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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,

No. C 10-00022 WHA

Plaintiff,

v.

**MEMORANDUM OPINION AND  
FINDINGS IN SUPPORT OF  
PRELIMINARY INJUNCTION**

INC21.COM CORPORATION, *et al.*,

Defendants.

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**INTRODUCTION**

In this enforcement action, the Federal Trade Commission moves for the entry of a preliminary injunction to stop defendants from collecting unauthorized charges on many thousands of telephone bills. For the reasons set forth below, a preliminary injunction is warranted and is now **GRANTED**.

**STATEMENT**

This action highlights the vulnerable underbelly of a widespread and under-regulated practice called LEC billing. LEC billing — or “Local Exchange Carrier” billing — arose out of the court-ordered break-up of AT&T in the 1980s. *See United States*

1 long-distance fees, despite the fact that the long-distance services were provided by separate  
2 business entities. LEC billing was born. Four years later, the FCC detariffed the billing and  
3 collection services provided by local telephone companies, opening the door for LEC billing to be  
4 used as a method of charging and collecting payments for a wide variety of services. *See In the*  
5 *Matter of Detariffing Billing and Collection Services*, 102 F.C.C.2d 1150 (1986). Today, the  
6 types of charges that can appear on local telephone bills through LEC billing encompass far more  
7 than long-distance services and can have almost nothing to do with phone services.

8           Since its institution, LEC billing has attracted fraudsters. *See, e.g., In the Matter of Truth-*  
9 *in-Billing and Billing Format*, 14 F.C.C.R. 7492 (1999) (discussing rampant fraud in the LEC

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27           <sup>1</sup> For the sake of convenience and simplicity, all defendants are collectively referred  
to in this order as Inc21.

28           <sup>2</sup> Declarations denoted with “TRO” were filed in conjunction with briefing pertaining  
to the temporary restraining order granted by the undersigned on January 19, 2010.

1 Inc21’s customers never authorized anyone to bill them, much less bill them via hard-to-find  
2 charges on their monthly phone bills.

3 To promote and sell its MetroYP, GlobalYP, NetOpus, and JumPage products and  
4 services, Inc21 allegedly contracts with brokers and call centers around the world, including in  
5 the Phillipines, India, and Canada (*id.* ¶ 13). Inc21’s pays these entities a commission for each  
6 valid sale they procure (*id.* ¶ 14, Exh. A). The foreign call centers are purportedly provided with  
7 training manuals, including sales scripts that are approved by the LEC, *i.e.* the local phone  
8 company whose bills are used to collect Inc21’s monthly service charges, and the billing  
9 aggregator, a “middle man” company that aggregates and manages billing requests and payments  
10 between the LEC and companies like Inc21 (*id.* ¶ 19, Exh. F). To supposedly ensure, however,  
11 that foreign brokers and call centers do not fabricate sales to earn their commissions, Inc21 says  
12 that it uses what are called third-party verification (“TPV”) services, described below (*id.* ¶ 17,  
13 Exh. D).

14 Sales of Inc21 products and services are allegedly consummated in the following manner:  
15 Inc21 maintains a listing of North American businesses, and purportedly filters that list to  
16 eliminate government agencies, schools, banks, and franchises (*id.* ¶ 20). Next, any business  
17 listed on the “Do Not Call” registry are removed. What remains, in theory, are only those  
18 businesses that Inc21 deems as “potential customers” (*ibid.*). The overseas call centers then “cold  
19 call” these leads, supposedly following a detailed procedure to determine whether the potential  
20 customer is interested in Inc21’s services (Dkt. No. 18 at 8–9; J. Lin TRO Decl. ¶¶ 21–22). Once  
21 a callee indicates that he or she is interested, the TPV service is brought into the phone call and  
22 verifies the sale by asking a series of preset questions that are also approved by the LEC and  
23 billing aggregator (J. Lin TRO Decl. ¶ 23, Exh. G). The TPV segment is purportedly recorded.  
24 As explained at the hearing, however, the entire sales conversation is *not* recorded. Only the last  
25 portion of the conversation, where the customer purportedly agrees to receive Inc21’s services, is  
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1 is valid (*ibid.*). If a sale passes inspection, the customer is mailed a welcome letter that  
2 congratulates him for signing up and warns the customer that he has 15 days from the sign-up  
3 date to cancel the service, else he will be charged a monthly fee of around \$34.99 (*id.* ¶ 25, Exh.  
4 H). The customer is also purportedly informed that cancellation requests are “immediate” and  
5 “will incur no penalty charges” (*ibid.*). Finally, Inc21 waits 20 days before instituting monthly  
6 billing, which appears on the customer’s phone bill (*id.* ¶ 27). These safeguards and procedures  
7 — including the telemarketing manual, the lead filtering, the TPV service, Inc21’s own inspection  
8 of each sale, and the welcome letter — were and are meant to protect customers from being billed  
9 for services they did not authorize. The foregoing, of course, is Inc21’s version of the facts.

## 10 2. A HISTORY OF FRAUDULENT ACTIVITY

11 The evidence, however, tells a different story — namely, that the vast majority of  
12 “customers” *never* authorized any charges or bought any services, and yet are being “ripped off”  
13 by surreptitious add-ons to their phone bills by LECs, which is then funneled to Inc21. It is  
14 worthwhile to recount the strange procedural history preceding this litigation. Before the FTC  
15 filed this action, Inc21 filed its own action before the undersigned judge against its foreign call  
16 centers alleging massive fraud pertaining to the telemarketing of its products and services (Case  
17 No. 3:08-cv-02967-WHA). In that litigation filed in June 2008, which ended in the entry of  
18 default judgment, Inc21 asserted that its call centers in the Phillippines had fraudulently signed up  
19 *thousands* of customers by “using recorded or digitized answers” to “thwart the TPV verification  
20 of sales” (Wolfe Decl. Att. G; J. Lin Dep. 166:18–171:10). This is the same call center allegedly  
21 responsible for over 30,000 “sales” of Inc21 products and services. On April 27, 2009, Inc21  
22 *again* filed suit against yet more of its own agents — this time, a company called “Delicate Data”  
23 that was contracted to acquire 100,000 “authorized” customer sign-ups for Inc21 — alleging  
24 fraudulent sales of its products (Case No. 3:09-cv-01824-WHA). In this second action, Inc21  
25 alleged that of the 78,071 customers signed up by Delicate Data, approximately 70% were  
26 fraudulently procured. This second action was stayed, however, due to a criminal investigation of  
27 Inc21 and its principals.  
28

1 Related to this criminal investigation, on June 9, 2009, postal inspectors and IRS agents  
2 executed search and seizure warrants on Inc21 and its principals based upon an investigation  
3 conducted by Postal Inspector Andrew Wong (Opp. 1). This seizure gave rise to yet a *third*  
4 proceeding — a civil forfeiture action also before the undersigned — in which Inc21 was (and  
5 still is) a claimant (Case No. 3:09-cv-03119-WHA). Like Inc21’s second civil action mentioned  
6 above, this forfeiture action was stayed due to the criminal investigation of Inc21 and its  
7 principals.

### 8 3. THE INSTANT ACTION

9 On January 5, 2010, the FTC commenced the instant action and obtained a temporary  
10 restraining order (Dkt. Nos. 1, 5). The TRO motion relied heavily upon the same affidavit of  
11 Postal Inspector Wong that formed the basis of the search and seizure warrant. An expedited  
12 briefing schedule was set, allowing Inc21 a fair but prompt opportunity to rebut the allegations  
13 and evidence presented by the FTC. Following a hearing on the temporary restraining order on  
14 January 14, the FTC’s motion was granted in part and a hearing on the instant motion was  
15 scheduled for February 11 (Dkt. No. 28). To ensure that both parties had the opportunity to  
16 substantiate their respective claims in preparation for the preliminary injunction hearing, an  
17 expedited discovery schedule was set that allowed Inc21 to inspect all documents relied upon by  
18 Postal Inspector Wong in preparing his affidavit (Dkt. No. 27). Inc21 was then provided with the  
19 opportunity to depose Postal Inspector Wong directly. The FTC, in return, was granted access to  
20 Inc21’s current customer list as well as depositions of Inc21’s principals, brothers John and Roy  
21 Lin, who waived the Fifth Amendment.

22 Importantly, at the January 14 hearing, the undersigned requested certain evidence for the  
23 preliminary injunction hearing. The FTC was ordered to procure at least twelve *new* sworn  
24 declarations of current or former Inc21 customers who had been billed without authorization for  
25 Inc21’s services (*id.* at 37).<sup>3</sup> This request was made in response to Inc21’s adamant assertions at  
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28 <sup>3</sup> At the time the Court ruled on the temporary restraining order, the FTC had only submitted two declarations from allegedly defrauded customers.

1 the January 14 hearing that it ran a legitimate business, that thousands of customers relied upon  
2 its products and services, and that the Wong Affidavit was factually inaccurate.

3 For its part, Inc21 was ordered to send *all* of its current customers a verification letter  
4 asking them to confirm in writing that they authorized their services and wanted to continue being  
5 billed via LEC billing (*id.* at 32). With respect to the verification letter, the Court stated (*id.* at  
6 32, 36–37):

7 THE COURT: All right. Now, here is some possible relief for  
8 Inc21, who is already set up to send out the welcome package, and  
9 use that same procedure to send out a letter to the customers that  
10 says something like the following:

11 “The Judge has ordered us to send this out. And we need for you  
12 to confirm that you, indeed, do want to continue to get this service  
13 and that you, in fact, did authorize it to be deducted from or added  
14 to your phone bill. And please sign in ink your name,” you know,  
15 something that will be — you two [parties] work out the form.

16 \* \* \*

17 THE COURT: . . . It should be a simple form. . . . One page,  
18 simple. They can just say: “We do authorize this. This is a  
19 legitimate product. We authorize this.” Then, those, as to those  
20 people, we’re going to let the money start flowing again.

21 \* \* \*

22 THE COURT: . . . I’ll be asking you [at the preliminary injunction  
23 hearing]: “How many customers have signed up for this directly?”

24 You know, for example, if you came in here and there were  
25 thousands of customers saying: “Please, this is a great product.  
26 Please, we want this on our phone bill,” and there are a lot of  
27 those, I will just vacate the TRO.

28 MR. GROSS: Okay.

THE COURT: On the other hand, if there are very few who have  
said that, it’s going to be something of an indicator that something  
fishy is going on here.

Pursuant to this instruction, Inc21 sent its current customers a verification letter as follows  
(Dkt. No. 29):

Dear Customer,

To ensure your satisfaction and that you continue to receive  
[Inc21’s] service, please complete and sign the verification form  
below and return it to us in the enclosed, self-addressed stamped  
envelope. For these services, you are currently being billed

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[\$XX.XX] monthly on your telephone bill. Unless we receive the attached form, your service may be discontinued.

The letter then presented the reader with three check boxes, stating: (1) I previously authorized [Inc21] to provide services to me and to bill me on my telephone bill, (2) I authorize [Inc21] to continue billing me on my telephone bill, and (3) I prefer that [Inc21] bill me via invoice. After reminding the customer *again* that their service may be discontinued if they did not return the form, the letter then stated the customer's name, address, and phone number on record, as well as a signature line for the customer to sign (*ibid.*).

Significantly, the returns show that only a small percentage of Inc21's customers wish to continue paying for or receiving defendants' services.

**4. E**

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<sup>4</sup> A handful of these customers, however, indicated that they preferred to be billed via invoice rather than through LEC billing. Additionally, nine customers either returned the letter unsigned or signed the letter without checking any of the three options. These nine responses are not included in any of these totals, since it is unclear what the customer intended by signing the form.

**United States District Court**  
For the Northern District of California

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<sup>5</sup> *See*



- 1 • Fourteen reported that they could not reach Inc21 to lodge complaints about the
- 2 unauthorized billing or request cancellation of services and a refund.<sup>11</sup>
- 3 • Two reported that they would never have authorized the services because they ran
- 4 national franchises and had no need for them.<sup>12</sup>
- 5 • Eleven were billed for *multiple months* for charges they never authorized in the
- 6 first place.<sup>13</sup>

7 The FTC also had the opportunity to depose the principals of Inc21, Roy and John Lin.

8 These depositions revealed that both Roy and John Lin signed sworn, materially false statements

9 in order to gain access to the LEC billing system for their MetroYP, GlobalYP, JumPage, and

10 GlobalypUSA products and services (R. Lin Dep. 329–45, 346-53, Atts. L and N; J. Lin Dep.

11 122–24, 242-63, Att. K). Specifically, the principals of Inc21 failed to disclose in their LEC

12 billing applications that the above-named products and services were interrelated and shared a

13 common owner.<sup>14</sup>

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23 <sup>11</sup> See Decls. of Abbate, Bloom, Brown, Bryan, Buesing, Cronk, Gerber, Groppe,

24 Hammond, Maklari, O’Neil, Rumphol, Smerud, and Thompson.

25 <sup>12</sup> See Decls. of Urso and Weber.

26 <sup>13</sup> See Decls. of Benedict, Buesing, Fontana, Hammond, Kaylor, Lapinski, Morris-

27 Meyer, O’Neil, Thompson, Urso, and Witt.

28 <sup>14</sup> The depositions also revealed that the Lin brothers had their mother and father sign various forms for Inc21, even though the parents had no involvement in the operation of the business (R. Lin Dep. 110–111, 353–62; Wolfe Decl. Att. O). Even after their mother had passed away, her signature appeared on a sworn filing (J. Lin Dep. 148–149).



1 these TPV recordings, 4,989 “passed” QCI’s re-examination and 5,445 “failed” (*id.* ¶ 5). This  
 2 translates to a 48% pass rate *and a 52% failure rate*. Thus, by defendants’ own evidence, 52% of  
 3 their customer base should never have been billed.<sup>15</sup>

#### 4 **5. RELATED PRE-HEARING FILINGS**

5 Leading up to the preliminary injunction hearing, both sides submitted timely briefs and  
 6 supporting declarations. Inc21 also provided the Court with supplemental updates of customer  
 7 verification responses. During the briefing process, Inc21 filed a separate motion in the related  
 8 civil forfeiture case petitioning the undersigned to release approximately \$750,000 in seized funds  
 9 to pay for its legal fees. Inc21 also asked the Court to set an early trial date in March 2010 for  
 10 both the forfeiture and instant action. Both requests were denied (Dkt. No. 30). The undersigned,  
 11 however, sought comment from the parties in both the civil forfeiture action and the instant action  
 12 as to whether they should be consolidated and scheduled for an early trial (*ibid.*).

13 Pacific Bell also appeared in this action, seeking relief from any injunction that may issue  
 14 as a result of this motion. Finally, on the last business day before the preliminary injunction  
 15 hearing, Inc21 filed a motion to compel the production of any and all *drafts* prepared by Postal  
 16 Inspector Andrew Wong in the creation of his affidavit.

17 A hearing on this motion was held on February 16, 2010. In addition to the parties in the  
 18 instant action, counsel for the government in the related civil forfeiture action, counsel for Pacific  
 19 Bell, and counsel for The Billing Resource (a billing aggregator for Inc21) appeared before the  
 20 undersigned.<sup>16</sup> This order reflects a thorough examination of all documents filed with the Court,  
 21 and all arguments set forth at the hearing.

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22  
 23 <sup>15</sup> According to QCI, a TPV will only “pass” if (1) the customer provides all  
 24 information when prompted; (2) the responses are clear and understandable; (3) the person  
 25 giving the answers is actually the customer; (4) the voice answering the questions is the same  
 26 throughout the recording; (5) the voice is not computer-generated; (6) the audio has no sign  
 of being tampered with. If any of the six criteria do not pass, the sale will “fail” (Josey Decl.  
 ¶ 4). Additionally, the discrepancy between the number of TPV records (10,484) and actual  
 Inc21 customers (9,082) is apparently due to the fact that certain customers had multiple  
 TPV entries. The reason for this is not explained (Dkt. No. 47 ¶ 6).

27 <sup>16</sup> Although Pacific Bell, The Billing Resource, and all other local exchange carriers  
 28 and billing aggregators involved in the billing and collection of charges on behalf of Inc21  
 have *not* been named as relief defendants, this order and the accompanying preliminary  
 injunction treat them as such.

ANALYSIS

Section 13(b) of the Federal Trade Communications Act, 15 U.S.C. 53(b), states:

Whenever the Commission has reason to believe . . . (1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and (2) that the enjoining thereof . . . would be in the interest of the public . . . the Commission . . . may bring suit in a district court of the United States to enjoin any such act or practice. Upon a proper showing that, weighing the equities and considering the Commission’s likelihood of ultimate success, such action would be in the public interest, and after notice to the defendant, a temporary restraining order or a preliminary injunction may be granted without bond.

As such, to meet its burden for issuance of a preliminary injunction under the FTC Act, the FTC need only show a likelihood of success on the merits and that the balance of equities weighs in favor of an injunction. *FTC v. World Wide Factors*, 882 F.2d 344, 347 (9th Cir. 1989); *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1233 (9th Cir. 1999) (the FTC need *not* show irreparable harm for a preliminary injunction to issue).<sup>17</sup> “Because irreparable injury must be presumed in a statutory enforcement action, the district court need only to find some chance of probable success on the merits.” *World Wide Factors*, 882 F.2d at 347.

The complaint alleges (1) deceptive business practices, (2) unfair billing practices, and (3) violations of the FTC’s Telemarketing Sales Rule (Compl. ¶¶ 28–29, 31–33, 46–51). These allegations are now addressed in turn.

**1. VIOLATIONS OF SECTION 5 OF THE FTC ACT**

Section 5 of the FTC Act prohibits “unfair or deceptive acts or practices in or affecting commerce.” 15 U.S.C. 45(a). To prove deception, the FTC must show (1) “there is a representation, omission, or practice” that (2) “is likely to mislead consumers acting reasonably

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<sup>17</sup> Congress intended this standard to depart from the “traditional” equity standard for issuing an injunction, which required the consideration of irreparable harm. *See* H.R.Rep. No. 93-624, at 31 (1971). Congress determined that the traditional standard was *not* “appropriate for the implementation of a Federal statute by an independent regulatory agency where the standards of the public interest measure the propriety and the need for injunctive relief.” *Ibid.* In this light, the recent Supreme Court holding in *Winter v. Natural Resources Defense Council*, — U.S. —, 129 S.Ct. 365, 374 (2008), which clarified the test for applying the “traditional” equity standard for issuing an injunction does *not* affect the analysis under Section 13(b) of the FTC Act. Moreover, the parties do not dispute this standard.

1 under the circumstances” and (3) “ the representation, omission, or practice is material.” *FTC v.*  
2 *Stefanchik*, 559 F.3d 924, 928 (9th Cir. 2009).

3 Here, this order finds that the FTC has met its burden of showing a likelihood of success  
4 on the merits. Six compelling bodies of evidence support this finding.

5 *First*, after mailing 10,924 customer verification forms to all of its currently billed  
6 customers, only 27 have thus far responded indicating that they expressly authorized Inc21 to bill  
7 them for their services and wanted to continue receiving such services. By contrast, although not  
8 required to do so, 71 customers filled out the form and cancelled their services with Inc21. Of  
9 these customers, more than half indicated that they had *not* authorized being billed in the first  
10 place, with the majority demanding refunds. Significantly, the customer verification letter — as it  
11 was worded by Inc21 — placed the onus *on the customer* to fill out, sign, and return the form to  
12 continue receiving their services. Indeed, despite being warned *twice* in the letter that their  
13 “service may be discontinued” if they did not sign and return the form, only 27 out of nearly  
14 10,000 customers have thus far come forward to *prevent* their services from being cancelled. The  
15 silence of the remaining thousands — given this express warning — indicates these customers do  
16 not wish to subscribe. This silence speaks volumes.

17 *Second*, as readily admitted by Inc21 at the hearing on this motion, it was defendants’ *own*  
18 actions in contracting with foreign call centers in the Phillipines and an unscrupulous TPV  
19 service provider that set in motion the fraudulent billing of *thousands* of Inc21 customers. As  
20 stated, Inc21 itself filed two separate lawsuits against these third-party entities alleging — and  
21 thereby admitting — that these agents of their business fraudulently “doctored” TPV recordings  
22 of customers. Given these admissions, Inc21 is not entitled to any presumption that their current  
23 customer base has been properly authenticated and has not been tainted by the aftermath of these  
24 undisputed fraudulent acts.

25 *Third*, given the fact that (1) Inc21 has admitted that one of the means of defrauding its  
26 customers involved the “doctoring” of TPV recordings, (2) there are numerous sworn declarations  
27 by former Inc21 customers stating that their TPV recordings were doctored, and (3) there are  
28 numerous sworn declarations by former Inc21 customers stating that they were misled or lied to

United States District Court  
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<sup>18</sup> It is also worth mentioning that the Court has no information on QCI beyond the information provided by Inc21. At the hearing on this motion, counsel for an interested party — who has been working in the LEC industry for over a decade — noted that she never heard of QCI as a TPV service provider.

<sup>19</sup> Pointing out yet another reason why the TPV “re-examination” fails to prove that a sale is “authorized,” the FTC notes that the examination of any TPV recording fails to address a critical inquiry: whether the person on the phone is actually the person being billed. Indeed, one of the many declarations produced by the FTC illustrates this deficiency, showing a customer whose TPV recording was “verified” by a TPV service provider, but was actually *not* the customer being billed (*see* [Fraddock Performance Products, Inc. v. TPV](#), 2017 WL 1281725, 2017 U.S. Dist. Ct. LEXIS 10009, 2017 U.S. Dist. Ct. LEXIS 10009, 2017 U.S. Dist. Ct. LEXIS 10009).

ers who “passed” the re-examination

actually authorized their services. On this point, it is impo

rights. This “re-examination” for Inc21 is the same id



1 or practices in or affecting commerce”). With respect to unfair practices, the FTC must show that  
2 defendants’ practices (1) cause, or are likely to cause, substantial injury to consumers, (2) the  
3 harm is not outweighed by any countervailing benefits to consumers or competition, and (3) the  
4 harm is not reasonably avoidable by consumers. 15 U.S.C. 45(n).

5 For the same reasons as above, the FTC has met its burden of showing success on the  
6 merits of this claim. The record supports a finding that Inc21’s sales and billing practices failed  
7 to adequately safeguard against the unauthorized billing of consumers. Indeed, Inc21’s own  
8 actions in instituting litigation against its foreign call centers illustrate the deficiencies in its sales  
9 and billing systems. Moreover, given the fact that more than half of Inc21’s current customers  
10 “failed” its internal re-examination, this amounts to a staggering amount of potentially fraudulent  
11 charges. Aggregate harm on consumers is sufficient to show substantial injury, and given the fact  
12 that many of these defrauded consumers are completely unaware of any services or products they  
13 have “purchased,” there is *no* benefit to either consumers or competition by these unfair practices.  
14 *See FTC v. Stefanchik*, 559 F.3d 924, 930 (9th Cir. 2009). Finally, the FTC has produced  
15 sufficient evidence showing that consumers, even after recognizing that they are being charged by  
16 Inc21, cannot cancel their services or obtain refunds from defendants despite reasonable efforts.

17 As such, plaintiff has shown a likelihood of success on the merits for both of their FTC  
18 Act claims.

19 **2. VIOLATIONS OF THE TELEMARKETING SALES RULE**

20 The FTC’s allegations regarding violations of the Telemarketing Sales Rule apply only to  
21 “consumer” (rather than “business”) sales. *See* 16 C.F.R. 310. On this point, the FTC conceded  
22 at the hearing that it did not know how many of Inc21’s customers were, in fact, non-business  
23 entities. Additionally, the vast majority of the FTC’s declarations were from former business  
24 customers of Inc21.

25 Given these uncertainties, this order finds that the FTC has not made a sufficient showing  
26 of likelihood of success on the merits of its Telemarketing Sales Rule claims. This finding,  
27 however, does not preclude a preliminary injunction as to the FTC Act claims.  
28



1           **3.       PRINCIPAL LIABILITY**

2           Inc21 makes the audacious argument because “a principal is only liable for the  
3 misrepresentations of his agent if he is acting within the scope of the agent’s actual or apparent  
4 authority,” the unauthorized actions of Inc21’s foreign call centers should insulate it from liability  
5 under the FTC Act (Opp. 8). This argument is rejected. Defendants want to have it both ways.  
6 Defendants want to blame their own foreign call centers for the fraud, yet keep on pocketing LEC  
7 charges set in motion by the very same fraudsters. Apparent authority is determined from the  
8 perspective of the consumer. *See Goodman v. FTC*, 244 F.2d 854, 592 (9th Cir. 1957). The  
9 evidence before the Court shows that the foreign call centers represented that they were acting on  
10 behalf of Inc21. Additionally, it was Inc21 who orchestrated this overall scheme and set in  
11 motion an army of telemarketers who committed fraud. Even if Inc21 did not approve of the  
12 fraud (and it seems likely that it *did* approve), the fact remains that Inc21 is responsible for  
13 organizing this engine of fraud and reaping its profits. As such, Inc21 may *certainly* be held  
14 accountable and the engine of fraud may be shut down by court order.<sup>22</sup>

15           **4.       LIABILITY OF INDIVIDUAL DEFENDANTS FOR INJUNCTIVE RELIEF**

16           This order finds that the FTC has produced sufficient evidence that both Roy and John Lin  
17 participated directly in the practices discussed above, and had the authority to control them. *FTC*  
18 *v. Publishing Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1997). Specifically, the  
19 depositions of both brothers indicated that they repeatedly signed sworn documents that contained  
20 materially false information, and were aware that unauthorized billing of their customers was  
21 prevalent. Since this order has concluded that the FTC has met its burden of showing, under  
22 Section 5 of the FTC Act, that Inc21 committed misrepresentations of a kind usually relied upon

23 \_\_\_\_\_  
24           <sup>22</sup> With respect to relief defendants Pacific Bell (and perhaps other LECs bound by  
25 this injunction), the undersigned allowed counsel for Pacific Bell to explain at the  
26 preliminary injunction hearing why it was not able to separate out and escrow payments  
27 collected on behalf of Inc21. The Court is *not* wholly convinced by this explanation. It  
28 seems that Pacific Bell could have organized the LEC billing process — from which it  
presumably profits handsomely — to have more control over the flow of funds going to  
potentially fraudulent businesses, but has simply chosen not to do so. This order declines to  
exempt Pacific Bell and other LECs from the preliminary injunction. LECs have a  
responsibility to learn the ultimate destination of the funds they are charging their own  
customers so that if and when fraud occurs, they can protect their customers and immediately  
put an end to the fraudulent billing.

1 by a reasonably prudent person, thereby causing consumer injury, this is sufficient under  
2 *Publishing Clearing House* to warrant a preliminary injunction against individual defendants Roy  
3 and John Lin.

4 **5. BALANCING OF THE E**

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<sup>23</sup> On this point, the undersigned expects that Inc21 will immediately investigate whether the 5,445 customers who “failed” their TPV “re-examination” and had their accounts cancelled are entitled to prompt refunds. There is a great risk that these customers have been defrauded. Now that defendants’ monthly charges have been removed from their telephone bills, these customers are less likely to discover that they were fraudulently billed.