing about the customer experience, or their efforts to explain OSP's billing, were right. Eventually, **almost every call ended with OSP customer service representative telling the customers that there must have been a billing error and that a credit would be issued.**¹⁰² (Emphasis added.)

According to Mr. Gross, TBR and LECs continue to receive requests for customer refunds for OSP billings. To date, TBR has refunded approximately \$376,000. LEC's made approximately \$544,000 in bill adjustments and OSP has issued over \$2,030,000 in refunds.¹⁰³ Thus, OSP's refunds total approximately \$2.9 million.

VI. OSP VIOLATED P.U. CODE SECTION §2890 (a) BY PLACING UNAUTHORIZED CHARGES ON CONSUMERS' TELEPHONE BILLS

Based on Staff's analysis of consumer complaints, interviews with and declarations from complainants, the absence of matching AMA call records, and TBR's declaration, Staff believes OSP crammed more than 250,000 California consumers by placing unauthorized collect call charges on their telephone bills. Therefore, OSP violated P.U. Code §2890(a), which states: "A telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized."

VII. OSP VIOLATED P.U. CODE §451

P. U. Code §451 requires:

All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be

¹⁰¹ *Ibid.* at p. 8.

¹⁰² *Ibid.* at pp. 8-9.

¹⁰³ *Ibid.*, at p. 9.

just and reasonable. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful. OSP's apparent placement of unauthorized charges was egregious. OSP appears to have unjustly charged customers, in violation of P. U. Code §451.

VIII. OSP DOES NOT HAVE OPERATING AUTHORITY IN CALIFORNIA BUT MAY BE PROVIDING A SERVICE THAT REQUIRES REGISTRATION WITH THE COMMISSION

According to Mr. Vogel, OSP provided only interstate calls¹⁰⁴ for its collect call operator service. If such were the case then OSP did not need Commission operating authority. However, in addition to operator services, OSP appears to be a provider of prepaid calling card services according to its billing aggregator, (see discussion in Section II.A.1.), thus, Staff believes OSP is in violation of P.U. Code §885(a), which states:

Any entity offering the services of telephone prepaid debit cards is subject to the registration requirements of Section 1013...unless the entity is certificated by the [C]ommission to provide telephone service.

IX. OSP SHOULD REMIT REGULATORY FEES

If the Commission finds that OSP is a provider of prepaid card services, OSP should comply with P.U. §§431-435 and remit User Fees to the Commission for the duration of its operations.

X. RECOMMENDATIONS

Based on Staff's findings in this report, CPSD requests that the Commission open an OII into OSP's actions. CPSD believes that competent evidence exists to warrant an OII.

If the Commission finds that OSP violated any laws, rules, or regulations of this State as described in this report, the Commission should impose penalties against OSP and John Vogel and consider other restrictions on John Vogel, including whether he

¹⁰⁴ Attachment 2 (OSP Response received on March 8, 2011 by CPSD).

should be allowed to provide telecommunications service or place charges on telephone bills of California consumers. Since Mr. Vogel was the sole officer and the only managing member of OSP, it appears that Mr. Vogel controlled and participated directly in the cramming of hundreds of thousands of California consumers. Therefore, Staff believes Mr. Vogel should be held personally liable for apparently defrauding California consumers and should be appropriately sanctioned and fined.