

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

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| |) | | Case No. SA-98-CA-0629-FB |
| FEDERAL TRADE COMMISSION, |) | | |
| |) | | |
| Plaintiff, |) | | |
| |) | | |
| vs. |) | | |
| |) | | |
| HOLD BILLING SERVICES, et. al. |) | | |
| |) | | |
| Defendants. |) | | |
| |) | | |

FACT APPENDIX IN SUPPORT OF MOTION FOR AN ORDER TO SHOW CAUSE WHY BILLING SERVICES GROUP LIMITED; BILLING SERVICES GROUP NORTH AMERICA, INC.; HBS BILLING SERVICES COMPANY f/k/a HOLD BILLING SERVICES, LTD.; ENHANCED BILLING SERVICES, INC.; BILLING CONCEPTS, INC.; and ACI BILLING SERVICES, INC., SHOULD NOT BE HELD IN CONTEMPT

The Federal Trade Commission (“FTC”), pursuant to Local Rule CV-7(c), submits this Fact Appendix in support of its Motion for an Order that Billing Services Group Limited (“BSG Ltd.”); Billing Services Group North America, Inc., f/k/a HBS, Inc. (“BSGNA”); BSG Clearing Solution North America, LLC (“BSG Clearing”); HBS Billing Services Company f/k/a Hold Billing Services, Ltd. (“HBS”); Enhanced Billing Services, Inc. (“ESBI”); Billing Concepts, Inc. (“BCI”); and ACI Billing Services, Inc. (“ACI”) (collectively, “Contempt Defendants” or “BSG”) show cause why they should not be found in civil contempt of the Stipulated Final Judgment and Order for Permanent Injunction as to Defendants Hold Billing Services, Ltd., HBS, Inc., and Avery Communications, Inc., issued by the Court on September 22, 1999.

(“Permanent Injunction”) [DE39, Permanent Injunction].¹

LEC Billing and the History of Cramming

1. In the late 1990s, consumer complaints surfaced about a practice that became known as “cramming”: the placement of unauthorized charges by third parties on consumers’ Local Exchange Carrier (“LEC”) telephone bills. Wolfe Att. A, [Senate Commerce Committee, Office of Oversight and Investigations, Majority Staff Report, *Unauthorized Charges on Telephone Bills* (July 12, 2011), pp. i, 2-4]. LECs are telephone companies, such as AT&T and Verizon, through which consumers receive local telephone service. *Id.* at 8-9. The relevant parties to the practice are LECs, the consumers who receive their local phone service through the LECs, third-party vendors who wish to charge for their purported goods or services on LEC telephone bills, and the billing aggregators. *Id.*
2. Billing aggregators serve as intermediaries between the vendors and the LECs. *Id.* Aggregators contract with the LECs for billing and collection, and they contract with vendors to submit vendors’ billing applications to the LECs. *Id.* If a vendor is granted billing privileges, billing aggregators pass the charges from the vendor to the LEC for placement on its customers’ bills. *Id.* at 9. After receiving the LEC bills, consumers pay the vendor’s charge as part of their total phone bill payment. *Id.*

¹ The citation conventions for facts cited herein and filed herewith are as follows: Declarant’s last name, paragraph number in the declaration (if applicable), attachment # (where # is a letter referred to in the declaration), [description of document (if applicable), and specifically identified document, including page number or Bates number]. Additionally, citations to documents already on the docket in this case are as follows: [DE (for Docket Entry), document number, document description, paragraph number within the document (if applicable)]. The short citation form “*id.*” refers to the same declaration and attachment as in the previous citation, with references to specific documents or page numbers given if applicable. Certain documents have been redacted to remove references to an individual’s phone or fax number, complaint ID number, street address, or email address; names of minor children; account numbers; and any portion of a Social Security number.

3. As a result of consumers' cramming complaints, the FTC filed several law enforcement actions in the 1990s, including the action that lead to the entry of the Permanent Injunction against Avery Communications and its billing aggregator subsidiaries, HBS, Inc., and Hold Billing Services, Ltd.

Entry of the Permanent Injunction

4. This Court entered the Permanent Injunction on September 22, 1999. The Permanent Injunction named, among other parties, Hold Billing Services, Ltd. ("Hold"), a Texas limited partnership; HBS, Inc., a Texas corporation; and Avery Communications, Inc. ("Avery"), a Texas corporation. [DE39, Permanent Injunction].
5. At the time the Permanent Injunction was entered, Avery held HBS, Inc., as a wholly owned subsidiary, and HBS, Inc. was the sole general partner of Hold. [DE 1, Complaint ¶¶ 5-7].

Formation of the BSG Enterprise

6. After entry of the Permanent Injunction, Hold was converted into a Texas corporation and renamed HBS Billing Services Company ("HBS"). Wolfe Att. B, [HBS Compliance Report, p. 15]. HBS reported this change in the Compliance Report it submitted to the FTC on May 22, 2000, as required by the Permanent Injunction, stating that the change would not "affect its compliance obligations arising out of the Order" and "does not effect [sic] the continuity of the legal entity under Texas law." *Id.*
7. Also after entry of the Permanent Injunction, HBS, Inc. merged into Delaware corporation Thurston Communications Corporation ("Thurston Corp."). *Id.* at 15-16. Thurston Corp. reported this change to the FTC in the May 22, 2000, Compliance Report,

stating that it “had no corporate structure changes that would affect its compliance obligations arising out of the Order.” *Id.*

8. The relationships between the three defendants remained essentially unchanged. Avery reported in the 2000 Compliance Report that it was still the sole owner of the two subsidiaries, “although such entities now operate under different names.” *Id.* at 16; *see also* Wolfe Att. C, [Avery’s Amended Schedule 14C, filed with the Securities and Exchange Commission on February 13, 2003, p. 26] (“Through its operating subsidiaries, HBS Billing Services Company and ACI Billing Services (‘ACI’), Avery provides billing and collection services.”); *id.* at p. F-58 (disclosing the Permanent Injunction).²
9. In 2003, Avery, Thurston Corp., and HBS merged with billing aggregator Billing Concepts, Inc. (“BCI”), to form BSG. Wolfe Att. D, [Contribution Agreement, III.B.5 – 000009-69].³ In the merger, Avery contributed all of the stock of Thurston Corp. to Billing Services Group, LLC (“BSG, LLC”), making Thurston Corp. (f/k/a HBS, Inc.) a wholly owned subsidiary of BSG, LLC. *Id.* at [Contribution Agreement, III.B.5 – 000014, 23-24, ¶2.4(a); Senior Subordinated Loan Agreement, III.B.5. – 000308]. Thurston Corp. then contributed all the stock of HBS to BCI Acquisition, LLC (“BCI Acquisition”), and received all the stock of BCI Acquisition, making BCI Acquisition a wholly owned subsidiary of Thurston Corp. *Id.* BCI Acquisition also received all the stock of Avery’s subsidiary ACI, BCI, and Enhanced Services Billing, Inc. (“ESBI”). *Id.* at [Senior Subordinated Loan

² In 2001, Avery “through its wholly owned subsidiary ACI Billing Services, Inc. (“ACI”), completed the acquisition of certain assets of OAN Services, Inc. (“OAN”).” *Id.* at p. F-24. OAN was also a LEC billing aggregator. *Id.*

³ BCI and its subsidiary Enhanced Services Billing, Inc. (“ESBI”), stipulated to a permanent injunction as a result of alleged cramming in 2001. *United States v. Enhanced Services Billing Inc., et. al.*, 01-CV-1660 (D.D.C. Aug. 9, 2001).

Agreement, III.B.5 – 000309]. The resulting corporate structure placed BSG, LLC, at the top; Thurston Corp. below BSG, LLC, as its wholly owned subsidiary; BCI Acquisition under Thurston Corp., BCI Acquisition’s sole member; and HBS, ACI, BCI, and ESBI at the bottom as wholly owned subsidiaries of BCI Acquisition.

10. Agreements that effectuated the merger disclosed the Permanent Injunction, and all parties to the merger signed the documents and had notice. *Id.* at [Contribution Agreement, III.B.5 – 000184, Part 3.15(c); Senior Subordinated Loan Agreement, III.B.5 – 000308-9, 317, 370, 386, 408]. In 2005, BSG provided these documents in response to an FTC Civil Investigative Demand that specifically requested documents related to the Permanent Injunction. *Id.* at [CID Specifications, p. 7, document request 3].
11. In June 2005, the BSG companies became publicly traded on the AIM market of the London Stock Exchange. Goldstein Att. A, [Admission to trading on AIM, p. 1-2]. BSG accomplished this by creating Billing Services Group Limited (“BSG Ltd.”), a Bermuda limited partnership, which was “formed to succeed to the business of” BSG, LLC, and its subsidiaries. *Id.* at [BSG’s 2008 annual report, p. 22; BSG’s 2009 annual report, p. 26].
12. In December 2005, Thurston Corp. (known as HBS, Inc., at the time of the permanent Injunction) again changed its name to Billing Services Group North America, Inc. (“BSGNA”), and BCI Acquisition changed its name to BSG Clearing Solutions North America, LLC (“BSG Clearing”). *Id.* at [BSG Disposal of Wireless Business, p. 14]. BSG then sold its overseas wireless billing subsidiaries, leaving BSGNA as its sole asset. *Id.* at pp. 1-15; Wolfe Att. E-32, [BSGRESPIXVI00002747]. BSG thus assumed its current corporate structure and nomenclature. *Id.*

BSG Operates as One Enterprise

13. Following the 2003 merger, the BSG companies integrated their operations. This “operational merger” took place in the summer of 2004. Wolfe Att. F, [Deposition of Greg Carter, p. 23 lines 18-23];⁴ Goldstein Att. B, [BSG Description of Business] (“The company has approximately 120 employees with headquarters in San Antonio, Texas.”).
14. A single board of directors acts on behalf of all the BSG companies. Goldstein Att. A, [BSG’s 2008 annual report, p. 11]. The same individuals serve as officers for all of the entities. *Id.* at p. 4; Wolfe Att. F, [Deposition of Greg Carter, p. 20 lines 4-25]. CEO and Executive Director Greg Carter serves as both an officer and a director, as did CFO Norman Phipps until December 31, 2007. Goldstein Att. A, [BSG 2009 annual report, p.4]; Wolfe Att. E-23, [BSG00087216, 87221]. The entities file consolidated financial statements with each annual report. *E.g.*, Goldstein Att. A, [BSG’s 2009 annual report, pp. 18-48].
15. BSG has only one roster of employees. Wolfe Att. F, [Deposition of Greg Carter, p. 20 lines 4-25]. The enterprise’s employees perform the same functions regardless of which subsidiary is nominally involved in a particular transaction or activity. *Id.* at [p.17 lines 5-10]; *see also* ¶¶ 60-61, 64, 67, 69, 83-86, 92, *infra*. BSG houses all of its employees in and conducts all of its business from its offices in San Antonio, Texas. Wolfe Att. F, [Deposition of Greg Carter, p. 25 lines 1-16]; *see also* Goldstein Att. B, [BSG Description of Business].
16. In practice, BSG does not differentiate between its billing subsidiaries: HBS, ESBI, ACI, and BCI. Wolfe Att. F, [Deposition of Greg Carter, p. 19 line 17 – p. 20 line 12]. As BSG CEO Carter testified, subsidiary BCI is unique only in that it employs all the BSG personnel,

⁴ BSG Clearing, ACI, and BCI agreed to a permanent injunction restricting unauthorized billing of telecommunications services in 2008 in *FTC v. Nationwide Connections*, Civ 06-80180 (S.D. Fla.), in which the FTC alleged cramming of \$34.5 million in charges for collect phone calls that were never made. Wolfe Att. A, [Senate Majority Staff Report, *Unauthorized Charges*, p. 5].

and “the other identities are just that. They’re contracts and identities on the local telephone bill.” *Id.* at [p. 20 lines 13-21]. Standard contracts between the billing subsidiaries and BSG’s customers provide that the contracts may be freely assigned among BSG’s subsidiaries. Wolfe Att. E-27, [BSG_Resp.-II-p.00000022]; Wolfe Att. E-28, [BSG_Resp.-II-p.00000131, 150]; Wolfe Att. E-29, [BSG_Resp.-II-p.00000245, 306]; Wolfe Att. E-30, [BSG_Resp.-II-p.00000342, 374]; Wolfe Att. E-31, [BSG_Resp.-II-p.00000402, 442]. CEO Carter signed these billing contracts for BSG regardless of which subsidiary’s name was on them. *Id.* at [BSG_Resp.-II-p.00000012 (ESBI), 235 (ESBI), 296 (ESBI), 332 (BCI), 364 (BCI), 392 (ACI), 432 (ACI)]. Similarly, when the BSG companies entered loan and guaranty agreements in 2011, CFO Phipps signed the loan for BSGNA and the guaranty agreements on behalf of each of BSGNA’s subsidiaries. Goldstein Att. B, [BSGNA Credit Agreement, June 30, 2011; Guaranty Agreements, June 30, 2011]. Phipps also signed the tax-sharing agreement as CFO of BSGNA and of each billing subsidiary. Wolfe Att. E-22, [BSG00086897-902].

17. A single billing and collection contract with a LEC (like Verizon or Embarq) applies to the billings for all of BSG’s subsidiaries. *See* Wolfe Att. G-1, [Billing agreements with Embarq and Verizon, filed as DE23-9 in *Lady Di’s, Inc v. ESBI*, Case No. 10-3903 (7th Cir.)].
18. BSGNA, the enterprise’s North American parent company, controls its subsidiaries BSG Clearing, HBS, ESBI, ACI, and BCI. In loan documents executed in 2011, BSGNA acted as the borrower and its subsidiaries acted as guarantors. Goldstein Att. B, [BSGNA Credit Agreement, June 30, 2011; Guaranty Agreements, June 30, 2011]. In those documents, BSGNA promised to perform various tasks as follows: “Borrower shall, and shall cause each

of its Subsidiaries to” . . . “maintain insurance,” “to discuss its business operations with its officers, employees, and...accountants, in each instance at [BSGNA]’s expense,” and “to comply in all material respects with all applicable laws, rules, regulations, orders, and decrees of any Governmental Authority or arbitrator.” Goldstein Att. B, [BSGNA Credit Agreement, June 30, 2011, pp. 28-29]. BSGNA also files a single, consolidated tax return on behalf of itself and all of its subsidiaries. Wolfe Att. E-22, [BSG00086896-934].

19. BSG Ltd. retains its ability to set policy for BSG. BSG Ltd. authorized the funding that supports BSGNA’s billing activities. Goldstein Att. B, [2011 credit agreement, p. 20 § 5.1(a); BSG Ltd.’s Bye-Laws, pp. 28-29]. BSG Ltd.’s board of directors are responsible for BSG’s “system of internal control,” including “both financial and non-financial controls,” and “seeks to continuously assess the risks to which it is exposed and to take appropriate steps to mitigate or eliminate those risks wherever possible.” Goldstein Att. A, [BSG’s 2008 annual report, p. 12; BSG’s 2009 annual report, p. 15]. BSG’s board of directors “agreed to a schedule of items that are specifically reserved for its consideration, which is reviewed on an annual basis...[and] includes setting and monitoring strategy, reviewing trading performance, guiding business development, examining acquisition possibilities and approving reports to shareholders.” *Id.* at [BSG’s 2008 annual report, p. 11; BSG’s 2009 annual report, p. 14]. BSG Ltd.’s board also approves the annual budget. *Id.* The board also commissioned audits that included BSG’s billing operations, and established an audit committee that made recommendations on the scope of the audits. *Id.*; see Wolfe Att. E-23, [BSG00093255, 94682, 97265] (audit committee meetings), Wolfe Att. E-22 [BSG00086935-83] (Ernst & Young audit), Wolfe Att. E-32, [BSGRESXVIII00002747-64] (Accenture audit). BSG Ltd.’s bylaws allow it to pass a resolution to wind up its affairs and

distribute its assets among its shareholders. Goldstein Att. B, [BSG Ltd.'s Bye-Laws, p. 39].

BSG Ltd.'s only asset is BSGNA. *See* ¶ 12, *supra*.

BSG Accepts Enhanced Billing Records from Vendors, and Places Them with LECs to Bill Their Telephone Customers

20. BSG “enables third-party service providers [vendors] to include their charges on the telephone bills of LECs.” Wolfe Att. A, [Comment of Billing Concepts, Inc., *In re: Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (Cramming)*, FCC CG Docket 11-116, (filed Oct. 24, 2011), p. 1].
21. Vendors can bill charges for “enhanced” or telecommunications services through BSG in the name of its billing subsidiaries. *Id.* at pp. 1-3.
22. “Enhanced” services are those products or services unrelated to the completion of a call, such as web hosting, directory listings, and e-mail services. Wolfe Att. G-2, [Deposition of Cathy Coleman-Ackerman, filed as DE35-7 in *Lady Di’s, Inc v. ESBI*, Case No. 10-3903 (7th Cir.), pp. 55-57; Deposition of Denise DeSilva, filed as DE23-7 in *Lady Di’s, Inc v. ESBI*, Case No. 10-3903 (7th Cir.), pp. 26-27].

BSG Only Requires Data Fields, Not Actual Consumer Authorizations, Before Submitting Enhanced Services Charges for Billing

23. Vendors interact with BSG through its Webtrack® system, where vendors log in and deliver file data to BSG’s subsidiaries and access BSG’s reports. Wolfe Att. G-2, [Deposition of Cathy Coleman-Ackerman, pp. 29-30].⁵
24. BSG gives all its vendors a handbook that contains the requirements for submitting billing data to BSG. *Id.* at [Deposition of Cathy Coleman-Ackerman, p. 30]; *see also id.* at

⁵ Ms. Coleman-Ackman testified about subsidiary ESBI, the named defendant in that action; however, she made clear that the Webtrack file-delivery and reporting system serves all of BSG’s billing subsidiaries. *Id.* at p. 30.

[BSG LEC Billing Carrier Handbook, filed as DE23-7 in *Lady Di's, Inc v. ESBI*, Case No. 10-3903 (7th Cir.), pp. 8-43].

25. BSG requires that vendor records submitted for placement on LEC telephone bills be in a particular electronic format. *Id.* at [Deposition of Cathy Coleman-Ackerman, p. 38]. BSG treats a charge as “authorized” by the consumer when a particular field in that format is populated with the number “4.” *Id.* at [Deposition of Cathy Coleman-Ackerman, pp. 38-43, 55-56].

26. If the record is missing any digits in the required data fields, then the charge is rejected. *Id.* at [Deposition of Cathy Coleman-Ackerman, p. 63 line 9 – p. 65 line 4].

27. At the time the vendor presents the billing records to BSG, the only consumer “authorization” information possessed by BSG, other than the data field populated with the number “4,” is its subsidiary’s contract with the vendor, which requires that the vendor send only authorized charges. *Id.* at [Deposition of Cathy Coleman-Ackerman, p. 65 lines 5-19].

BSG and Its Subsidiaries Have Long Provided Billing and Collection of Unauthorized Charges for Businesses Run by Cindy Landeen

28. Cindy Landeen was an officer of a company known as Innovative Calling Technologies, later known as Phonebillit, Inc., a voicemail service which billed through ESBI from 2002 until mid-2005. Wolfe Att. D, [BSG 2005 CID Response, III.B.13.a – 000716-719, III.B.13.d – 001696-98].

29. In 2002, ESBI monitored consumers’ calls to Phonebillit complaining of unauthorized charges, notifying Landeen that her company was receiving excessive cramming complaints, and was suspended by PAC Bell. *Id.* at [III.B.13.d – 001889-90].

30. In 2003, ESBI notified Landeen that BellSouth reviewed a sales recording from a Phonebillit sale and found that the telemarketer’s pitch differed from the script submitted to

BellSouth for approval. *Id.* at [III.B.13.d – 001815]. Because of the discrepancy, BellSouth suspended new billing for Phonebillit. *Id.*

31. In March 2005, ESBI notified Landeen that Phonebillit exceeded Qwest’s 15% credit threshold (percentage of dollars credited versus dollars billed) for three straight months, with ratios of 42.9%, 27.2%, and 21.8%. *Id.* at [III.B.13.d – 001933-34].
32. Landeen’s involvement in the LEC billing operation and break-up of Phonebillit is the subject of a reported federal court decision. *Landeen v. Phonebillit, Inc.*, 519 F. Supp. 2d 844 (S.D. Ind. 2007). Christian Henderson’s involvement as Phonebillit’s marketer is also detailed in the decision. *See id.* at 853-54 (Landeen contended that Henderson’s “marketing was not appropriate because of issues that had arisen with the Texas Public Utilities Commission and a Verizon cramming complaint”).
33. When Landeen resigned from Phonebillit in 2005, she wrote to BSG employees that she would return to the LEC billing industry. Wolfe Att. D., [III.B.13.d – 001995] (“I plan on being in the LEC business one way or the other and I can guarantee that you have not seen the last of me!”).

MyIproducts

34. Later in 2005, Cindy Landeen did return to LEC billing through BSG with associate Timothy Durham and an entity called Durham Technology, LLC. Wolfe Att. E-11, [BSG00036085]; Wolfe Att. E-29, [BSG_Resp.-II-p.00000296-320].
35. On its billing agreement with ESBI, Durham Technology listed its address as 111 Monument Circle, Suite 4800, Indianapolis, Indiana, the same address used by Phonebillit. *Compare id.* at [BSG_Resp.-II-p.00000296] with Wolfe Att. D, [III.B.13.a – 000716-719]; *see also* Wolfe Att. E-14, [BSG0004931-6] (Landeen reminded BSG of her connection to

Phonebillit).

36. In late 2005, Landeen communicated with BSG about the LECs' billing approvals for Durham Technology to bill in the name of MyIproducts Imail. Wolfe Att. E-21, [BSG00078447-8]. BSG approved and started billing for MyIproducts in December 2005. Wolfe Att. E-14, [BSG00049527-8].
37. Landeen's communications with BSG about MyIproducts' additional LEC approvals continued into 2006. *Id.* at [BSG00049397].
38. MyIproducts Imail purported to offer a voicemail service where messages could be accessed via phone or the Internet. Wolfe Att. E-18, [BSG00054491].⁶
39. Soon after MyIproducts began operating, consumers complained to Landeen's company Alternate Billing Corp ("ABC") about MyIproducts' billing. Wolfe Att. E-14, [BSG00049409-15, 49386-90, 49376-83]. ABC handled the customer service calls for MyIproducts, and BSG frequently monitored those calls. *Id.*
40. In early 2006, BSG employees noted MyIproducts was not issuing billing credits to consumers even when consumers denied all knowledge of the billings or said they never ordered the service. *Id.* at [BSG00049494-5].
41. In March 2006, BSG employee Denise DeSilva questioned Landeen's failure to issue credits for unauthorized billing just because the consumer's information matched the information ABC had on file. Specifically, DeSilva asked, "How can you ensure that the person that is billed for the service is the one that hit the enter key?" Wolfe Att. E-6, [BSG00019025-26].

⁶ Durham also billed consumers for MyIproducts via another billing aggregator (not related to BSG), ILD Teleservices of Ponte Vedra, FL. Wolfe Att. H, [ILD Subpoena Response, pp. 0001-4]. Durham also billed two other products via ILD, SafeguardMyCredit and NeedTheInfo. *Id.*

42. In May and June, BSG warned Landeen that ABC was failing to credit consumers for unauthorized MyIproducts charges on their phone bills. Percival Att. A, [1B056_ITEM 57-BINDER JUNE-MAY-MARCH-FEB 06, pp. 000177-82, 000186-91].
43. In June, BSG's LEC relations manager, Sally Welge, informed Landeen that 154 Verizon customers had made cramming complaints about MyIproducts, and Welge requested an action plan to address them. Wolfe Att. E-14, [BSG00049546-48].
44. In July 2006, BSG again notified Landeen that it had monitored her call center and that her company was failing to issue credits. Percival Att. A, [1B056_ITEM 57-BINDER JUNE-MAY-MARCH-FEB 06, pp. 000001-3].
45. Also in July, BSG employee Melissa Covarrubias notified Landeen of another 103 Verizon cramming complaints, that her action plan failed to reduce complaints, and that MyIproducts was "over the threshold for two months in a row." Wolfe Att. E-14, [BSG00049554-6].
46. In July 2006, BSG scheduled a meeting with Cindy Landeen, Tim Durham, and attorney Gary Sallee in San Antonio because MyIproducts was on the "verge of getting suspended in the Verizon region." Wolfe Att. E-11, [BSG00037238].
47. At the end of August 2006, BSG notified Landeen that for the last 3 months, MyIproducts had exceeded BSG's threshold for allowable customer service inquiries (versus bills sent), writing that MyIproducts' inquiry rate was "higher than our target of 10% inquiry." Wolfe Att. E-6, [BSG00019616-17] (showing monthly billing inquiry rates of 28%, 24%, and 16% respectively).⁷ In the same month, Southwestern Bell informed BSG

⁷ Meanwhile, billing aggregator ILD applied to bill Verizon's customers for MyIproducts, but Verizon refused because of "a recent problem with cramming complaints under this subCIC[.]" Wolfe Att. H, [ILD Subpoena Response, pp. 0581-82].

that MyIproducts had crammed a phone line belonging to Southwestern Bell's vice president. Wolfe Att. E-5, [BSG00009895].

48. At the end of 2006, MyIproducts again exceeded BSG's customer service inquiry threshold (which BSG had by then raised to 12.5%) with 2,794 consumer inquiries for a ratio of 12.68% in October and 5,623 such calls for a ratio of 19.92% in November. Percival Att. B, [1B501_ITEM 32-CINDY'S PAPERS, pp. 000007, 9]; Wolfe Att. E-6, [BSG00019638-40]. On both of these occasions, BSG requested a sample of 30 Letters of Authorization ("LOAs"), which are documents demonstrating consumers' assent to be billed. BSG stated that, "since Internet marketing is also utilized, BSG requires the website creative or landing pages that were used during each end user's sign-up process," *i.e.*, pages consumers had allegedly navigated to on the Internet to sign up for MyIproducts Imail. *Id.*
49. Consumer complaints about MyIproducts continued into 2007. In January, BSG notified Landeen that Durham Technology had again exceeded BSG's 12.5% inquiry threshold in December 2006, with 4,843 calls from consumers for a ratio of 13.52%. Wolfe Att. E-7, [BSG00026863-64]. Again, BSG requested LOAs and landing pages. *Id.*
50. In February, BSG notified Landeen that Durham Technology exceeded the threshold with 6,081 calls for a ratio of 18.1% during January. Percival Att. B, [1B051_ITEM 32-CINDY'S PAPERS, p. 000020]. Again, BSG requested LOAs and landing pages from Landeen. *Id.*
51. At the end of February, BSG notified Landeen of 73 Verizon cramming complaints against MyIproducts, where "end-users contacted Verizon to deny all knowledge of the product and/or signing up for the service." Wolfe Att. E-20, [BSG00068166-69]. In March 2007, BSG notified Landeen of 91 such cramming complaints by Verizon customers. *Id.* at [BSG00068244-7].

52. In April, May, and June 2007, BSG notified Landeen that MyIproducts had surpassed BSG's threshold for billing inquiries, and generated 8,398, 7,798, and 7,616 complaint calls that breached the 12.5% threshold each month at 19.7%, 16.19%, and 17.89% respectively. Wolfe Att. E-6, [BSG00024052-53, 24058-59, 24088]. Even though BSG nominally requested the landing pages each time it sent these notifications, BSG produced no document showing that anyone produced landing pages in response to those requests.⁸
53. In June 2007, BSG notified Landeen that both Verizon and BSG wanted action plans to address the cramming complaints. Landeen responded not with a plan, but with denials of the complaints and allegations that consumers filled out LOAs and agreed to the charges. *Id.* at [BSG00024014-8].
54. Still, consumers' complaints of unauthorized billing continued to breach BSG's threshold, with a whopping 9,363 calls (15.87%) from complaining consumers in October 2007. Wolfe Att. E-20, [BSG00070794-95].⁹

⁸ The FTC sent document requests to BSG for the following:

9. All notifications sent by BSG (and all communications related thereto) that any entity identified in Request 6 [Durham Technology/MyIproducts, 800 Vmailbox, Digital VMail, EprotectID, EsafeID, InfoCall, Instant411, Streaming Flix, and Uvolve] has exceeded any complaint or inquiry threshold, including any threshold set by a LEC.

10. All responses, including LOAs and landing pages, marketing materials, and other information (and all communications related thereto) provided to BSG regarding the notifications responsive to Request 9.

BSG responded by designating thousands of emails as responsive to this request, but none of those emails appear to show that anyone sent landing pages "used in each end user's sign-up process" in response to the threshold breach notifications. *See also* Wolfe Att. E-32, [Accenture BSG On-site Assessment, BSGRESPXVIII00002754 ("Actual website not verified against the approved material on file.")].

⁹ Throughout 2007, BSG set the threshold at a ratio of 12.5% complaint calls to bills sent. *See* ¶¶ 49-52, *supra*.

55. Finally, that same month in 2007, Verizon notified BSG that it was terminating MyIproducts' ability to bill Verizon's customers "as they have not and will not bring cramming complaint level" down to meet Verizon's thresholds. *Id.* at [BSG00056583]. Further, Verizon stated that:
- "it would be irresponsible for Verizon to allow this service provider to continue billing."
- Id.* at [BSG00056585-6].
56. In response, BSG's LEC relations manager, Sally Welge, attempted to get Verizon to reconsider by sending a reinstatement plan authored by Landeen. *Id.* at [BSG00056621-27]. Landeen's plan attached an email from Christian Henderson promising to end a free coupon promotion, but stating that it could only end within 60-90 days "due to the number of publishers and websites currently running the campaign." *Id.* at [BSG00056627]. BSG's proposal for MyIproducts' reinstatement was to allow BSG to continue billing those 8,503 Verizon customers who had been billed for more than 6 months, and to make the termination, instead, into a suspension of new sales until inquiries were under the threshold. *Id.* at [BSG00056692-98].
57. Verizon rebuffed BSG's effort to reinstate MyIproducts because "in our ongoing discussions about internet marketing, co-registration marketing, and the like, these are exactly the programs that continue to generate cramming related complaints." *Id.* at [BSG00056672-82]. That, plus a 5-month analysis of MyIproducts' threshold breaches, "bolstered" Verizon's decision to terminate MyIproducts' ability to bill Verizon customers. *Id.* at [BSG00056672].
58. BSG continued to bill other LECs' customers for MyIproducts despite Verizon's termination of its billing privileges. Wolfe Att. E-32, [LEC Dilution Report,

BSGRESVII00000001-2]; *see also* Wolfe Att. E-20, [BSG00057695-6, 59898-9]

(subsequent threshold breaches by MyIproducts), Wolfe Att. E-13, [BSG00044790] (AT&T terminated BSG's ability to bill its customers for MyIproducts in March 2010).

59. In February 2008, AT&T required an action plan from MyIproducts to address cramming complaints in the BellSouth region. Wolfe Att. E-20, [BSG00071654-60].

BSG Accepted More Billing Applications from Landeen in 2008

60. BSG sales representative Beth Kimball "went to see Cindy Landeen [on February 13, 2008] because we've been talking about adding two or 3 new companies/products for several months now." *Id.* at [BSG00062963-64]. Kimball informed BSG CEO Greg Carter that she was drafting the billing agreements. *Id.*

61. On March 5, 2008, Kimball told BSG CEO Carter that the potential agreements with Landeen "probably won't be under the Durham name, by the way." *Id.* at [BSG00062963]. Carter approved Kimball's request to waive the application fee and give the new contracts the same call-transfer fee that Durham Technology had in its contract to bill consumers for MyIproducts. *Id.* On March 10, 2008, Cindy Landeen wrote to BSG's Kimball that the "three companies to start" were eSafeID, Instant411, and Digital Vmail, and Christian Henderson would sign the contracts to bill through three different BSG subsidiaries. Wolfe Att. E-11, [BSG00039448-51].¹⁰

62. On April 24, 2008, aggregator ILD suspended billing for all new sales of MyIproducts and two other services with Tim Durham listed as President: SafeguardMyCredit (ID theft

¹⁰ In March 2008, BSG stipulated to another Permanent Injunction, this one prohibiting unauthorized billing for telecommunications services. *FTC v. Nationwide Connections*, Case No. 06-80180, Stipulated Permanent Injunction as to Billing Concepts, ACI Billing Services, and BSG Clearing [DE778] (S.D. Fla. 2008). BSG's billing and collections detailed in this contempt motion are for "enhanced" services (recurring charges unrelated to the carriage of a phone call), and thus are not subject to that order.

protection) and NeedtheInfo (a 411 directory service). Wolfe Att. H, [ILD Subpoena Response pp.0002-3]. ILD later terminated SafeguardMyCredit and NeedtheInfo in September 2008. *Id.* at [ILD Subpoena Response p. 0001].

63. Within weeks, Landeen sent BSG contracts that Durham and Henderson signed to bill for seven new services, including the three she discussed with Kimball.¹¹ Two were for voicemail service providers, **800 Vmailbox**, **Digital Vmail**, with Christian Henderson signing the agreements to bill through ESBI. Wolfe Att. E-27, [BSG_Resp.-II-p.00000012-37]; Wolfe Att. E-29, [BSG_Resp.-II-p.00000235-8, 245, 257-8]. The ID theft protection service providers were **eSafeID** and **eProtectID**, with Henderson and Durham, respectively, signing agreements with BCI.¹² Wolfe Att. E-30, [BSG Resp.-II-p.00000332-350, 364-382]. In addition to an application for **NeedtheInfo**, Landeen also submitted directory assistance services **Instant411** (Henderson) and **InfoCall** (Durham) to bill through ACI. Wolfe Att. E-31, [BSG_Resp.-II-p.00000392-415, 432-3, 442, 454-5]; Wolfe Att. E-23, [BSG00102765-7, 87-90].

64. BSG CEO Greg Carter counter-signed the billing agreements with the following titles: CEO of ESBI, Wolfe Att. E-27[BSG_Resp.-II-p.00000012], Wolfe Att. E-29, [BSG_Resp.-II-p.00000235]; CEO of BCI, Wolfe Att. E-30, [BSG_Resp.-II-p.00000332, 364]; and CEO of ACI, Wolfe Att. E-31, [BSG_Resp.-II-p.00000392-415, 432-3, 442, 454-5], Wolfe Att. E-23, [BSG00102765].

¹¹ Documents found by the FBI when it executed search warrants at Landeen's business premises in December 2010 show that employees were told they were "launching 7 new products" to replace and "work the same as" the services suspended by ILD. Percival Att. C, [1B071_ITEM 80-OLD MEMOS, p. 000233].

¹² Although these agreements were with BSG subsidiary BCI, the charges were actually billed by HBS. *E.g.*, Wolfe Att. E-5, [BSG00003980, 4000].

65. At the same time the proposed vendors signed the billing agreements, they also submitted information about their proposed LEC-billed services on a BSG-supplied “iForm.” Wolfe Att. E-24, [BSG_Resp.-I-p.00000021-60]; Wolfe Att. E-25, [BSG_Resp.-I-p.00000061-100, 122-140]; Wolfe Att. E-26, [BSG_Resp.-I-p.00000216-234]. These applications contained blatant false statements, including Tim Durham’s answer to Question 9: “Have you ever submitted billings under a different business, company or marketing name? No.” Wolfe Att. E-24, [BSG_Resp.-I-p.00000022]; Wolfe Att. E-25, [BSG_Resp.-I-p.00000062].
66. The seven vendors’ relationship to one another and to Cindy Landeen was apparent from the start, and certainly well before BSG started billing for them. Wolfe Att. E-11, [BSG00039463] (BSG’s Beth Kimball emailed Denise DeSilva and Melissa Mitchell referring to eProtectID as “one of Cindy Landeen’s accounts”); *id.* at [BSG00039464-71] (Mitchell emailed DeSilva, attaching forms for NeedtheInfo, InfoCall, Instant411, 800 Voicemail, Digital Voicemail, and stating “most of these are related/Cindy Landeen is doing back office.”), Wolfe Att. E-15, [BSG00054480] (Kimball emailed Roberta Trevino: “Do you know if you are going to be the rep on the 7 new Landeen accounts for Christian Henderson and Tim Durham yet?”); Wolfe Att. E-7, [BSG00027349-51] (Sherry Martinez asked Landeen for a conference call regarding the marketing of all seven products). In fact, when some BSG employees were planning a due diligence site inspection at Tim Durham’s office, BSG employee Denise DeSilva wrote to them on October 30, 2008: “I don’t know if you want to kick off a visit to Tim’s office. All of the ‘moving parts’ are happening at Alternate Billing Corporation.” Wolfe Att. E-7, [BSG00027800-1].
67. The same BSG employees handled the applications for all seven proposed vendors, even though their agreements were nominally with separate BSG subsidiaries. Wolfe Att. E-23,

[BSG00089246-7, 249-65]. The same BSG employees communicated with ABC, often in serial emails about the seven services, during the “due diligence” period between the signing of the billing agreements and the commencement of billing. *See* Wolfe Att. E-16, [BSG00054481-5], Wolfe Att. E-17, [BSG00054486-9], Wolfe Att. E-18, [BSG00054490-1], Wolfe Att. E-19, [BSG00054492-7] (Cindy Landeen’s son sent BSG’s Denise DeSilva “3 separate emails containing the product profiles for each product type” (voicemail, directory service, ID products)); Wolfe Att. E-15, [BSG00054391-98, 54101-6], Wolfe Att. E-9, [BSG00027996-28004, 27971-9, 27980-8], Wolfe Att. E-8, [BSG00027960-8] (DeSilva sent identical emails telling ABC it was “free to launch your marketing” for eProtectID, InfoCall, Digital Vmail, 800 Vmailbox, and Instant411); Wolfe Att. E-10, [BSG00034081-95], Wolfe Att. E-7, [BSG00027802-21], Wolfe Att. E-8, [BSG00027822-36, 27837-51, 27852-66, 27867-86] (ABC employee Terri Chartrand sent consecutive emails attaching the services’ completed due diligence files to BSG employee Denise DeSilva, with copies to Cindy Landeen).

68. Those completed due diligence files stated that for each service “all operational aspects will occur” at ABC’s offices in Minnesota. Wolfe Att. E-10, [BSG00034091]; Wolfe Att. E-7, [BSG00027816]; Wolfe Att. E-8, [BSG00027825, 27843, 27855, 27876]. Denise DeSilva described the phrase “all operational aspects will occur” as meaning “basically, whomever is ‘driving’ the account.” Wolfe Att. E-10, [BSG00034078].

BSG Learned the Vast Majority of Consumers Billed Would Not Use the Services

69. On October 20, 2008, ABC employee Gabrielle Menne emailed Cindy Landeen and BSG employees Sherry Martinez and Roberta Trevino “contract info sheets” for NeedtheInfo, EprotectID, and InfoCall, each showing only a 20% expected product usage rate. Wolfe Att.

E-20, [BSG00054512-18]. Those sheets also answered the question, “do you have any direct/indirect associations with any BSG contracts?” by disclosing MyIproducts. *Id.*¹³

70. That same day, Menne sent a similar email to Cindy Landeen and BSG employees Martinez and Trevino with a hyperlink to “contract info sheets” for “companies owned by Christian Henderson.” *Id.* at [BSG00054520]. When the FBI executed search warrants at ABC in December 2010, the FBI seized contract info sheets for those companies -- Instant411, eSafeID, Digital Vmail, and 800 Vmail. Percival Atts. D- H, [1B057_ITEM 63-INSTANT 411 CA, 1B057_ITEM 63-INFOCALL, 1B057_ITEM 63-ESAFEID CA, 1B057_ITEM 63-DIGITAL VMAIL CA, 1B057_ITEM 63-800VMAILBOX CA]. Each showed estimated usage rates of 20%. *Id.*

71. After BSG received the contract info sheets disclosing the 20% expected usage, instead of rejecting the billing applications or questioning why so few billed customers would use the services, a BSG employee wrote:

“mention to Cindy during your discussions that we appreciate her honesty on the estimated usage rate. Please stress that usage is a very important issue right now with the regulatory agencies and she may at some time in the future need to produce usage information on each product.”

Wolfe Att. E-8, [BSG00027922]. Denise DeSilva forwarded the email to Cindy Landeen and Terri Chartrand with a copy to BSG employees Sherry Martinez and Roberta Trevino. *Id.*

BSG Continued to Bill for Crammers Despite Verizon’s Termination of MyIproducts

72. During BSG’s purported pre-billing due diligence in the summer and fall of 2008 for these seven services, BSG received word from competitor billing aggregator ILD

Teleservices that it had terminated billing for one of the services, NeedTheInfo. Wolfe Att.

¹³ On September 29, 2008, BSG notified Cindy Landeen that AT&T (whose customers BSG was still billing) suspended MyIproducts from billing any newly signed-up AT&T customers in the Southeast region. Wolfe Att. E-12, [BSG00040237].

E-11, [BSG00039495]; Percival Att. N, [FBI search warrant emails, 0000966-967]; *see also* Wolfe Att. H, [ILD Subpoena Response, p. 0001].

73. In November 2008, BSG LEC Relations Manager Sally Welge sent an email to Verizon asking if Verizon had “terminated within the past 5 years any of the following (a) InfoCall LLC; (b) owners, officers, directors, consultants, and contacts with decision making authority listed below; or (c) any company currently or formerly owned by the Vendor’s principals or owners listed below.” Wolfe Att. E-23, [BSG00100549-50]. Welge then then listed “Timothy Durham-President” and “Cindy Landeen” as “Consultant/Management Company.”

Id. Verizon’s reply to BSG was clear:

“Verizon terminated processing for My IProducts Imail in September 2007. Mr. Durham was a principal of this company. Verizon is not interested in allowing this company to submit charges for billing[.]”

Id.

74. Two days later, Denise DeSilva wrote to Cindy Landeen (and copied BSG employees Melissa Mitchell, Sherry Martinez, and Roberta Trevino): “We were informed by Verizon that due [to] Tim Durham being associated with My I Products and the fact this account was suspended due to performance issues in 2007, they are choosing to not allow any billing related to... Needthe Info[,] eProtectID[,] InfoCall.” Wolfe Att. E-9, [BSG00028009].
75. Within an hour came the response from ABC’s Terri Chartrand, with a copy to her boss Cindy Landeen, that they “would like to go ahead without Verizon.” Wolfe Att. E-10, [BSG00034246].
76. BSG allowed eProtectID and InfoCall to “go ahead without Verizon” and billed other LECs’ customers for these three services (Wolfe Att. E-7, [BSG00027495], Wolfe Att. E-32, [BSGRESVII00000006-7]; *see also* Genetski ¶ 8, Att. D) despite Verizon’s refusal to bill,

the services' connection to Tim Durham, Landeen's connection to MyIproducts, and that "all of the moving parts" for these services were happening at Landeen's place of business.

77. BSG also permitted 800 Vmailbox, Digital Vmail, EsafeID, and Instant411 to bill, even though their contract signator Christian Henderson had done the marketing for MyIproducts, and he submitted a letter at BSG's request stating that Cindy Landeen would "manage and oversee all the operations" for 800 Vmailbox, Digital Vmail, EsafeID, and Instant411. Wolfe Att. E-8, [BSG00027928-34]; Percival Att. H, [800 VMAILBOX CA, p. 108]; *see also* Wolfe Att. E-27, [BSG_Resp.-II-p.00000102-5] (Landeen later signed amendments to Digital Vmail's and 800 Vmailbox's billing agreements with BSG).
78. BSG's approval of billing for services run by Cindy Landeen, Christian Henderson, and Tim Durham after it knew of their involvement in cramming and termination by a major LEC contradicts BSG's past testimony about its due diligence process. In 2007, in a deposition in *FTC v. Nationwide Connections*, BSG CEO Greg Carter testified under oath that "BSG screens potential vendors to eliminate certain vendors that BSG doesn't want to enter into a service contract with," such as "[a]ny known entity or organization, company that has had issues or problems with third-party billing in the past." Wolfe Att. F, [Deposition of Greg Carter, p. 76].
79. Indeed, despite Landeen's cramming history and her involvement with all of the services, the only one of the seven services BSG refused to bill was NeedtheInfo, and that was nominally based upon its "performance" at billing aggregator ILD, rather than its connections to MyIproducts, which Verizon terminated. Wolfe Att. E-15, [BSG00054273-4]; *see also* Wolfe Att. E-8, [BSG00027958-9] (BSG's general counsel stating NeedTheInfo will be the only service of the seven Landeen applied for in 2008 that would not be approved

for billing).

BSG Approved Yet Another Landeen Application in 2009

80. In early 2009, Landeen, Durham, and Henderson proposed yet another service to be billed through BSG. On February 8, 2009, BSG's Melissa Mitchell thanked Cindy Landeen for coordinating a meeting at Tim Durham's suite in Las Vegas, but asked, "which company was executing the agreement? Will this me [sic] a new agreement between BSG and National Lampoon? Or will it a new [sic] B2P agreement between Durham Technologies and BSG and the subCIC (National Lampoon) will be under the Durham agreement?" Wolfe Att. E-11, [BSG00039742].
81. Within the week, Landeen clarified that the name of service provider would be Streaming Flix, LLC, and that Landeen, Durham, and Henderson would be its members. Wolfe Att. E-13, [BSG00048166]; Wolfe Att. E-10, [BSG00032536-7]; Wolfe Att. E-28, [BSG_Resp-II-p.00000118-34, 138-39]. Streaming Flix would purportedly allow consumers to stream movies to their home computers, and like the six services BSG approved in the fall of 2008, all operations would occur at ABC's offices. Wolfe Att. E-12, [BSG00040257-74]. It would bill consumers through BSG subsidiary HBS. Wolfe Att. E-5, [BSG00003980].
82. Again, BSG noted that actual usage of the service was crucial. BSG's general counsel wrote to Landeen:
- "Usage data has become a sensitive subject for the LECs, regulatory agencies, and BSG. What we need to confirm is that Streaming Flix will be able to identify the consumers that downloaded movies, types of movies, date of usage, etc. This data is very helpful in showing that the consumer did in fact use the service that they were charged for."
- Percival Att. N, [FBI search warrant email 0001046].

Billing for Landeen's Services Generated Thousands of Unauthorized Billing Complaints

83. BSG approved six of Landeen's products – 800 Vmailbox, Digital Vmail, eSafeID, eProtectID, Instant411, and InfoCall – in November 2008. Wolfe Att. E-8, [BSG00027960-68]; Wolfe Att. E-9, [BSG00027971-88, 27996-2800]; Wolfe Att. E-15, [BSG00054391-98, 54101-06]. BSG approved Streaming Flix in May 2009. Wolfe Att. E-9, [BSG00028353-60].¹⁴ Predictably, the results for consumers were disastrous.
84. BSG started billing for each of these services in 2009 and soon racked up complaints from LECs, regulatory agencies, and consumers (once again) in excess of the inquiry thresholds set by BSG.¹⁵ Wolfe Att. E-20, [BSG00054811] (ABC emailed BSG's Roberta Trevino seeking an "allowance" or accommodation for threshold breaches for the initial months of billing for "our newest products"); Wolfe Att. E-7, [BSG00024678] (Landeen emailed BSG CEO Carter, saying she found AT&T's 50 complaint per month threshold "alarming."). BSG notified Landeen and her employees that these new services breached BSG's 15% threshold month after month. Wolfe Att. E-10, [BSG00033419]; Wolfe Att. E-12, [BSG00040310, 40532-38, 40829-33, 40850-54]; Wolfe Att. E-13, [BSG00042296-306, 44484-86, 44492-4, 44497-99; 46280, 47107, 47769, 48068, 48071]; Wolfe Att. E-14,

¹⁴ In late 2009, BSG received from Landeen an application to bill for Uvolve. Landeen first asked if this service, which purportedly provided a job search tool plus streaming instructional videos, could be billed through Streaming Flix. Wolfe Att. E-12, [BSG00040489]; *see also* Wolfe Att. E-20, [BSG00073657-8] ("redo the marketing and focus on being able to stream the tutorials."). In April 2010, BSG approved a separate application signed by Landeen. Wolfe Att. E-28, [BSG_Resp.-II-p.00000140-41, 150, 158-59]; Wolfe Att. E-10, [BSG00034763-4]. BSG billed Uvolve through HBS. Wolfe Att. E-5, [BSG00008186-94].

¹⁵ Some time between 2007 and 2009, BSG raised the permissible customer complaint call threshold from 12.5% to 15%. Although the FTC in discovery requested "all documents relating to BSG's determination of appropriate or reasonable inquiry thresholds for enhanced services" BSG did not provide documents explaining why the threshold went up from 12.5% to 15%. In any event, these services could not meet even a 15% threshold.

[BSG00052783-84]; Wolfe Att. E-20, [BSG00057831-2, 57835-6, 57695-96, 60010-24, 75458-59]; Percival Att. I, [1B068_ITEM 71 – BSG PERFORMANCE INDICATORS, pp. 000007-55]; *see also* Wolfe Att. E-10, [BSG00033413, 33439-40], Wolfe Att. E-13, [BSG00042307, 47614] (notifications that the services exceeded the permissible LEC and regulatory complaint thresholds). Digital Vmail exceeded the threshold for eight straight months (April through November) in 2009, then again for two months (January and February) in 2010, with ratios ranging from 15.17% to 32.21%; and 800 Vmailbox exceeded it for seven of those same eight months (April, then June through November) in 2009 with ratios ranging from 16.59% to 38.39%. Wolfe Att. E-12, [BSG00040310, 40535-6], Wolfe Att. E-14, [BSG00052783-4], Wolfe Att. E-20, [BSG00057831-2, 578]; Percival Att. I, [1B068_ITEM 71 – BSG PERFORMANCE INDICATORS pp. 000024-25, 28-29, 37, 39, 49-52]. Also in 2009, Instant411 and InfoCall exceeded the threshold for seven and eight straight months, respectively. Wolfe Att. E-10, [BSG00033419], Wolfe Att. E-12, [BSG00040537-8], Percival Att. I, [1B068_ITEM 71 – BSG PERFORMANCE INDICATORS pp. 000014, 21, 26, 33-34, 40-41, 44, 48, 53-54].¹⁶ The ID theft services exceeded the thresholds for five straight months with ratios ranging from 16.35% to 20.23% (eSafeID) and 18.76% to 20.65% (eProtectID). Wolfe Att. E-12, [BSG00040830, 40832], Percival Att. I, [1B068_ITEM 71 – BSG PERFORMANCE INDICATORS pp. 000022, 27, 31-32, 38, 42, 46-47]; *see also* Wolfe Att. E-6, [BSG00017267-68] (November 12, 2009, internal BSG email from Blanca DeLeon to Melissa Mitchell consolidating threshold breach ratios for the last 3 months for all 8 services and asking “what their plan of action will be”).

¹⁶ The high number of complaints about unauthorized billing is not surprising, as InfoCall and Instant 411 were to “work the same” as another Landeen service that simply gave consumers a toll-free number they could call to ask one of Landeen’s employees to perform an Internet search. Percival Att. C, [1B071_ITEM 80-OLD MEMOS, pp. 000030, 33, 233].

The total numbers of complaints included in these threshold breaches were: 11,348 about eSafeID, representing 23.84% of its “customers”; 6,922 about eProtectID, representing 12.64% of its “customers”; 25,893 about Instant411, or 25.2%; and 26,665 about InfoCall, or 27.1%. *Compare* Wolfe Att. E-10, [BSG00033419], Wolfe Att. E-12, [BSG00040537-8, 40830, 40832], Wolfe Att. E-13 [BSG00044497, 44499], Wolfe Att. E-20, [BSG00057835-6], Percival Att. I, [1B068_ITEM 71 – BSG PERFORMANCE INDICATORS pp. 000007-8, 14, 21-22, 26-27, 31-34, 38, 40-42, 44, 46-48, 53-54] *with* Genetski Att. D.

85. From October 2009 through January 2010, and again in March and April of 2010, BSG notified ABC that inquiries about Streaming Flix greatly exceeded the 15% threshold with the following numbers of billing inquiries: 4,157 (25.42%); 7,469 (23.75%); 8,943 (22.42%); 13,907 (20.49%); 15,399 (16.05%); and 14,185 (18.3%). Percival Att. I, [1B068_ITEM 71 – BSG PERFORMANCE INDICATORS, pp. 000009, 19-20, 35]; Wolfe Att. E-13, [BSG00044108-9, 44492-4, 45089-91, 45273-4]. These complaint totals represented 25.67% of consumers BSG billed for Streaming Flix. *Compare id. with* Genetski Att. D.¹⁷

86. In each of these threshold breach notices, BSG asked Landeen to provide, or (in the case of a third consecutive breach) allow BSG to retrieve, the billed consumers’ LOAs, which purportedly demonstrated consumers’ assent to be billed. Wolfe Att. E-10, [BSG00033419, 33413, 33439-40]; Wolfe Att. E-12, [BSG00040310, 40532-38, 40752-53, 40829-33, 40850-54]; Wolfe Att. E-13, [BSG00042296-307, 44108-9, 44484-86, 44497-99, 45089-91, 45273-4, 47107, 47614, 48068]; Wolfe Att. E-14, [BSG00052783-84]; Wolfe Att. E-20, [BSG00057695-96, 60010-24, 75458-59]; Percival Att. I, [1B068_ITEM 71 – BSG PERFORMANCE INDICATORS, pp. 000007-55]. The LOAs appear to be screen shots

¹⁷ Uvolve breached the threshold twice, garnering 738 complaints. Wolfe Att. E-13, [BSG00047107, 48068].

showing what the consumers saw upon signing up for the service. *E.g.*, Wolfe Att. E-13, [BSG00040993-41083]. These LOAs had several fields purportedly filled in by consumers, a scroll bar next to terms and conditions of the service, and a very prominent “Order Now” button, making it appear that a consumer found the service’s website, read the conditions, wanted the service, and clicked on the big Order button to order it. *E.g.*, Wolfe Att. E-5, [BSG0008297-98].¹⁸

87. On several occasions in 2009 and 2010, BSG notified Landeen that the LOAs passed BSG’s performance review while at the same time noting that the information consumers allegedly input in the LOAs did not contain specific security questions (e.g., mother’s maiden name, or date of birth) that Landeen promised would be captured when consumers signed up. Wolfe Att E-15, [BSG00053815-47]; Wolfe Att. E-10, [BSG00032286]; Wolfe Att. E-10, [BSG00033429] (“we did not find a security question response field in the eLOA records.”); Wolfe Att. E-21, [BSG00077966] (same); Wolfe Att. E-10, [BSG00033430] (“we noticed the records did not have a response to the security question.”); Wolfe Att. E-21, [BSG00079770-72] (same); Wolfe Att. E-12, [BSG00040752-53] (“the eloa records submitted did not have a field or a response for those questions.”); Wolfe Att. E-21, [BSG00081285] (“the eloas have a blank or n/a as the security response”); Wolfe Att. E-21, [BSG00081327] (same); Wolfe Att. E-21, [BSG00083046] (“we noticed that on several of the eloas the security response field for the mother’s maiden name is blank.”). BSG’s response to these discrepancies was simply to note that the Landeen/Henderson/Durham

¹⁸ In the fall of 2009, AT&T notified BSG that it suspended Instant411 from marketing to its customers. Wolfe Att E-13, [BSG00043580]. Around that same time, BSG’s CEO Carter was negotiating to make Landeen a “reseller/agent” of BSG, apparently as a result of their “prior conversation” in Los Angeles. Wolfe Att. E-7, [BSG00024782, 24386]; Wolfe Att. E-20, [BSG00073198-203].

marketing material submitted to the LECs for approval was “different than what we received via testing [of the LOAs].” Wolfe Att. E-13, [BSG00041798].

88. Time and again, consumers notified BSG that they had never seen the LOAs. *See* Wolfe Att. E-2, [BSG00001594-1603] (“They have sent me a copy of what I supposedly filled out and sent to them. Honestly, I have never seen this and did not send it in.”); Wolfe Att. E-4, [BSG00002843-57] (“They said I ordered the service and had proof I ordered it. I asked them to send proof. What they sent was an order form which I never saw before.”); Wolfe Att. E-3, [BSG00004726-29] (Verizon “advised me to call HBS Billing Service... they too told me I signed up for the account and sent me a typed up form ... which had all my information. My biggest concern is they sent me a form that I supposedly filled out on 11-11-09 which I had never seen before.”); Wolfe Att. E-5, [BSG00005654-7] (Digital Vmail “said they would send the ‘proof’ they have of my order. When it came it was apparent to me that I had never authorized it because the entire form was filled out in all lower case letters and I NEVER write that way.”); Wolfe Att. E-4, [BSG00006389-95] (Instant411 “did send a copy of my supposed transaction to prove I had made this order. However, it is in lower case, and I always capitalize proper nouns, including my own name.”); Wolfe Att. E-21, [BSG00086522-4] (“They said they would cancel my subscription but I would still be responsible for the original \$14.95. When I started screaming and swearing at them they offered to email me a copy of the form I filled out. I had never seen this form before.”); *see also* Wolfe Att. E-4, [BSG0004471-4] (“I have contacted them, they will not disclose information on how I signed up.”). Still others who were billed would not have knowingly signed up, like medical device maker Boston Scientific or the owner of restaurant chains Hardee’s and Carl’s Jr., who patently had no need for directory assistance service. Percival

Att. J (complaint from CKE Restaurants about InfoCall's billings); *see also* Wolfe Att. E-24, [BSG00016628] (BSG reviewed a recorded call showing that it had billed publicly traded Boston Scientific for months for directory service Instant411).

89. In September 2009, BSG's performance indicator testing of MyIproducts' LOAs resulted in the following email from BSG's John Wardashki to Melissa Mitchell: "We noticed when reviewing the LOA records they did not have a response to the security question....If the client provides the maiden name provided for each bill number, we will add it to the August PI records." Wolfe Att. E-21, [BSG00079770-72]. Again in November 2009, BSG spoke of "adding" the missing security question responses to MyIproducts' LOA records after reviewing them. *Id.* at [BSG00079952].

90. Further, just as it had done with MyIproducts in 2007, BSG again nominally "required" production of the landing pages each time it sent Landeen a notification that the products exceeded the thresholds. *See, e.g.*, Wolfe Att. E-10, [BSG00033419]; Wolfe Att. E-12, [BSG00040310, 40532-38, 40850-54]; Wolfe Att. E-13, [BSG00042296-306]; Wolfe Att. E-20, [BSG00054811, 75458-59]; Percival Att. I, [1B068_ITEM 71 – BSG PERFORMANCE INDICATORS, pp. 000019-35, 37-42, 44-50]. Even though BSG nominally requested the landing pages each time it sent these notifications, BSG produced no document showing that that anyone produced landing pages in response to those requests. *See* n.8, *supra*. BSG therefore did not receive the marketing consumers actually saw before being enrolled in these services, nor, apparently, did BSG follow up on this failure to supply the pages consumers actually saw.

91. Indeed, BSG does not appear to have questioned ABC about 800 Vmailbox's Internet "marketing paths" until the summer of 2009, but ABC provided no answer. Wolfe Att. E-9,

[BSG00028561-65]. Finally, in January 2010, when BSG asked how a particular consumer would have seen a particular advertisement (for 800 Vmailbox), Landeen's company responded, "We do not track the signup specific information you are talking about." Wolfe Att. E-13, [BSG00043957-58].

BSG and Its Vendors Misrepresented What Consumers Saw When They Were Enrolled in the Services

92. Even though BSG knew that the LOAs it reviewed were inconsistent with the marketing approved by the LECs, that consumers were complaining that they had never seen the LOAs, and that continuing astronomical complaint levels were inexplicable in the face of the LOAs' clarity, BSG continued to supply the LOAs to Better Business Bureaus, and public regulatory authorities as proof of "authorization" by the customers. *E.g.*, Wolfe Att. E-1, [BSG00000773-4, 854-5, 1039-41, 1043-48, 1140-46, 1264-5, 1341-3, 1380-1]; Wolfe Att. E-2, [BSG00001461-73 1502-1506, 1508-12, 1568-71, 1667-75]; Wolfe Att. E-3, [BSG00001726-31, 1807-9, 1837-47, 1849-61, 1939-46]; Wolfe Att. E-5, [BSG00001948-52, 3980-6, 4000-7, 8186-94, 8297-302].¹⁹

93. In reality, consumers had never seen the LOAs. Instead, they saw the Internet "offers" Christian Henderson's marketing company placed with website publishers. *See* Oskoui ¶¶3, 5-7. The offers appeared to be part of the sign-up process for an unrelated, free service or event, such as voting in a picture contest or obtaining a free email account. Oskoui ¶6, Att. A and B. As consumers clicked through the web pages related to these free events or services,

¹⁹ The same BSG employee sent the LOAs, no matter which BSG subsidiary billed the charge. *See* Wolfe Att. E-1, [BSG00000773-4 (ESBI), 1043 (ACI d/b/a OAN)]; Wolfe Att. E-5, [BSG00003980 (HBS)]. Occasionally, BSG provided no LOA regarding the complaint, but simply credited the charge and told the complainant to contact the Landeen company that billed the complainant to get "additional information" about the authorization. Wolfe Att. E-1, [BSG00001211, 1236-1241, 1259].

the offer pages for the services appeared several pages into the click-through and appeared to be part of the unrelated sign-up. *Id.* Indeed, the offer pages were pre-populated with information (such as name, address, and phone number) that consumers had initially entered to obtain the free email account or to vote, and contained a prominent heading such as “You’re Almost Ready to Cast Your Vote!” or “Your Email Account is Almost Ready!” Oskoui ¶10, 12, Att. A and B; Goldstein Att. D. Though the offer pages “disclosed” the service, its cost, and that it would be billed to the user’s telephone number, these disclosures appeared in a lengthy block of tiny text sandwiched between the large-print headline and the prepopulated data fields. Oskoui Att. A and B. Nor did the pages disclose anything about a refund policy. *Id.* Moreover, at the bottom of the page, well below the terms, was a button that (like prior screens) said “submit and go to next page”, “submit and continue to next page,” or “accept and go to next page.” *Id.* However, when consumers clicked that button, they did not just continue to the next page related to the free event or service; they were enrolled to be LEC billed for the service. Oskoui ¶3. Nothing in the following screens indicated that they had just agreed to be billed. Oskoui Att. A and B.

BSG Monitored and Recorded “Customer Service” Calls from Consumers

94. BSG monitored and recorded what it called “customer service” inquiry calls from consumers about each of the services. *See* ¶95, *infra*. The form BSG used to note the monitored calls was set up to record a complaint about unauthorized billing, including information about whether the LOA matched the identity of the person calling and whether he or she continued to dispute the bill. *See* ¶96, *infra*. BSG apparently did not produce documents showing that monitored calls involved typical “customer service” issues, such as inquiries for help accessing or using any of the services for which BSG was billing a calling

consumer \$14.95 a month.

95. BSG constantly recorded and monitored calls to ABC. Transcripts of these calls revealed:

- A. A representative told a caller from a law firm that “David Jones” ordered MyIproducts. The caller said there was no David Jones in his office and he knew no one by that name. After noting that charges for MyIproducts had appeared on his bill for six months, the caller said, “Nice gig you guys got, ‘David Jones.’ I got seven employees and we don’t have any Davids or any Joneses.” Wolfe Att. E-24, [BSG00016505].
- B. A consumer told the representative, “I have these charges on my phone bill that were not authorized and I’m trying to figure out why.” After the representative determined that the name given on sign-up for InfoCall did not match the name on the phone bill, the consumer said, “[E]very month there’s somebody trying to do this and I don’t know how to – how it’s done on the Internet or how it’s – it’s just absolutely ridiculous. You guys got to come up with some better stuff.” When the representative said that the order form used the consumer’s address and phone number, the consumer replied, “Yeah, which you can look in the phone book and find ... I can’t even believe that AT&T even allows you guys to bill on this.” *Id.* at [BSG00016590]. *See also* Wolfe Att. E-6, [BSG00016529] (BSG cover email admitting that InfoCall’s customer information is “not matching on the majority of their monitored calls.”).
- C. When the caller’s information did not match the name and address on the Instant411 account BSG billed to her phone line, the representative said, “When they

signed up for Instant411 over the Internet, they keyed in their telephone number incorrectly and that's why you're seeing the charge." Wolfe Att. E-24, [BSG00016519]; *see also id.* at [BSG00016520, 16500, 16499] (same).

- D. A consumer told the representative he had previously been promised a credit that had not appeared. The consumer said, "We've been fighting this thing for two months now" and that he "got a past due" because of the unauthorized charge. The consumer asked the representative whether she was with AT&T or ESBI, and she replied that she was with MyIproducts. The consumer asked, "MyIproducts? You're the guys that slammed me or did whatever you did anyway, right?" The representative replied, "We're not slammers. I would take that up with your son who signed up for the service." The consumer explained that he did not know how the charge appeared on his bill but that a previous representative told him it may have occurred after he filled out a survey. The representative said the service would have been ordered directly through Myiproducts.com. When the consumer replied, "I doubt that very seriously," the representative told him, "You don't have to believe that, but that is how it's ordered." *Id.* at [BSG00018440].
- E. An employee of Boston Scientific called in June 2009, after beginning an audit of the company's phone lines and discovering a charge for Instant411. The caller learned that Boston Scientific's phone line had been billed for six months for the service, under a name the caller did not recognize. *Id.* at [BSG00016628].
- F. A representative told a consumer that eSafeID had billed her for an order placed in her neighbor's name. When the representative told her it would take two to three billing cycles for a credit to appear on her bill, the consumer replied, "Wait a minute,

you said a couple billing cycles to give me my credit, but it only takes a minute to take – you know, to bill me. ... This is the second time this has happened to me.” *Id.* at [BSG00016642].

G. A representative told a consumer she was being charged for a Streaming Flix account ordered in her ex-husband’s name. When the representative described the service and said it allowed the user to download videos onto a computer, the consumer replied, “We don’t have a computer, honey.” The representative initially refused to issue a credit, however, because “he [the consumer’s ex-husband] would be held responsible for that 14.95 charge ... because I do show that I have correct information that he did sign up for a service.” The consumer replied, “But this is not right, how somebody can put something on my phone bill that I don’t even have and I have to pay it. ...the phone is in my name and I did not okay this.” *Id.* at [BSG00016670].

H. A caller who BSG charged for Digital Vmail told the representative he did not want the service. When the representative said, “I am showing your information on the order form as the person that requested our services,” the consumer replied, “I did not. I take care of the billing and I’m looking to lower the bill, not raise it. I’m not sure where the mix-up was.” The representative told him the only way the company could get his information was for the consumer to “manually enter all of your information in on the order form and then click the order now button and submit it to us.” *Id.* at [BSG00016704].

I. A representative told a consumer that the order for Streaming Flix was in the name of her husband. The consumer replied, “I’m pretty sure he did not mean to sign

up for this. So, is that what the 14.95 extra charge on my phone bill was?” When the caller asked how her husband was enrolled, the representative said, “It’d have to be signed up for over the Internet and it did have to be signed up for directly off of the Streaming Flix website or an advertising affiliate site.” The representative then led the consumer in a confusing exchange over how many Streaming Flix charges had been billed to her telephone number. *Id.* at [BSG00016858].

J. A consumer asked the representative what the \$14.95 charge on his phone bill was for. The representative explained that it was for a Streaming Flix account for “unlimited access to our video database.” The consumer replied, “Yeah, but I didn’t ask for – I didn’t ask for that, though. I mean, how could they just put that on there? ... I don’t know how it could be just – how you could just stick something on – you know, on a person’s bill that they don’t ask for?” The representative denied that the charge was crammed on the consumer’s bill and said the consumer signed up directly on the Streaming Flix site or on an “advertising affiliated” site. The consumer asked to have his bill “without charging me for something that I don’t know anything about.” *Id.* at [BSG00016859].

K. A caller complained about a bill for eProtectID, and the representative explained that it was for a credit-monitoring service and was in the caller’s niece’s name. The caller said, “Okay. Now, there we have a problem. She doesn’t have any credit. She’s a kid. I mean, why would she need a – you know what I mean – a credit report?” *Id.* at [BSG00016668].

L. A representative told a consumer that her son signed up for Instant411 online. When the consumer said she did not understand how that happened because her son

would not need such a service, the representative replied, “Well, he may have been on one of our advertising affiliate sites and thought he was signing up for something else.” *Id.* at [BSG00016518].

96. BSG’s notes on monitored calls also revealed details of billing complaints, including:
- A. A caller complained that she was billed for identity theft monitoring supposedly ordered by her minor daughter. Wolfe Att. E-32, [BSGRESPIXIII_00000290].
 - B. Callers complained about being billed for Streaming Flix’s online video subscriptions even though the billed parties had no Internet access. *Id.* at [BSGRESPIXIII_00000033, 37, 39].
 - C. A caller complained on behalf of a phone subscriber who was billed for InfoCall’s directory assistance service while he was deployed. *Id.* at [BSGRESPIXIII_00000223, 226].

BSG Continued Billing for the Services Even After AT&T Forced BSG to Acknowledge that Thousands Were Billed Without Authorization

97. In early 2010, in response to continuously high complaint levels, AT&T suspended all billing for MyIproducts and stopped all new billing for 800 Vmailbox, Digital Vmail, and Streaming Flix. Wolfe Att. E-21, [BSG00081623-4]; *see also* Percival Att N, [FBI warrant email 0171] (Melissa Mitchell notified Landeen that AT&T is cutting off new sales of all voicemail products to its customers effective February 1, 2010).
98. In early 2010, AT&T told BSG that cramming complaints about Streaming Flix had reached an unacceptable level. Wolfe Att. E-11, [BSG00035208]. AT&T also denied BSG’s request to bill AT&T customers under the name Streaming Flix-National Lampoon because

“This new subCIC application is for a service provider whose Principal is also the officer of Streaming Flix, LLC. The service program for Streaming Flix, LLC offered online subscriptions to receive streaming video. The service

program for this applicant, Streaming Flix National Lampoon, LLC is the same offering. Based on the 2/9/2010 letter to HBS informing them of our intent to no longer accept new billing from Streaming Flix due to unacceptable levels of cramming complaints, we have made the decision not to accept billing from this service provider.

This request is denied.”

Id.

99. In response to a request from AT&T, BSG “scrubbed” the customer lists for those services to determine whether the phone numbers it was billing matched the names and addresses gathered during marketing of the services. *See* Wolfe Att. E-13, [BSG00044516-7] (Melissa Mitchell sent Landeen “the attached worksheet from ATT today regarding excessive complaint levels for MyIproducts, 800VM, Digital vm, Info Call, and Instant 411...ATT has requested for all the attached companies to scrub their existing ATT base.”); Wolfe Att. E-13, [BSG00044525-6] (Mitchell sent to Landeen, Henderson and their IT contractor Brian Jones the “file format we need for the current ATT customers for MyIproducts, Digitalvm, and 800vmbox” for the scrub). Mitchell vowed that BSG would continue to “bill records that pass.” *Id.* at [BSG00044516].
100. BSG conducted the scrubs (but, curiously, only in AT&T’s southeast region) for 800 Vmailbox and Digital Vmail and found that 5,430 of the 8,413 telephone numbers it was currently billing in that region – a stunning 64% – “did not pass name and address lookup,” meaning BSG had billed the telephone numbers of thousands of consumers without their authorization. *Id.* at [BSG00045186-88]. BSG also scrubbed the InfoCall customers from that region, and found that 46.7%, or 1,803 of the 3,866 telephone numbers it was currently billing, did not pass. *Id.* at [BSG00045189]. Landeen’s company conducted the scrub for Streaming Flix across all of its billings (without limiting the scrub to AT&T’s southeast

region) and found that 26%, or 9,341 out of 35,409, of the phone numbers billed did not belong to the consumer who purportedly ordered the service. Goldstein Att C, [Idataworx\abc\sent items 03/04/2010, HBSDOC-0009372].²⁰

101. But BSG did not cut off all billing for the services, report them to law enforcement, issue credits to “scrubbed” consumers whose numbers had been improperly billed, or even conduct a full-scale investigation. Instead, BSG simply told ABC to remove the mismatched numbers from the services’ billing rosters and continued billing the rest of the services’ “customers.” See Wolfe Att. E, [BSG00045186] (reporting the total numbers of 800Vmailbox and Digital Vmail customers that did not pass name and address lookup, BSG’s Melissa Mitchell told Landeen’s employee to “[h]old off on sending the Info and Instant until I can get you the numbers that did not pass so you can strip from your files.”). Mitchell even sent Landeen and Henderson a draft plan to ask AT&T for reinstatement of Streaming Flix, stating “we need to add some words related to the SF/ATT existing base and what scrubs have occurred with the existing base.” *Id.* at [BSG00044554-6].

102. In May 2010, BSG’s Mitchell informed Landeen that, based on running Streaming Flix’s purported customers through NAP validation (*i.e.*, checking the Name and Address against the billed Phone number), 16 of the “customers” were dead. *Id.* at [BSG00045874-5].

103. On July 14, 2010, Verizon sent BSG a letter terminating billings for Streaming Flix. Wolfe Att. E-7, [BSG00024431].

104. Despite continuous, overwhelming evidence that all of Landeen’s services were rife with cramming, BSG then approved applications to bill two new services for her,

²⁰ In March 2010, Landeen informed BSG that, in submitting Streaming Flix’s new sales to BSG for billing, the “customers” names and addresses had not been checked against the telephone numbers to be billed (also known as “NAP validation”) at any time before March 1, 2010. Wolfe Att. E-13, [BSG00045161-2].

ProIdentityProtect and MyIDsafe, in the fall of 2010. Wolfe Att. E-26, [BSG_Resp-I-p.00000446-50, 457-62] (affidavits for billing ProIdentityProtect through AT&T and Verizon signed by Cindy Landeen on August 10, 2010). These applications contained blatantly false statements, such as a response of “N/A” to AT&T’s request to “include the names of any and all business enterprises, corporations, joint ventures with whom any of the individuals who currently serve or have served as Officers, Directors, Principals, Owners or Partners of subCIC are now or have ever been associated, and that have either generated or submitted charges to be billed on any AT&T Telcos bill.” *Id.* at [BSG_Resp.-I-p.00000447]. Despite BSG’s willingness to continue billing for Landeen, Verizon caught the proposed services’ connections to the terminated Streaming Flix and denied the applications. Wolfe Att. E-11, [BSG00035286. Still, BSG continued to seek approval to bill other LECs’ customers for ProIdentityProtect and MyIDsafe. *See* Wolfe Att. E-21, [BSG00082858] (CenturyLink approved ProIdentityProtect, subCIC 349 , noting that “this is an identical product to MyIDsafe,” and asking, “What is the benefit of having the same product under multiple names?”); *see also* Wolfe Att. E-20, [BSG00076869] (confirming MyIDsafe was subCIC 243).

105. In the fall of 2010, BSG attempted to convince Verizon to keep billing Streaming Flix’s residual “customers,” like the reinstatement request BSG submitted for MyIproducts in 2007, but Verizon told BSG “that is against the Verizon policy.” Wolfe Att. E-7, [BSG00025325]. BSG then reviewed Verizon’s termination of Streaming Flix. *Id.* at [BSG00024418-19]. Denise DeSilva wrote to CEO Greg Carter and Melissa Mitchell, reminding them that Streaming Flix’s customers’ names and addresses were not matched with phone numbers before billing them:

“Streaming Flix had an issue when they were authenticating their own sales...It was discovered that that during the initial query for NAP [name/address/telephone], that is [sic] the query came back as "blank" or "no data", they would then send it to NAS [name/address/SSN] for processing. The problem in doing this is that there is no confirmation that the consumer is associated with that telephone number.”

Id.; *see also* Wolfe Att. E-12, [BSG00040060-8], Wolfe Att. E-21, [BSG00080881-3] (ABC said a billed phone number that belonged to an AT&T corporate office was found to have been “disconnected” when BSG asked how it could have passed authentication to be billed for Streaming Flix). Despite this knowledge, BSG attempted to get Verizon to reinstate Streaming Flix’s billing privileges and give the service another chance to meet Verizon’s complaint thresholds. Wolfe Att. E-7, [BSG00024706-9; Wolfe Att. E-21, [BSG00082631].

BSG Billed for Services Barely Any Consumer Used

106. BSG received written complaints from consumers stating they never used the services for which BSG was billing them \$14.95 a month. *See* Wolfe Att. E-1, [BSG00000092-93] (“I have never used voicemail; nor would I have need of it. This I feel is nothing but a scam.”); Wolfe Att. E-2, [BSG00001713-14] (“I had no idea of this service because I have always paid my bills on live [sic] and I never check my bills. I am requesting reimbursement back since July of 2007 in the amount of \$669.90. I have never used this service.”); Wolfe Att. E-4, [BSG00002079] (“Bottom line: I was charged 6 months for a service I never signed up for and never used.”); Wolfe Att. E-4, [BSG00002145-6] (“Neither my wife Linda nor I made the subscription and have never used the service. We just realized it was on our bill this month [after being billed for 7 months]”); Wolfe Att. E-1, [BSG00005031] (“Neither my wife or I have ever ordered this service. We don’t need this service because we have an answering machine. I have, until this problem arose, never heard of this company. We have never used this service and wish to have this cancelled or disconnected or whatever.”); Wolfe

Att. E-6, BSG00018779] (“I have never used directory assistance and dispute this charge and would like you to issue a refund.”); Wolfe Att. E-21, [BSG00008145-49] (“Through our telephone provider, AT&T, Enhanced Services Billing fraudulently billed on behalf of Digital Vmail, Inc for voicemail services never ordered or used.”).

107. The three voicemail services that BSG billed (800 Vmailbox, Digital Vmail, and MyIproducts Imail) were supported by an underlying provider of voicemail boxes, NXT Telecommunications. Percival Att. K [1B057_ITEM 63-VENDORS, pp. 000063-66]. Had BSG ever bothered to ask for the voicemail usage data, it would have learned that while BSG was billing between 98,000 and 150,000 “customers” for voicemail boxes each month, NXT’s records showed that a mere 209 voicemail boxes were used. Wolfe Att. I, [NXT Records Declaration]; Genetski ¶¶ 5-6 and Att. B;²¹ *see also* Goldstein Att. C, [Idataworx\abc\inbox 07/23/2009, HBSDOC-0006504; 07/27/2009, HBSDOC-0006471] (showing only 141 active and 98,772 inactive mailboxes as of July 27, 2009); *id.* at [Idataworx\abc\inbox 10/21/2009, HBSDOC-0005260] (ABC employee Angela Leal stating “these 4 digit Imail accounts were provided to employees to use for personal usage.”); Wolfe Att. E-8, [BSG00027834, 27841] (Landeem’s pre-billing answers to FAQs for billed consumers about 800 Vmailbox and Digital Vmail: “your mailbox number is the ten digit account number (BTN or phone number).”).

108. Not surprisingly, Streaming Flix had a similar track record of non-usage: hundreds of thousands of billings, and barely any movies streamed. In fact, between July 2009 and December 2010, BSG billed 253,269 consumers a net \$9,642,992.00 for StreamingFlix. Genetski Att. D; *see also* Wolfe Att. E-10, [BSG00033460] (showing that BSG billed 28,932

²¹ Genetski ¶¶ 5-6 and Att. B provide a summary of NXT’s usage records pursuant to Rule 1006, Fed. R. Evid. Copies of NXT’s records are available upon request.

Verizon customers for Streaming Flix in January 2010). For all those billings, the underlying video provider, Rovi Corporation, owner of CinemaNow, reported that there were 23 total videos streamed. Wolfe Att. J, [Rovi Corporation records]. Some of those were rented by Landeen's employees. *Compare id. with* Percival Att. C, [1B071_ITEM 80-OLD MEMOS, pp. 000220-221] (showing names of ABC's employees whose names appear in Rovi's records). Again, BSG failed to ask for usage information at any time during the lucrative year and a half it billed over 250,000 consumers for Streaming Flix.

109. In addition, the identity theft protection services (eSafeID and eProtectID) approved by BSG were unused by at least 95% of those billed. These companies allegedly offered identity theft protection services that would place fraud alerts on consumers' credit reports and order copies of the reports from the credit bureaus. Wolfe Att. E-7, [BSG00027802-21]; Wolfe Att. E-8, [BSG00027867-86]. To place a fraud alert on a consumer's credit report, eSafeID and eProtectID requested additional information from consumers after the sale. According to BSG's files, consumers could provide the information by using a hyperlink in a "Welcome" letter, and creating a user name and password to "log in" to their eSafeID or eProtectID account. Wolfe Att. E-16, [BSG00054484, pp. 13-14; 54485, pp. 13-14]. BSG billed consumers a net \$4,082,940 for these two products from May 2009 until the execution of search warrants. Genetski Att. D. But, in October 2010, one of Christian Henderson's employees, when asked about creating a cancellation page for all services, admitted that users would "have to create their user name and login and 95% of the user[s] don't bother doing that." Goldstein Att. C, [Idataworx\abc\inbox 10/20/2010, HBSDOC-0001726].
110. Uvolve also was not used by consumers. Uvolve purported to be an online instructional video and job training service. Wolfe Att. E-10, [BSG00034763-64]. To utilize the

instructional videos and to access articles, a consumer would purportedly have to create a user name and password and login to the website. *Id.* As noted above, 95% of those billed for Landeen's services never provided that information.

Execution of Search Warrants Finally Stops the Cramming Operation

111. It was not until the FBI raided Landeen's Minneapolis offices in December 2010 that BSG finally stopped billing for her companies' services. *See* Wolfe Att. E-13, [BSG00048335-36]; Wolfe Att. E-21, [BSG00077100-3, 83176].

Consumer Injury

112. From 2006 through December 2010, BSG billed 1,196,346 consumers' telephone numbers a net \$52,631,224.46 for MyIproducts, 800 Vmailbox, Digital VMail, eProtectID, eSafeID, InfoCall, Instant411, Streaming Flix and Uvolve. Genetski ¶¶ 8, 10, Att. D.

113. The net amounts BSG billed for each service are: MyIproducts: \$25,233,464.31; 800 Vmailbox: \$2,894,827.06; Digital VMail: \$1,987,636.95; eProtectID: \$2,312,880.19; eSafeID: \$1,779,405.06; InfoCall: \$4,134,345.48; Instant411: \$4,310,675.32; Streaming Flix: \$9,700,870.02; and Uvolve: \$277,120.07. *Id.*

114. An astronomical number of these services' "customers" sought and received credits for at least some of the unauthorized billings, including: MyIproducts: 58% of phone numbers billed; 800 Vmailbox: 61%; Digital VMail: 59%; eProtectID: 46%; eSafeID: 48%; InfoCall: 55%; Instant411: 54%; Streaming Flix: 46%; and Uvolve: 37%. *Id.* In the credit card billing context, a credit-to-billings ratio of 1% or above is considered to be an indicator of fraud. Chen ¶ 10.

115. Of those who received credits, many received credits for only part of the charges BSG billed them. For example, although 48% received credits for eSafeID charges, 15% received

credit for less than all the charges billed to them. Genetski ¶ 8, Att. D. The percentages of the other services' "customers" receiving less than full credits are as follows: eProtectID: 16%; Uvolve: 8%; Streaming Flix 17%; InfoCall 17%; Instant411: 17%; MyIproducts: 20%; 800 Vmailbox: 20%; and Digital Vmail: 19%. *Id.* For those consumers, the net loss from these billings was \$10,670,672.03, a substantial part of the net \$52,631,224.46.

116. The lucre from these billing is astounding. Overall, consumers received credits for only 28% of BSG's \$73,289,129 gross billings. Genetski ¶8, Att. D. Indeed, of those consumers who received some credit for BSG's unauthorized billings, they still lost over \$10 million. *Id.*

WHEREFORE, the FTC submits this fact Appendix, pursuant to Local Rule CV-7(c) and requests an Order to Show Cause Why BSG and its Subsidiaries Should Not be Held in Contempt for Violating the Permanent Injunction.

Dated: March 28, 2012

Respectfully Submitted,

/s/ Douglas V. Wolfe

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