UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CASE NUMBER 1:01CV01660

JUDGE: Ricardo M. Urbina

DECK TYPE: General Civil

DATE STAMP: 08/01/2001

UNITED STATES OF AMERICA Plaintiff, v. ENHANCED SERVICES BILLING, INC., BILLING CONCEPTS, INC., Delaware Corporations, both with their principal place of business at 411 John Smith Drive, Suite 200 San Antonio, Texas 78229; NEW CENTURY EQUITY HOLDINGS CORP. A Delaware Corporation, 10101 Reunion Place, Suite 450 San Antonio, Texas 78216 Defendants.	Civ. No. COMPLAINT FOR CIVIL PENALTIES, PERMANENT INJUNCTION, CONSUMER REDRESS AND OTHER EQUITABLE RELIEF

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission"), for its complaint alleges that:

1. Plaintiff brings this action under Sections 5(a)(1), 5(m)(1)(A), 9, 13(b), 16(a) and 19 of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 49, 53(b), 56(a) and 57b, and the Telephone Disclosure and Dispute Resolution Act of 1992 ("TDDRA"),

15 U.S.C. §§ 5701 *et. seq.*, to obtain injunctive relief and consumer redress for violations of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), and to obtain monetary civil penalties, consumer redress and injunctive and other relief for Defendants' violations of the Commission's Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 ("900-Number Rule"), 16 C.F.R. Part 308.

JURISDICTION AND VENUE

2. This court has jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345 and 1355 and under 15 U.S.C. §§ 45(m)(1)(A), 49, 53(b), 56(a), 57b, 5721 and 5723. This action arises under 15 U.S.C. § 45(a)(1).

3. Venue in the District of Columbia is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c) and 1395(a).

DEFENDANTS

4. Defendant Enhanced Services Billing, Inc. is a Delaware corporation with its principal place of business at 7411 John Smith Drive, Suite 200, San Antonio, Texas 78229. Enhanced Services Billing, Inc. provides or provided billing and collection services for vendors who market Internet Web sites, psychic memberships, voice mail and hospital telephone and television rental, and other enhanced services. Enhanced Services Billing, Inc. was incorporated on March 17, 1994. Enhanced Services Billing, Inc. transacts or has transacted business in this district.

5. Defendant Billing Concepts, Inc. is a Delaware corporation with its principal place of business at 7411 John Smith Drive, Suite 200, San Antonio, Texas 78229. Billing Concepts, Inc. provides or provided billing and collection services for vendors who market

calling cards, 900-numbers and other services. Billing Concepts, Inc., formerly known as Zero Plus Dialing, Inc., was incorporated on January 12, 1987. Billing Concepts, Inc. transacts or has transacted business in this district.

6. Defendant New Century Equity Holdings Corp., formerly known as Billing Concepts Corp., is a Delaware corporation with its principal place of business at 10101 Reunion Place, Suite 450, San Antonio, Texas 78216. From on or about August 1996, to on or about October 23, 2000, New Century Equity Holdings Corp. owned Enhanced Services Billing, Inc. and Billing Concepts, Inc. New Century Equity Holdings Corp. sold Enhanced Services Billing, Inc. and Billing Concepts, Inc. to Platinum Equity, L.L.C. on or about October 23, 2000. New Century Equity Holdings Corp. transacts or has transacted business in this district.

COMMERCE

7. At all times material to this Complaint, Defendants' course of business, including the acts and practices alleged herein, have been and are in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

DEFINITIONS

For the purpose of this complaint:

8. "Billing aggregator" means an entity that, on behalf of one or more vendors, arranges to have charges placed on the telephone bills sent to Line Subscribers from their LECs, arranges for the LECs to collect those charges from Line Subscribers, and arranges for vendors to receive payment for their services.

9. "DDD Calling" shall mean DDD Calling, Inc. 5120 Woodway Drive, Suite 7009, Houston, Texas 77056.

10. "Local Exchange Carrier" or "LEC" means the local telephone company from which a Line Subscriber receives his or her telephone bill.

11. "Line Subscriber" means an individual or entity 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.

12. "RRV Enterprises" means RRV Enterprises, Inc. 5120 Woodway Drive, Suite 7007, Houston, Texas 77056.

13. "Telephone Billed Good or Service" means all goods or services that are charged to a Line Subscriber's telephone bill except for the following: (1) purchases solely of common carrier transmission services; and (2) purchases of services accessed by dialing a 900 number or other number that can be blocked by the Line Subscriber pursuant to 47 U.S.C. § 228(c).

14. "Vendor" means an entity that offers goods or services that are billed to Line Subscribers on the monthly telephone bills received by Line Subscribers from their LECs.

DEFENDANTS' BUSINESS PRACTICES

15. Defendants Enhanced Services Billing, Inc. and Billing Concepts, Inc. are billing aggregators for vendors that market or marketed a variety of goods and services, including but not limited to, Internet Web sites, calling cards, audiotext (telephone-based audio information or entertainment) services, psychic club memberships, voice mail, and in-hospital telephone and television rental. Defendants' client-vendors market or marketed their goods or services to Line Subscribers through cold-calling, unsolicited mailers, prize promotions, contests and other techniques.

16. Defendants contract with LECs to place the charges for their clients' goods or services on Line Subscribers' telephone bills. Charges for their client-vendors' goods or services generally appear on a separate billing page, hereinafter "Defendants' billing page," which is inserted into Line Subscribers' telephone bills. Some of these charges are one-time fees; others are recurring fees that appear on the Line Subscribers' bills month after month.

17. Defendants also contract with vendors to provide customer services, *i.e.* to handle complaints and inquiries from Line Subscribers who have been charged for a vendor's goods or services. In a number of cases, Defendants' billing page includes a telephone number that the Line Subscriber can call to reach Defendants' customer service department. In other cases, vendors have their own billing pages, but they still list the telephone number for Defendants' customer service department as the place to call with inquiries or disputes about charges.

18. In numerous instances, Line Subscribers called Defendant Billing Concepts, Inc. to complain that charges on their telephone bills for 900-number audiotext services were not incurred by anyone calling from the Line Subscriber's telephone, and offered convincing evidence to support that assertion. Yet in such cases, employees of Defendant Billing Concepts, Inc. failed to perform a reasonable investigation to determine whether the charges were valid, as is required by the 900-Number Rule.

19. For example, American TelNet, Inc. was a client-vendor of Billing Concepts, Inc. Defendant Billing Concepts Inc., formerly known as Zero Plus Dialing, Inc., contracted with American TelNet, Inc. to handle complaints and inquiries from Line Subscribers who had been charged for American TelNet Inc.'s goods or services. When consumers called the Defendant in 1996 and 1997 to challenge charges for American Telnet, Inc.'s goods or services on their bills, and stated that they had a 900-number block in place, the Defendant still sustained the charges

without conducting a reasonable investigation. Notably, as set forth below, American TelNet Inc. itself was sued by the Commission for billing Line Subscribers for goods or services they never purchased.

20. Defendants also perform customer service for client-vendors that sell goods or services other than 900-number audiotext services. In performing this function, Defendant Enhanced Services Billing, Inc. received a high number of complaints and became aware of other indicia of fraud relating to certain client-vendors, and yet continued to bill Line Subscribers for goods or services for those client-vendors, even though it knew or should have known that these client-vendors were forwarding unauthorized charges for inclusion on the Line Subscribers' telephone bills.

21. Defendants' client-vendors include or have included a number of entities that have been sued by federal and state agencies for causing consumer injury by charging Line Subscribers for goods or services they never purchased or authorized. *See, e.g., In re RRV Enterprises, Inc.*, No. DV 99-01255 (Dist. Ct. Dallas County, Tex. Assurance of Voluntary Compliance, February 17, 1999); *FTC v. American Telnet, Inc.*, No. 99-1587 (S.D. Fla. Stipulated Final Judgment, June 14, 1999); *FTC v. WebValley, Inc.*, No. 99-1071 (D. Minn. Stipulated Final Judgment, June 5, 2000); *FTC v. Shared Network Services, LLC*, No. S-99-1087 (E.D. Cal. Stipulated Final Judgment, June 12, 2000); *FTC v. YP.NET*, No. 00-1210 (D. Ariz. Complaint filed June 26, 2000); and *FTC v. Mercury Marketing of Delaware, Inc.*, No. 00-CV-3281 (E.D. Penn. Complaint filed June 28, 2000).

22. Defendants have direct contact with Line Subscribers through Defendants' billing page and through their customer service telephone representatives.

23. Defendants have caused consumer injury by falsely representing to Line Subscribers, both on their billing page and in their representatives' telephone conversations with Line Subscribers, that Line Subscribers owe money for Internet Web sites and other goods or services that these Line Subscribers never ordered, by causing Line Subscribers to be billed for unauthorized charges they could not reasonably avoid and by failing to conduct reasonable investigations to determine whether charges were valid.

24. Defendant New Century Equity Holdings Corp. knew of, tacitly approved and failed to use its influence to stop Defendants Enhanced Services Billing, Inc.'s and Billing Concepts, Inc.'s unfair and deceptive acts or practices.

25. Defendant New Century Equity Holdings Corp.'s motto to its client-vendors was "We Make Sure You Get Paid."

26. Defendants New Century Equity Holdings Corp., Enhanced Services Billing, Inc. and Billing Concepts, Inc. earned substantial fees in at least the following two ways even when consumers were being billed for unauthorized charges: (1) Defendants received fees from clients for collecting the unauthorized charges, and (2) if a Line Subscriber happened to complain after noticing the unauthorized charges, Defendants received a fee from their clients for responding to the Line Subscriber's complaint about a charge that should not have been billed in the first place.

27. New Century Equity Holdings Corp. was founded on or about August, 1996 when U.S. Long Distance Corp. spun off its billing subsidiaries Billing Concepts, Inc., formerly known as Zero Plus Dialing, Inc., and Enhanced Services Billing, Inc. into a separate, publicly traded company. The transaction that created the publicly traded company, New Century Equity Holdings Corp., formerly known as Billing Concepts Corp., involved a stock distribution. New Century Equity Holdings Corp. owned Enhanced Services Billing, Inc. and Billing Concepts,

Inc. from on or about August, 1996 until on or about October 23, 2000. New Century Equity Holdings Corp. has not remedied the unfair and deceptive acts of Enhanced Services Billing, Inc. and Billing Concepts, Inc. set forth in the complaint.

28. On or about October 23, 2000, Platinum Equity acquired Enhanced Services Billing, Inc. and Billing Concepts, Inc. from New Century Equity Holdings Corp. through a stock sale and merger. Prior to the stock sale and merger, New Century Equity Holdings Corp. publicly disclosed that FTC staff had presented the company with a proposed complaint and that the company was engaging in good faith negotiations. Platinum Equity, on notice that no final settlement had been reached with the FTC, acquired Enhanced Services Billing, Inc., and Billing Concepts, Inc. Both companies, Enhanced Services Billing, Inc., and Billing Concepts, Inc., continue to operate as billing aggregators, and continue to provide a point of entry into the telephone billing and collection system for individuals and entities.

29. New Century Equity Holdings Corp., as well as Enhanced Services Billing, Inc. and Billing Concepts, Inc., are liable for the unfair and deceptive acts set forth in the complaint. New Century Equity Holdings Corp., Enhanced Services Billing Inc. and Billing Concepts, Inc. are liable for disgorgement of funds they have received or will receive from the unfair and deceptive practices set forth in Counts I, II, III, IV and V of the complaint.

30. New Century Equity Holdings Corp. and Enhanced Services Billing, Inc. are jointly and severally liable for providing redress for the violations set forth in Counts I and II of the complaint. New Century Equity Holdings Corp. and Billing Concepts, Inc. are jointly and severally liable for providing redress for the violations set forth in Counts III and IV of the complaint.

31. Billing Concepts, Inc. is liable for penalties for the violations set forth in Count V of the complaint.

UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN VIOLATION OF THE FTC ACT

32. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that "unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful."

COUNT I

33. In numerous instances since January 1996, Defendant Enhanced Services Billing, Inc. represented, expressly or by implication, that a Line Subscriber was legally obligated to pay a charge for an Internet Web site or other Telephone Billed Good or Service.

34. In truth and in fact, in numerous instances, the Line Subscriber was not legally obligated to pay the charge Defendant had caused to be included on the Line Subscriber's telephone bill, because the Line Subscriber did not agree to purchase the Internet Web site or other Telephone Billed Good or Service, or authorize anyone else to incur a charge billed to his or her telephone bill.

35. Therefore, the representation by Defendant, as alleged above, was false and deceptive, and violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

36. In numerous instances since January 1996, Defendant Enhanced Services Billing, Inc. directly or through an intermediary, has billed, attempted to collect and collected charges from Line Subscribers for Internet Web sites that the Line Subscribers neither agreed to purchase nor authorized anyone else to purchase.

37. A Line Subscriber, even though he or she had not authorized or purchased an Internet Web site, could not reasonably avoid Defendant's billing and collection efforts. A Line Subscriber could not block the Defendant from inserting unauthorized charges onto his or her telephone bill for an Internet Web site marketed though cold-calling.

38. Defendant's practice of billing, attempting to collect or arranging for the collection of payment from Line Subscribers for Internet Web sites that the Line Subscribers neither agreed to purchase nor authorized anyone else to purchase caused substantial injury to them that they could not reasonably avoid and that was not outweighed by countervailing benefits to consumers or competition.

39. Therefore, the practice of Defendant, as alleged above, was unfair and violates Section 5(a) of the FTC Act, 15 U.S.C. § 45.

COUNT III

40. In numerous instances from on or about April 1997 to on or about April 2000, Defendant Billing Concepts, Inc. represented, expressly or by implication, that a Line Subscriber was legally obligated to pay a charge for an activation fee and monthly minimum fee for a calling card from RRV Enterprises.

41. In truth and in fact, in numerous instances, the Line Subscriber was not legally obligated to pay the charge Defendant had caused to be included on the Line Subscriber's telephone bill, because the Line Subscriber did not agree to pay a charge for an activation fee and monthly minimum fee for a calling card from RRV Enterprises, or authorize anyone else to incur a charge billed to his or her telephone bill.

42. Therefore, the representation by Defendant, as alleged above, was false and

deceptive, and violated Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT IV

43. In numerous instances from on or about April 1997 to on or about April 2000, Defendant Billing Concepts, Inc., directly or through an intermediary, billed, attempted to collect and collected charges from Line Subscribers for an activation fee and monthly minimum fee for a calling card from RRV Enterprises that was marketed by DDD Calling by means of a sweepstakes or prize promotion entry form that required, among other items of information, a telephone number.

44. A Line Subscriber could not prevent a third party from placing the Line Subscriber's telephone number on a sweepstakes or prize promotion entry form, such as those used by RRV Enterprises which were distributed by DDD Calling. Therefore, the Line Subscriber could not reasonably avoid Defendant's billing and collection efforts for activation and monthly minimum fees based on sweepstakes entry forms filled out by a person other than the Line Subscriber.

45. In numerous instances, Line Subscribers neither entered a sweepstakes, nor agreed to purchase a calling card from RRV Enterprises or DDD Calling. Defendant's practice of billing, attempting to collect and collecting charges for calling card services from RRV Enterprises from Line Subscribers who had not placed their telephone numbers on sweepstakes or prize promotion entry forms, entered into a contract to purchase services, or consented to have charges for such services billed to their telephone bills, caused substantial injury to these Line Subscribers that they could not reasonably avoid, and that was not outweighed by countervailing benefits to consumers or competition.

46. Therefore, the practice of Defendant, as alleged above, was unfair and violates Section 5(a) of the FTC Act, 15 U.S.C. § 45.

THE 900-NUMBER RULE

47. The Commission's 900-Number Rule, 16 C.F.R. Part 308, became effective on November 1, 1993, and implements the requirements of TDDRA, 15 U.S.C. § 5701 *et seq.* The 900-Number Rule, among other things, establishes procedures for billing and collecting charges for 900-number services, including a requirement that a billing entity conduct a reasonable investigation upon notification of a billing error by a line subscriber. Section 308.7(a)(1) of the Rule provides that the term "billing entity" includes "any person who transmits a billing statement to a customer for a telephone-billed purchase, or any person who assumes responsibility for receiving and responding to billing error complaints." Section 308.7(d) of the 900-Number Rule requires a billing entity that receives notice of a billing error to either: 1) correct the billing error, credit the customer's account, and notify the customer of the correction, or 2) transmit an explanation to the customer, after conducting a reasonable investigation, setting forth the reasons why the billing entity has determined no billing error has occurred, or that a different billing error occurred from that asserted by the customer, within the lesser of two billing cycles or 90 days. Unless it has taken one of these actions within 40 days after receiving notice of the billing error, the billing entity must also send a written acknowledgment notifying the customer that the disputed amount need not be paid while the billing error is being investigated. Section 308.7(g) prohibits the billing entity from trying to collect any disputed amount until the billing entity has complied with the requirements of Section 308.7(d).

VIOLATIONS OF THE 900-NUMBER RULE

COUNT V

48. In numerous instances since about January 1996, in connection with receiving and responding to billing error notifications for pay-per-call services and collecting for pay-per-call services, Defendant Billing Concepts, Inc., formerly known as Zero Plus Dialing, Inc., was a "billing entity" within the meaning of that term as defined in the Rule, and attempted to collect disputed amounts from a Line Subscriber after such Line Subscriber had submitted a notice of a billing error to the Defendant but before the Defendant had complied with Section 308.7(d) of the 900-Number Rule.

49. Therefore, Defendant's practice, as alleged in Paragraph 48, violated the 900-Number Rule, 16 C.F.R. § 308.7(d) and (g).

50. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), and TDDRA, 15 U.S.C. §§ 5721 and 5723, a violation of the 900-Number Rule constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

CONSUMER INJURY

51. Consumers throughout the United States suffered substantial monetary loss as a result of Defendants' unlawful acts or practices.

THIS COURT'S POWER TO GRANT RELIEF

52. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief, including consumer redress, disgorgement, and restitution to prevent and remedy any violations of any provision of law enforced by the Commission. Also,

in a Section 13(b) action, a court is empowered to exercise the full breadth of its equitable authority.

53. Section 19 of the FTC Act, 15 U.S.C. § 57b, authorizes this Court to grant such relief as the Court finds necessary to redress injury to consumers or other persons resulting from Defendant's violations of the 900-Number Rule.

54. Defendant has violated the 900-Number Rule as described above with knowledge as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(a).

55. Each violation, during the five years preceding the filing of this complaint, in which Defendant has violated the 900-Number Rule in one or more of the ways described above constitutes a separate violation for which Plaintiff seeks monetary civil penalties.

56. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), authorizes the Court to award monetary civil penalties of not more than $10,000 for each such violation of the 900-Number Rule that occurs prior to November 20, 1996. Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, authorizes the Court to award monetary civil penalties of not more than $11,000 for each such violation of the 900-Number Rule that occurs on or after November 20, 1996.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court, pursuant to 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 49, 53(b), 57b, 5721 and 5723 and pursuant to the Court's own equity powers:

1. Award Plaintiff such preliminary and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief;

2. Enter judgment against Defendants and in favor of Plaintiff for each violation alleged in this complaint, and where appropriate, find joint and several liability;

3. Permanently enjoin Defendants from violating Section 5 of the FTC Act;

4. Permanently enjoin Defendants from violating the 900-Number Rule;

5. Award Plaintiff such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act and the 900-Number Rule, including but not limited to, the refund of monies paid, and the disgorgement of ill-gotten monies;

6. Award Plaintiff monetary civil penalties from Defendant for each violation of the 900-Number Rule alleged in this complaint; and

7. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

DATED:

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