

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
BRYSON CITY DIVISION

DOCKET NO. 2:13CR6-MR

UNITED STATES OF AMERICA

v.

NINIAN ULYSSES BOND II.

**MOTION FOR MONEY JUDGMENT**

NOW COMES the United States of America, by and through Anne M. Tompkins, United States Attorney for the Western District of North Carolina, pursuant to Fed. R. Crim. P. 32.2(b), and requests that this Court enter a \$531,167.66 Money Judgment for the proceeds of the Count One mail fraud and Count Two wire fraud scheme to which Defendant pled guilty without a plea agreement. In support hereof, the Government submits the following:

**PRELIMINARY STATEMENT**

The proceeds analysis in this case is straightforward. Specifically, (1) Highlands Cable Group maintained records reflecting \$1,484,144.94 in revenues from Highlands Cable Group television services from 2003 through 2011; (2)

Defendant pled guilty to charges related to the DirecTV services provided from 2002 through 2011; (3) 35.79 percent of the connected television receivers that Defendant maintained at his cable “head-end” were DirecTV receivers; and (4) 35.79 percent of \$1,484,144.94 is \$531,167.66. Therefore, based on a simple analysis of Highlands Cable Group records and television receivers, the Government seeks herein a money judgment of \$531,167.66, such amount constituting the revenues obtained by Highlands Cable Group as a result of Defendant’s fraudulent acquisition and use of DirecTV systems and services.

### **SUPPORTING EVIDENCE**

The Government has attached hereto an Affidavit of Federal Bureau of Investigation (“FBI”) Special Agent Christopher Avery (“SA Avery”). Affixed to the Affidavit are Attachment A, Profit and Loss statements of Highlands Cable Group during the relevant time period, and Attachment B, a spreadsheet created by SA Avery that sets for the calculation of the requested Money Judgment amount. The Affidavit, Attachment A, and Attachment B, coupled with the plea of guilty (Doc. 12), support forfeiture herein.

Specifically, as set forth in SA Avery’s Affidavit and Affidavit Attachments, SA Avery participated in the search of the “Cherrywood Drive” property identified

in the Indictment (Doc. 1). As set forth in the Indictment returned by the Grand Jury, Defendant used the Cherrywood Drive property to operate Highlands Cable Group's "head-end"—the master distribution center of the cable TV system where incoming television signals were received from providers such as DirecTV and retransmitted to Highlands Cable Group's subscribers. As noted in the Affidavit, law enforcement identified ninety-five television receivers at the head-end. Of those receivers, law enforcement identified that thirty-five of the receivers were DirecTV receivers. Of those thirty-five DirecTV receivers, thirty-four receivers were connected. Therefore, connected DirecTV receivers accounted for 35.79%<sup>1</sup> of receivers at the head-end.

Additionally, as set forth in the Affidavit and Affidavit Attachments, SA Avery analyzed Highlands Cable Group Profit and Loss Reports in Quickbooks records seized pursuant to a Search Warrant. Those records identified total television revenue of \$1,484,144.94 from 2003 through 2011. In order to establish what amount of that total revenue was derived from the fraud related to DirecTV, SA Avery simply calculated 35.79% of \$1,484,144.94, to arrive at \$531,167.66 in revenue related to the thirty-four connected DirecTV receivers.

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<sup>1</sup>  $34 \div 95 = 35.79\%$

## MEMORANDUM OF LAW

### **A. Burden of Proof and Evidence/Information for Court to Consider**

Rule 32.2(b)(1) provides that, “[i]f the government seeks a personal money judgment [equivalent to proceeds], the court must determine the amount of money that the defendant will be ordered to pay.” Fed. R. Crim. P. 32.2(b)(1); *see also United States v. Butler*, ---Fed. Appx.---, 2014 WL 2978730, at \*3 (4th Cir. 2014) (district court must find nexus between forfeiture calculation and crime). Rule 32.2(b)(1) further provides that, “[t]he court’s determination may be based on evidence already in the record [ . . . ] or, if the forfeiture is contested, on evidence or information presented by the parties at a hearing after the verdict or finding of guilt.” Fed. R. Crim. P. 32.2(b)(1); *see also United States v. Farkas*, 474 Fed. Appx. 349, 360 (4th Cir. 2012). The burden of proof in a forfeiture proceeding is preponderance of the evidence. *United States v. Cherry*, 330 F.3d 658, 669 (4th Cir. 2003); *United States v. Tanner*, 61 F.3d 231, 233 (4th Cir. 1995). The Government may satisfy the preponderance burden by both direct and circumstantial evidence. *United States v. Pierre*, 484 F.3d 75, 86 (1st Cir. 2007).

### **B. Law Authorizing Forfeiture in this Case**

The civil forfeiture provisions of Title 18 U.S.C. § 981(a)(1)(C), rendered applicable in this criminal action by 28 U.S.C. § 2461(c), provide for forfeiture of

property constituting or derived from proceeds of specified unlawful activities. As set forth in Title 18 U.S.C. §§ 1956(c)(7)(A) and 1961(1), mail fraud and wire fraud are specified unlawful activities. Therefore, criminal forfeiture of proceeds of mail fraud and wire fraud, as charged in Counts One and Two in this case, is authorized under Section 981. *See United States v. Blackman*, 746 F.3d 137, 142-43 (4th Cir. 2014) (discussing Section 981 and Section 2461).

**C. The Evidence/Information Supports a \$531,167.66 Money Judgment**

In this case, the evidence and information on the guilty plea, the sentencing materials before this Court, and the Affidavit, Attachment A, and Attachment B on the accounting records and results of the search whereby law enforcement identified the DirecTV receivers support the requested Money Judgment for the revenues of the fraud scheme to which Defendant pled guilty. Additionally, if necessary, the Government will be prepared to present testimony by SA Avery on the proceeds at the sentencing of this matter.

## CONCLUSION

WHEREFORE, the United States respectfully requests that this Court enter a \$531,167.66 Money Judgment in the form submitted herewith.<sup>2</sup>

Respectfully submitted, this, the 28th day of August, 2014.

ANNE M. TOMPKINS  
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<sup>2</sup> Upon entry of a Money Judgment, the Government anticipates requesting authority to conduct discovery to identify assets subject to forfeiture to satisfy the Money Judgment.

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**CERTIFICATE OF SERVICE**

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I hereby certify that the foregoing document was served on persons listed as counsel by submitting the document to the Court for electronic notice.

s/ Benjamin Bain-Creed  
Assistant United States Attorney