

 **COPY**

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.
Douglas J. Peterson, Attorney
General,

Relator,

v.

BILLING SERVICES GROUP
NORTH AMERICA, INC.,

Respondent.

CI 16- 3814

ASSURANCE OF
VOLUNTARY COMPLIANCE

PREAMBLE

This Assurance of Voluntary Compliance (hereinafter Assurance) is entered into by the State of Nebraska, by and through Douglas J. Peterson, the Attorney General, and the undersigned Assistant Attorney General, and by Respondent Billing Services Group North America, Inc. pursuant to Neb. Rev. Stat. §§ 59-1610 and 87-303.05(2).

PARTIES

1. **Respondent:** Billing Services Group North America, Inc. is a for-profit Delaware corporation with its principal place of business at 7411 John Smith Dr., Ste. 1500, San Antonio, Texas 78229. Respondent offers financial clearinghouse services for telecommunications companies. It has, through its subsidiary Enhanced Services Billing, Inc.,

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transacted business in the state of Nebraska, including in Lancaster County. Enhanced Services Billing, Inc. is registered with the Nebraska Secretary of State as a foreign corporation with currently inactive status.

2. **Relator:** Douglas J. Peterson is the duly elected, qualified and acting Attorney General of the State of Nebraska. Relator commenced an investigation into the business acts and practices of Respondent in the state of Nebraska based on reasonable cause to believe that Respondent engaged in business acts and practices in violation of the Consumer Protection Act, Neb. Rev. Stat. § 59-1601 et seq. (hereinafter Consumer Protection Act), and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301 et seq. (hereinafter Uniform Deceptive Trade Practices Act).

3. **Parties:** Relator and Respondent shall be collectively referred to as “the Parties” throughout this Assurance.

VENUE, JURISDICTION, AND CHOICE OF LAW

4. In the enforcement of the Consumer Protection Act, Relator may accept an assurance of discontinuance of any alleged act or practice deemed in violation of the Consumer Protection Act pursuant to Neb. Rev. Stat. § 59-1610. Furthermore, pursuant to § 87-303.05(2), when the Relator has authority to institute a civil action or other proceeding pursuant to the Uniform Deceptive Trade Practices Act, in lieu thereof, Relator may accept an assurance of discontinuance of any alleged deceptive trade practice or unconscionable act listed in Neb. Rev. Stat. §§ 87-302 or 87-303.01. An assurance of discontinuance is also known as an assurance of voluntary discontinuance, assurance of compliance, or assurance of voluntary compliance.

5. The Parties agree that venue regarding the interpretation or enforcement of this Assurance is before the District Court of Lancaster County, Nebraska (hereinafter Court)

pursuant to the Consumer Protection Act, Neb. Rev. Stat. § 59-1610, and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-303.05; that the Court has subject matter jurisdiction over this matter; that the Parties submit to the personal jurisdiction of the Court; that the Court retains jurisdiction regarding the interpretation and enforcement of this Assurance; and that the laws of the State of Nebraska control and apply to the interpretation and enforcement of this Assurance.

ALLEGATIONS

WHEREAS, the Relator caused an investigation to be made into the business acts and practices of Respondent and avers as follows:

6. In the 1990s landline telephone companies, also referred to as local exchange carriers (hereinafter LECs), opened their billing platforms to third-party providers of products and services – such as voicemail, ringtones, operator assistance, discount long-distance – who wished to bill for those services through consumers' telephone bills.

7. A consumer could authorize a purchase, provide the third-party with his/her home telephone number, and the charge for the product or service would later appear on the consumer's monthly telephone bill.

8. The consumer's authorization is documented by the third-party service provider through a telephone switch record, a letter of authorization containing information supplied by the consumer online or a third-party verification recording capturing the consumer's verbal agreement.

9. This practice is oftentimes referred to as LEC billing.

10. In order to gain access to consumers' telephone bills, however, the third-party service providers contract with billing aggregators or clearinghouses, such as Respondent, to process the service provider's charges and transmit them to the appropriate LEC.

11. After the LEC places the charge(s) on a consumer's telephone bill, the consumer pays the bill, and the LEC keeps a percentage of the third-party charge and submits the remainder of the consumer's payment to Respondent.

12. Respondent then retains its percentage of the consumer's payment and sends the remainder to the third-party service provider.

13. While the practice described above is lawful if the charges are authorized, cramming is the submission of unauthorized, misleading or deceptive charges on a consumer's telephone bill (hereinafter Cramming).

14. According to Respondent's website www.bsgclearing.com, "BSG is the largest third-party billing and settlement clearinghouse for local exchange carriers ("LECs") in the United States."

15. Since at least 2009 and until no later than 2012, Respondent provided billing services to third-party providers of various services, including Enhanced Services as that term is defined below.

16. Respondent entered into agreements with Nebraska LECs that allowed Respondent to process charges for third-party service providers for Enhanced Services for a fee per transaction and then transmit the charges to the LECs.

17. Respondent engaged in trade and commerce in the state of Nebraska by aggregating and processing third-party charges that ultimately appeared on Nebraska consumers' telephone bills.

18. Once Nebraska consumers paid their telephone bills, including those third-party charges, those LECs kept a portion of the payment and sent the remainder to Respondent.

19. Respondent then retained a portion of the payment and sent the remainder to the appropriate third-party service providers.

20. Respondent's refund policy was to provide refunds to any consumers that complained to Respondent regarding Enhanced Services. Respondent is not currently aware of any outstanding Nebraska complaints.

21. As a result of its investigation, the Relator alleges that Respondent violated the Consumer Protection Act and Uniform Deceptive Trade Practices Act by facilitating and assisting third-party service providers to place charges on Nebraska consumers' landline telephone bills when such consumers either did not authorize the charges or accepted the charges due to the third-party service provider's deceptive conduct.

RESPONDENT'S DENIAL

22. Respondent denies that it has engaged in any wrongful or unlawful conduct as alleged by the Relator and this Assurance.

DEFINITIONS

23. "Consumer" means an individual or entity within the state of Nebraska that has arranged with a LEC to obtain local telephone service provided through an assigned telephone number, and to be billed for such service on a monthly (or other periodic) basis.

24. "Effective Date" means the date this Assurance, duly executed by the undersigned Parties, is approved by the Lancaster County District Court, pursuant to the Order Approving Assurance of Voluntary Compliance.

25. "Enhanced Services" means non-telecommunications products or services directly offered to any Consumer unrelated to the completion of a call, such as web hosting, directory listings, voicemail services and email services, including the aggregation of such products or services or of the billing related thereto. This definition expressly excludes services related to basic message telecommunications service or telecommunications service, including but not limited to long distance, collect or operator assisted calls.

26. "Released Parties" means Respondent, its current or former parents, subsidiaries, related affiliates, and each of their, or their current or former parents', subsidiaries' or related affiliates' principals, officers, directors, and employees.

27. The term "including" means "including without limitation."

28. The terms "and" and "or" shall be construed conjunctively or disjunctively as necessary, to make the applicable phrase or sentence inclusive rather than exclusive.

RECITALS

29. IT NOW APPEARS THAT, for the sake of judicial efficiency and preservation of resources, the Parties are willing to voluntarily enter into this Assurance in order to avoid the costs and uncertainty of litigation.

30. IT FURTHER APPEARS THAT Relator, acting on behalf of the general welfare of the public and citizenry of the state of Nebraska, is willing to accept this Assurance in lieu of bringing a formal action against Respondent, provided the following provisions contained herein are fully complied with and met by Respondent.

31. IT FURTHER APPEARS THAT Respondent has cooperated in the State's investigation and has consented to the entry of this Assurance.

32. THEREFORE, IT IS HEREBY AGREED by Respondent, on behalf of itself, its current parents, subsidiaries and related affiliates, its successors, assigns, officers, principals, directors, partners, agents, representatives, employees, and all other persons acting on its behalf, jointly or individually, directly or indirectly or through any corporate device, that the following assurances are made and will be complied herewith as of the Effective Date:

ASSURANCES

33. Beginning on the Effective Date, Respondent shall permanently refrain from providing bill forwarding services for Enhanced Services placed on Consumers' landline telephone bills.

34. When engaging in the business of processing charges or billing for products and services offered directly to Consumers for other than Enhanced Services, Respondent shall not, directly or through an intermediary, place charges for any products or services on any bill to Consumers unless the Consumer has expressly authorized such charge.

MONETARY PAYMENT

35. Within thirty (30) days of the Effective Date, Respondent shall pay Relator the sum of five thousand dollars (\$5,000.00) via certified check or money order to be placed in the State Settlement Cash Fund. These funds may be used for attorney's fees, investigation costs, future consumer protection, consumer education, litigation, to defray the costs of the inquiry leading hereto, or for other uses permitted by state law at the sole discretion of the Nebraska Attorney General. The Parties acknowledge that the payment is not a fine or penalty, or payment in lieu thereof. This Assurance is null and void if valid payment is not paid within 30 days of the Effective Date.

GENERAL PROVISIONS

36. This Assurance constitutes a complete settlement and release by the Relator of all civil claims and causes of action against the Released Parties arising out of the conduct alleged in this Assurance relating to the billing of charges for Enhanced Services that existed as of the Effective Date that could have been asserted by Relator, under the Consumer Protection Act, Uniform Deceptive Trade Practices Act, or any other consumer protection laws that give the Relator the authority to bring action. This Assurance does not affect a Consumer's private right of action.

37. Nothing in this Assurance shall be construed to impair or otherwise impact Respondent's ability to forward billing records related to basic message telecommunications service or telecommunications service, including but not limited to long distance, collect, or operator assisted calls.

38. Nothing in this Assurance shall be construed so as to limit or bar any other person or entity from pursuing any and all available legal remedies against Respondent; nor is it the intent of the Parties hereto that this Assurance shall create or support a cause of action against Respondent by non-parties to this Assurance.

39. Respondent understands that this Assurance shall not be construed as an approval of or sanction by the Relator of the Respondent's business acts and practices, nor shall Respondent represent the Assurance as such approval. The Parties further understand and agree that any failure by the Relator to take any action in response to any information submitted pursuant to this Assurance shall not be construed to be an approval of or sanction of any representations, acts or practices of Respondent, nor shall any inaction by the Relator be considered a waiver by the Relator of any rights under this Assurance or the law.

40. If any portion, provision, or part of this Assurance is held to be invalid, unenforceable or void for any reason whatsoever, that portion, provision or part shall be severed from the remainder and shall not affect the validity or enforceability of the remaining portions, provisions or parts.

41. In the event any law, regulation or order is enacted, adopted or issued by the federal government, the State of Nebraska or any of its agencies, any relevant local government or a court of competent jurisdiction with respect to any issue specifically covered by this Assurance, the requirements of such law, regulation or order, after written notice by Respondent to Relator, shall replace any provision contained herein so that compliance with such law, regulation or order shall be deemed in compliance with this Assurance.

42. Respondent shall retain and make readily available to Relator for inspection, upon reasonable notice and without the necessity of a subpoena or other legal process, all material records and documents reasonably necessary to document compliance with this Assurance.

43. Pursuant to Neb. Rev. Stat. § 59-1610 and § 87-303.05(2), proof of failure to comply with the Assurance shall be prima facie evidence of a violation of applicable Nebraska statutes in any civil action or proceeding hereafter commenced by the Relator against Respondent.

44. This Assurance is made and entered into without trial or finding of fact or conclusions of law by a court. This Assurance does not constitute evidence against or an admission by Respondent of any issues of fact or any violations of law in the past or that Respondent has engaged in any inappropriate activities or other wrongdoing, and shall not be used in a manner inconsistent with these terms.

45. The Parties acknowledge and represent that: (a) each Party has read this Assurance in its entirety and fully understands all of its terms and conditions and the ramifications and consequences thereof; (b) each Party unconditionally consents to the terms of this Assurance; (c) each Party has either consulted with or had ample opportunity to consult with legal counsel of their choosing prior to executing this Assurance; (d) each Party has freely and voluntarily signed this Assurance; and (e) the consideration received by each Party as described in this Assurance is adequate.

46. The Parties acknowledge and agree that this Assurance contains the entire understanding of the Parties and supersedes and forever terminates all prior and contemporaneous representations, promises, agreements, understandings and negotiations, whether oral or written, with respect to its subject matter. The Parties further agree that this Assurance may only be amended, modified or supplemented by a duly executed writing signed by each Party to this Assurance.

47. The Parties agree that they may execute this Assurance in any number of counterparts, each of which shall be deemed an original hereof, but which together shall constitute one and the same document, and that facsimile or electronically-transmitted signatures may be attached to this Assurance and shall be binding on such Party as an original signature.


WHEREFORE, each undersigned representative of the Parties represents and certifies that he or she is competent and fully authorized to act with respect to this matter and to legally bind such Party to the terms of this Assurance. The following signatures are affixed hereto as of the dates written below in agreement hereof.

JOINTLY APPROVED FOR ENTRY AND SUBMITTED BY:

FOR RELATOR:

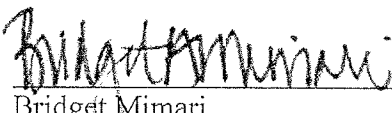
THE STATE OF NEBRASKA, ex rel.
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10-13-2016
Date

FOR RESPONDENT:

By: 
Bridget Mimari
General Counsel
Billing Services Group North America, Inc.
7411 John Smith Dr., Ste. 1500
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10-11-2016
Date