

FILED

AO 91 (Rev. 02/09) Criminal Complaint

UNITED STATES DISTRICT COURT

JUN 24 2009

for the
Western District of Texas

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]
DEPUTY CLERK

United States of America)

v.)

Kim E. Hawkins)

Case No. A-09-M-404(1)

Defendant

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date of 05/01/2008 in the county of Williamson in the Western District of Texas, the defendant violated 18 U. S. C. § 371, an offense described as follows:

unlawfully, knowingly, and intentionally agreeing, combining and conspiring with others to defraud the Federal Communications Commission and its agent, the National Exchange Carrier Association.

This criminal complaint is based on these facts:

SEE ATTACHED AFFIDAVIT

Continued on the attached sheet.

[Signature]
Complainant's signature

Special Agent Patrick A. Westerhaus
Printed name and title

Sworn to before me and signed in my presence.

Date: 06/24/2009

City and state: Austin, Texas

[Signature]
Judge's signature
ANDREW W. AUSTIN
United States Magistrate Judge
Printed name and title

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT
AND ARREST WARRANT AGAINST KIM E. HAWKINS

I, Patrick A. Westerhaus, being duly sworn, depose and state as follows:

PRELIMINARY INFORMATION

1. I am an investigative and law enforcement officer of the United States who is empowered by law to conduct investigations of and to make arrests for offenses enumerated in Title 18 of the United States Code.
2. I am a Special Agent with the Federal Bureau of Investigation ("FBI") and have been so employed since March 2004. I am currently assigned to the Public Corruption Squad of the Washington, D.C., FBI field office. I investigate public corruption matters in the Washington metropolitan area. My duties include the investigation of various criminal allegations, including those involving bribery and corruption of public officials, bank fraud, mail and wire fraud, government fraud, and other violations. I have training and experience in the enforcement of the laws of the United States, including the preparation and presentation of arrest warrant affidavits. I am also a Certified Fraud Examiner through the Association of Certified Fraud Examiners and am a licensed Certified Public Accountant in the Commonwealth of Virginia.
3. This Affidavit is written in support of a criminal complaint and arrest warrant for KIM E. HAWKINS ("HAWKINS"). Based on the facts set forth in this Affidavit, there is probable cause to believe that HAWKINS violated Title 18, United States Code, Section 371, in that HAWKINS, in the Western District of Texas and elsewhere unlawfully, knowingly, and intentionally combined and conspired with others to defraud the Federal Communications Commission and its agent, the National Exchange Carrier Association.

4. The facts and information contained in this Affidavit are based on my knowledge and observations, information obtained from records obtained in the course of this investigation, information from other experienced FBI agents and experienced investigators of the Federal Communications Commission's ("FCC") Office of Inspector General ("OIG") - including transcripts of witness interviews conducted by the FCC-OIG, and information gained from my personal training and experience.

5. This Affidavit is being submitted for the limited purposes of establishing probable cause to obtain a criminal complaint and arrest warrant for HAWKINS. I have not set forth each and every fact learned during the course of the investigation. In addition, where conversations or statements are related herein, they are related in substance and in part except where otherwise indicated.

BACKGROUND

6. In 1990, the Americans with Disabilities Act ("ADA") required that certain telecommunication companies provide Telecommunications Relay Services ("TRS") to help deaf and hard of hearing individuals communicate with hearing individuals "in a manner that is functionally equivalent to . . . voice communication services . . ."¹ A nationwide TRS program began in 1993. Video Relay Service ("VRS") is a specific type of TRS and is the service that is the subject of this investigation.

7. VRS is an online video translation service that allows people with hearing disabilities to communicate with hearing individuals online with the use of interpreters and web cameras. A person with a hearing disability who wants to communicate with a hearing person can do so by contacting a VRS provider through an audio and video internet connection. The VRS provider,

¹ 47 U.S.C. § 225(a)(3).

in turn, provides a Video Interpreter (“VI”) to view and interpret the deaf person’s signed conversation and relay the conversation orally to the hearing person. VRS is funded by fees assessed by telecommunications providers to their customers and is provided at no cost to the VRS user. Specifically, VRS services are funded by charges to consumers’ phone bills, listed as regulatory fees, that go into the TRS Fund, which is overseen by the FCC and administered by the National Exchange Carrier Association (“NECA”). Providers of VRS services are paid for their services from the TRS Fund. The TRS Fund currently reimburses VRS providers at the rate of \$6.73 per minute for the first 50,000 minutes billed in any given month, \$6.46 per minute for minutes 50,001 through 500,000, and \$6.26 per minute for all minutes over 500,000.

8. The FCC-OIG has tracked a dramatic increase in the reimbursements the TRS Fund has paid out to VRS providers. For example, in January 2005, the TRS Fund paid providers approximately \$10.8 million in connection with the billing of approximately 1.4 million minutes. By January 2009, the TRS Fund paid providers approximately \$51.2 million in connection with the billing of approximately 8.1 million minutes. Based in part on this dramatic increase in reimbursements, as well as on complaints of fraud from VIs in the VRS industry, the FCC-OIG, and later the FBI, began investigating allegations of fraud described more fully below, including allegations that VRS providers were fraudulently generating minutes for which they would then seek and receive reimbursement from the TRS Fund.

RELEVANT ENTITIES AND INDIVIDUALS

9. NECA is a non-profit association responsible for, among other things, administering the TRS Fund on behalf of the FCC, which includes receiving and paying claims for VRS. NECA is headquartered in Whippany, New Jersey. VRS providers that are certified by the FCC to receive payment for VRS submit their monthly requests for payment along with the required backup

documentation to NECA and are paid out of the TRS Fund, a function that the FCC has contracted to NECA. NECA currently requires that VRS providers include call detail records for each billed call, which includes the date, time, originating phone number or IP address,² destination number, and call duration.

10. Company 1 is a certified VRS provider based in Flint, Michigan. Company 1 provides VRS through its own call centers and also contracts with outside entities to operate VRS call centers. The minutes from the contracted call centers are billed by Company 1 to NECA with the payments for those calls divided between Company 1 and the contracted call center. In 2008, Company 1 was paid approximately \$38.7 million for VRS services purportedly provided by Company 1 and its contracted call centers.

11. Company 2 is a Delaware corporation established in 2005 and is headquartered in Rockville, Maryland. According to NECA, Company 2 operates, or subcontracts to others the operation of call centers in, among other places, Rockville, Towson, and Baltimore, Maryland, Austin, Texas, New York City, New York, and Colonia, New Jersey. Company 2 is not a certified VRS provider that can bill directly to NECA. Instead, beginning in 2006, Company 2 billed for VRS through Company 1. According to Company 1's representation to the FCC, in 2008, Company 2 was responsible for approximately 60% of the VRS minutes billed by Company 1.

12. Mascom, LLC is a Texas corporation located in Round Rock, Texas. Mascom operated a VRS call center for Company 2 from in or about April 2008 through in or about October 2008. Mascom's call center was located at 525 Round Rock West Drive, Round Rock, Texas 78681.

² An IP address identifies the computer from which the caller is calling. Because these calls are made over the internet, the IP address of the caller is generally used as the identifier for record-keeping purposes.

13. HAWKINS owned Mascom and is a resident of Texas.

14. Video Interpreter #1 ("VI1") is a certified American Sign Language ("ASL") interpreter who was hired by Mascom in or about April 2008 to recruit VIs. VI1 worked at Mascom from in or about April 2008 through in or about October 2008. From in or about May 2008 through in or about October 2008, VI1 was employed as Mascom's call center manager.

15. Video Interpreter #2 ("VI2") is a certified ASL interpreter who was hired by VI1 as a VI for Mascom in or about March 2008 and worked there through in or about October 2008.

16. Video Interpreter #3 ("VI3") is a certified ASL interpreter who was hired by VI1 as a VI for Mascom in or about May 2008 and worked there through in or about October 2008.

17. Video Interpreter #4 ("VI4") has been an ASL interpreter for approximately 15 years. VI4 was hired by VI1 as a VI for Mascom in or about May 2008 and worked there through in or about September 2008. For approximately the last four months of VI4's employment at Mascom, VI4 was a team leader with supervisory responsibilities over other VIs.

THE SCHEME

18. According to both VI1 and VI2, Mascom had a contract with Company 2 to provide VRS and began providing VRS in Spring 2008. According to VI1, all VRS calls to Mascom were routed through Company 2's servers.

19. According to VI1, VI2 and VI3, Mascom processed a large number of VRS calls from callers who specifically requested that no translation be done, or to numbers that required no translation. For example, many VRS callers requested to be connected to lengthy podcasts³ or to numbers that would put the callers on interminable hold. VIs interviewed by investigators refer

³ Podcasts are essentially recordings, like, for example, a recording of a radio program or a person reading a novel.

to these types of calls—calls with no apparent legitimate purpose—as “run calls” or callers “running calls.”⁴

20. Both VI1 and VI2 report that upon opening in or about Spring 2008, Mascom was inundated with calls from China every morning from approximately 5:00 a.m. through approximately 8:00 a.m. The Chinese callers did not want interpretation and instead just ran minutes.

21. VI4 reported that based on a conversation that VI4 had with one of the Chinese run callers, VI4 believed that the Chinese caller was being paid to make the call.

22. HAWKINS told VI1 that these Chinese run calls were approved by the FCC for testing Mascom’s VRS server capacity when it first opened and that the FCC would not be billed for these calls. According to VI2, however, these calls continued for several months, up until a couple of weeks before Mascom was closed.

23. By on or about May 1, 2008, VI1 had become the manager of the call center and had discussions with HAWKINS about how many minutes the center was generating a month. In those discussions, VI1 learned that Mascom was including the Chinese run call minutes in minutes for payment. I have also reviewed call records for calls billed to NECA through Company 2 and there are hundreds of hours of billed calls that originated with Chinese IP addresses.

24. According to VI1, VI2, VI3 and VI4, Mascom processed many run calls like those described above.

25. VI1 and VI2 also explained that VRS video phones used by the callers had the ability to put up electronic “privacy screens.” These privacy screens allow either the caller or the

⁴ Based on current VRS reimbursement rates, a 60 minute VRS call would be billed to the FCC, through NECA, at the rate of \$403.80.

interpreter to be hidden from the other's view. If, for example, a caller put up a privacy screen, the VI would see a frozen picture of the caller or a blank screen until the caller removed the privacy screen. When used legitimately, a privacy screen might, for example, allow a caller to get dressed without disconnecting the call. There is no known legitimate purpose, however, for both the VI and the caller to have the privacy screens in use at the same time. If both the caller and the interpreter have their privacy screens up, neither can see the other, and no translation services can be provided. Both VII and VI2, however, report that many callers asked the VIs to put up a privacy screen while the caller did as well, and that no translation services were provided on those VRS calls.

26. Both VII and VI2 had conversations with callers about the callers being paid by Company 2 to make run calls. Callers told VII that Company 2 paid the callers \$12 an hour for each hour of VRS generated by the caller. The caller could use multiple VRS devices to connect to multiple VIs at the same time, and, presumably, be paid for each call.

27. In fact, VII observed VRS callers participating in multiple run calls at the same time. In VII's role as call center manager, VII was able to see the source of the calls that were currently being processed, and could tell when one person was participating in multiple VRS calls at the same time. Similarly, callers told VI2 that they were paid by Company 2 to make the run calls, including calls where the participants requested double privacy screens.

28. HAWKINS attempted to conceal the nature of the run calls. According to VI3 and VI4, HAWKINS directed VIs about the length that they could keep run callers on a call. VI3 told investigators that the instructions from HAWKINS and other supervisors changed over time. According to VI3 and VI4, when they started as VIs, there were no restrictions on the length of run call minutes that VIs could provide, and then HAWKINS instructed VIs to limit the run calls

to one hour. VI3 told investigators that HAWKINS later told VIs to vary the length of the run calls, presumably so there would be no pattern to the run calls.

29. In late August 2008, HAWKINS organized a scheme to generate additional VRS minutes. According to VI4, part of VI4's responsibility was to inform HAWKINS when there was a slow down in VRS minutes. Just before Labor Day weekend 2008, VI4 informed HAWKINS that Mascom's VRS minutes had slowed. HAWKINS told VI4 that Company 2 was routing calls away from Mascom so they would not have to pay her.

30. According to both VI1 and VI2, beginning on Thursday, August 28, 2008 (Labor Day weekend), and after VI4 had told HAWKINS that VRS was slow, HAWKINS instructed many of the Mascom VIs to go home. At the same time, HAWKINS told certain trusted VIs that they should come back to the building after lunch and sneak in through the back entrance.

HAWKINS and her trusted VIs logged in to all the available VRS interpreting stations and placed VRS calls that were routed to Mascom. The effect of this was that the trusted VIs were calling themselves to generate VRS minutes, which would generate profits for both Mascom and Company 2. VI2 participated in this scheme on Thursday, August 28, 2008, and Friday, August 29, 2008. VI1 was in the office on Saturday, August 30, 2008, and observed the scheme for four hours and talked with HAWKINS on Sunday about the scheme continuing through that day.⁵

31. According to my review of the claims submitted to NECA, from April 2008 through September 2008, Mascom generated approximately 605,000 VRS minutes that were billed to NECA through Company 2 and Company 1. According to VI1, HAWKINS had an arrangement

⁵ VI1 reported the events of Labor Day weekend to the owners of Company 2. One owner of Company 2 visited Texas the next week and told VI1 that he was considering removing the minutes from its request for NECA reimbursement. VI1, however, later saw the minute logs and believes that the minutes were billed to NECA. From my review of the bill for August submitted to NECA, it appears that the Labor Day minutes were, in fact, billed.

with Company 2 where HAWKINS received \$2 for each Mascom VRS minute billed to NECA. According to VI4, approximately 75% of the calls handled during VI4's employment at Mascom were run calls.

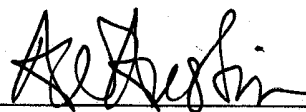
CONCLUSION

32. Based on the foregoing facts, there is probable cause to believe that HAWKINS and others within the Western District of Texas and elsewhere did violate Title 18, United States Code, Section 371 by unlawfully, knowingly, and intentionally agreeing, combining and conspiring with others to defraud the Federal Communications Commission and its agent the National Exchange Carrier Association.



Special Agent Patrick A. Westerhaus
Federal Bureau of Investigation

Sworn to and subscribed before me this 24th day of June 2009.



Andrew W. Austin
United States Magistrate Judge