

Informal Complaint Report

Index Number: 5013 **Company Name:** Integra Telecom of Utah Inc.

CUSTOMER INFORMATION

Customer Name: PIGNATELLI & O'BRIEN LLC **Account Number:** 790330
PIGNATELLI & O'BRIEN LLC

Other Contact Info: Melissa O'Brien (435-659-6368) & Tina Pignatelli (703-969-2442) **Phone Number:** (703) 969-2442

Customer Address: **Other Phone:**

Customer Address: 2503 Aspen Springs Dr., **Email Address:** www.mtctrains.com

City: Park City **State:** UT **Zip Code:** 84060-7537

COMPLAINT INFORMATION

Type of Call: Complaint **Complaint Type:** High Bill

Date Received: 8/7/2013 **Date Resolved:** 8/22/2013

Complaint Received By: Maria Martinez **DPU Analyst Assigned:** 0

Utility Company Analyst: Cathy Murray

Company at Fault: **Actual Slamming Case:** **Actual Cramming Case:**

Complaint Description:

On Wed, Aug 7, 2013 at 9:38 AM, Christina Pignatelli <Christina.Pignatelli@mtctrains.com> wrote:

Dear Maria,

Thank you so much for taking the time to speak with us today. As discussed, I will send you the initial correspondence and Melissa will follow up with a more detailed summary of her communications with Integra on this issue. My contact information at work is below and my cell phone is (703) 969-2442. This email is the best at which to reach me.

Initial Chronology

In the third or fourth week of June we received a letter from Integra regarding a "fraudulent call incident" or "hacking" that occurred on our phone lines. Admittedly, we could not tell if the letter was some sort of notice or if Integra was trying to sell us an additional service as it speaks about the installation of PBX. It also made it sound as though we had reported the incident as it began with "I regret to hear about and empathize with your fraudulent call incident" but we were unaware of any fraudulent calls at this time. Letter is attached as Integra June Letter.

Our most recent Integra bill at that time was for the usual amount – around \$200. This was a very typical sum for the entire length of our relationship with Integra. However, the July 2013 Bill was in the amount of \$28,815.79 (attached). When we received this bill we immediately began trying to communicate with someone at Integra to dispute the charges. We also followed the procedure for disputing the bill as outlined by Integra by sending correspondence to the Customer Operations – Billing Dispute address found on our bill. That correspondence is also attached and was sent via certified mail on July 22, 2013.

Please do not hesitate to let me know if you have additional questions.

Christina Pignatelli
Labor and Employment Counsel
Office: (801) 693-2603
www.mtctrains.com

PDF Attachments:

1. Integra June Letter
2. Integra July 11 2013 Bill
3. P&O Dispute Correspondence

Melissa

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12:28 PM (19 minutes ago)

to me, Christina, Marc
Maria,

Thanks again for the call this morning. I will send you a PDF with all of the email correspondence that I have had with Integra under a separate email (it is taking awhile to load and I wanted to get you the below information as soon as possible). Attached hereto is the timeline of communications that I have been keeping.

By way of background, Pignatelli & O'Brien LLC (hereinafter, "P&O") started taking phone service from Integra in December, 2008. In the last four and a half years, our monthly bill has consistently been between \$200-225 and we have always paid timely.

On June 15, 2013, in the middle of the night, two of the voicemail boxes at our offices were hacked into. The fraud was acknowledged in a letter from Integra dated four days later. According to Integra, what happens is that hackers try different combinations of passwords and break into the voicemails. They then have a way of selling international time and literally thousands of calls can be made in a matter of hours. We had never heard of such a thing but Integra told us that it is becoming a more common scam. They called it "toll fraud." In our case, over 2200 calls were made to the tune of nearly \$29,000.

Obviously this is VERY different usage than what Integra had come to expect from P&O – a \$200 a month client. Our understanding from our call with Integra is that its system does have an alarm that tags unusual usage but that it requires an actual human being to shut the service down. That human involvement did not occur until over seven hours later. Again, to the amount of nearly \$29,000.

Integra maintains that P&O is responsible for all of the calls due to unduly broad language in its Master Service Agreement – that basically customers are liable for every occurrence of fraud – known or unknown. P&O did everything right – we had our system checked out, it was installed properly. P&O had absolutely no way of stopping, or even knowing, that the fraud was going on, until the damage was done. Integra, on the other hand, had a system that could see the usage and stop it. Credit card companies do it all of the time.

We have tried to resolve this matter with Integra. When we called the customer service representative immediately upon receiving the bill, we could not even get a phone number for a manager – only an email. We have been on top of this issue since the moment we understood what happened.

While Integra has offered to waive half of the amount – still nearly \$15,000 is unpalatable to a small business. Integra knows that toll fraud is going on. P&O had absolutely no knowledge of it.

We very much appreciate your help in resolving this issue.

My contact information is:
melissa@pandollc.net
(435) 659-6368

I will be out of the country starting on Saturday but am accessible via email. My sister is around the entire time I am away – christina.pignatelli@mtctrains.com; (703) 969-2442.

Thank you again,
Melissa O'Brien

Integra Dispute Timeline

June 15, 2013 Hacking occurs

June 19, 2013 Letter is sent by Integra acknowledging the fraud, no contact information provided to resolve; Pignatelli & O'Brien LLC (hereinafter "P&O") receives sometime that next week

July 17, 2013 Bill for nearly \$29,000 received

July 17, 2013 Call is made to Integra, customer service representative refuses to provide a phone number for a manager, only provides email

July 18, 2013 P&O has system evaluated by IT installers; sends email to Integra

July 22, 2013 P&O sends certified letter disputing charges

July 23, 2013 Integra sends email requesting dates for conference call

July 23, 2013 P&O provides 5 different options for conference call over the immediate 72 hours

July 24, 2013 Return email from Integra at 5:53 pm

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July 26, 2013 Conference call held; Integra offers to waive half of the charges and suggests that P&O file with its insurance carrier

July 26, 2013 Integra confirms that all services received by P&O are out of contract

August 2, 2013 P&O reaches out to Integra via email to see if position has changed

August 6, 2013 Integra responds that its position remains the same, attaching a "Master Services Agreement," which assigns all responsibility for fraud to the customer, known or unknown

August 6, 2013 P&O inquires as to who approved the Master Services Agreement and whether or not it was provided to P&O at any time

August 6, 2013 Integra responds that it is not legal and not aware of who approved or if we ever received a copy of the Master Services Agreement—only that the original (now expired) contract references it

August 7, 2013 P&O contacts Maria Martinez

Complaint Response:

August 22, 2013

Via E-Mail and Certified Mail

Pignatelli & O'Brien LLC
Attn: Melissa O'Brien
Christina Pignatelli
1887 Gold Dust Lane, Suite 302
Park City, Utah 84060

www.integratelecom.com 1201 NE Lloyd Blvd., Suite 500, Portland, OR 97232

Re: Complaint with the Utah Public Service Commission, Index No. 5013 Contract for Service, Integra Telecom of Utah, Inc. and Pignatelli & O'Brien, Account No. 790330

Dear Ms. O'Brien and Ms. Pignatelli:

Enclosed please find the Response of Integra Telecom of Utah, Inc. to the above referenced Complaint.

Should you have any questions, please contact Ginny Zeller at 763-458-6575, or ginn y .zeller@integratelecom.com.

Sincerely

Cathy Murray
Manager, Regulatory Affairs
Phone: 763-745-8466
Facsimile: 763-745-8459
E-mail: camurray@integratelecom.com

cc: Marialie Martinez, Division of Public Utilities
at marmartinez@utah.gov

UTAH DIVISION OF PUBLIC UTILITIES, COMPLAINT INDEX NUMBER 5013
RESPONSE OF INTEGRA TELECOM OF UTAH, INC. TO INFORMAL COMPLAINT
OF PIGNATELLI & O'BRIEN, LLC

Introduction

Integra Telecom of Utah, Inc. (Integra) respectfully submits this Response to the Informal Complaint, Index No. 5013, filed by Integra customer Pignatelli & O'Brien, LLC (P&O) against Integra. P&O has refused to pay its outstanding charges for telecommunications services rendered by Integra. P&O bases its refusal on the fact that a third party illegally "hacked" into P&O's network hardware and placed long-distance calls. Although the terms of the parties' contract and the Utah tariff governing Integra's provision of service show that P&O is fully liable for the invoiced amount, Integra has agreed to credit a substantial portion of the invoiced

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charges. P&O nevertheless moved forward with its complaint, seeking a finding of zero liability. For the reasons that will be detailed in this Response, the Utah Division of Public Utilities (DPU) should dismiss P&O's complaint and find that P&O should pay the charges owing to Integra pursuant to contract and tariff.

History of Integra Contract with P & O

P&O first entered into a contract for telecommunications service with Eschelon Telcom of Utah, Inc. (Eschelon). Integra acquired Eschelon and its customer base in 2007. Eschelon had, and Integra continues to have, a policy and practice of providing to each customer signing a contract for service a copy of the governing document, the Master Service Agreement (MSA).

Furthermore, on July 1, 2008, Integra mailed each of the former Eschelon customers a copy of the Integra Master Service Agreement (MSA), with notification that this document was the contract governing the customer's service. Exhibit 1, July 1, 2008, Notification and attached Integra Master Service Agreement. On December 5, 2008, P&O signed a new 36-month contract with Integra. Exhibit 2, Voice and DSL Services Agreement. The contract states, among other things, that, "Customer acknowledges that Customer has received, read and understands this Agreement and the Master Services Agreement, and agrees to be bound by all of the terms and conditions of the foregoing documents and policies."

Paragraph 1 of the Master Service Agreement states that term contracts will convert to month-to-month unless and until either party terminates the agreement:

Subject to the early termination provisions set forth herein at the end of the Services Term, this Agreement will automatically continue on a month to month basis ("Renewal Services Tenn") until terminated by either party with at least (30) days advance written notice to the other party.

Exhibit 1, July 1, 2008, Notification and attached Integra Master Service Agreement, Paragraph 1.

As the original 36-month term was succeeded by a month-to-month contract, the MSA continued to govern Integra's service to P&O.

Circumstances behind the Charges

Shortly before 5:00AM, on June 15, 2013, an unknown party "hacked" into the hardware server on P&O's premises and originated an unauthorized call from the server to an international destination. This illegal activity is known as "toll fraud."

Integra's switch tracks all calls for billing and also monitors potential illegal activity. Because innumerable calls are legitimately placed to overseas destinations, and a telephone company cannot properly block a customer's calls without determining that the calls are something other than legitimate, the switch's anti-fraud function is only triggered when a sufficient volume of calls shows a pattern of abuse. In this case, this triggering volume occurred at just after 8:00 AM, whereupon the switch sent a "fraud alert." A trouble ticket was issued at 8:20 AM. After the completion of certain manual processes, rendered more complicated than usual by the multiple Business Telephone Numbers and the volume of customer circuits involved, all relevant international calls were blocked by 10:25 AM. Thereafter, at 10:45 AM, the underlying carrier, Level 3, issued its first "carrier alert" regarding toll fraud. A few illegitimate calls continued to come through the switch after the block was put on, probably because the calls had not been terminated until then and would therefore not have been tracked by the switch.

On July 11, 2013, Integra sent a bill to P&O for \$28,815.79, which included \$22,231.98 in toll fraud charges and \$6,377.34 in associated Other Charges and Fees. Thereafter, Integra issued a credit to P&O for 50% of the toll fraud charges, or \$11,115.87. The taxes and surcharges associated with the toll fraud charges will also be reduced by 50% in the following month's bill, which will bring the total credit to \$14,241.59. After application of all credits, P&O's remaining liability to Integra is therefore \$14,574.20.

P&O has refused to pay anything on the bill but its monthly service charge of \$184.35.

Terms of the Master Service Agreement and Governing Tariff.

Both Integra's governing MSA and its filed tariffs require that customers will be responsible for payment of toll fraud charges. Logic supports this position. Integra is responsible for carrying the communications service to and from the customer premises. The customer is responsible for installing and maintaining hardware that will interface with the communications service and ensure that calls are legitimate. Unless Integra is the customer's hardware vendor--which is not

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the case here--the vendor, not Integra, is able to install, set, and monitor the customer's PBX. Among many things the vendor or telecommunications consultant can do to protect the customer's system are: run periodic security audits to check for loopholes in the PBX; tailor access to the PBX to conform to business needs; delete/change all default passwords; frequently change default codes/passwords on voice mailboxes; and program the PBX to terminate access after the third invalid attempt. As the service provider, Integra can do none of these things. The terms of the MSA make clear the customer's responsibility in the case of toll fraud. Section 4 of the MSA states in relevant part:

FRAUD, TELEPHONE NUMBERS AND DIRECTORY LISTINGS

Customer is responsible for payment of any charges incurred due to fraud, abuse, or misuse of the Services, whether known or wllmown, to Customer. It is the Customer's obligation to take all measures to ensure against such occurrences.

Exhibit 1, July 1, 2008, Notification and attached Integra Master Service Agreement, Section 4.

Similarly, Integra's state tariffs governing its service, filed pursuant to Utah Public Service Commission rule, establish the customer's responsibility for charges incurred through toll fraud.

Section 2.7.2 of the Integra state tariff, under Liability of the Customer, states in relevant part:

B. Liability for Unauthorized Use

1. Except as provided for elsewhere in this Price List, the Customer is responsible for payment of all charges for Services provided under this Price List. This responsibility is not changed due to any use, misuse, or abuse of the Customer's service or Customer-provided equipment by Users or other third parties, the Customer's employees, or the public.

Section 2.9.7 of the tariff, found under Section 2.9, Customer Responsibilities, states: In accordance with the "filed tariff doctrine," as established by judicial and regulatory decisions and precedents, Customer shall pay all charges due and owing irrespective of any claims of loss, liability, set off, dan lages, or other claims against Company to which Customer may claim to be entitled, the duty to pay such charges shall arise upon the demand for payment by Company and shall not be delayed or deferred by the commencement of any legal or equitable action by either Customer or Company in connection with such charges incurred under this Price List.

Exhibit 3, Relevant Sections of Integra Telecom of Utah, Inc. Regulations and Schedules, Utah Price List No. 3.

Integra Acted Promptly and Appropriately and Should Be Paid for Its Costs of Service
Upon being alerted by its switch regarding possible toll fraud activity, Integra acted promptly and appropriately to block further calls. From its position as network provider, Integra acted as quickly as possible to address the problem associated with illegal activity directed against the customer's server. It is significant to note that Integra had the customer's outgoing fraudulent calls blocked by the time the underlying carrier, Level3, sent its first fraud alert.

Integra has significant underlying costs of service provided by its own underlying carriers in this matter. Integra should not be forced to bear losses for those costs if its service is uncompensated by its customer.

Conclusion

For the reasons stated, Integra requests that the Utah DPU dismiss P&O's complaint against Integra, and find that P & O should pay Integra the balance owing to Integra for services rendered: that is, the \$28,815.79 charges shown in the July 11, 2013, invoice, less credits applied by Integra in the amount of \$14,241.59, for a total balance owed by P& O of \$14,574.20.

Dated: August 22, 2013.

Cathy Murray

Manager, Regulatory Affairs

Phone: 763-745-8466

Facsimile: 763-745-8459

E-mail: JY@jntegratelecom

Note: SEE CORRESPONDENCE FILE FOR ATTACHMENT COPY

Additional Information:

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