

State of Florida



ORIGINAL

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: August 17, 2005

TO: Kay B. Flynn, Chief of Records, Division of the Commission Clerk & Administrative Services

FROM: Kira Scott, Attorney, Office of the General Counsel

RE: Docket No. 050526-TI – Acknowledgment of cancellation of IXC Registration No. TJ230 by Radiant Telecom, Inc., effective August 2, 2005.

Attached hereto are an original and fifteen (15) copies of APCC Services, Inc.'s MOTION TO INTERVENE AND STAY PROCEEDING to be placed in the docket file.

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DOCUMENT NUMBER-DATE

07983 AUG 17 05

FPSC-COMMISSION CLERK

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August 16, 2005

Kira Scott
Paula Isler
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399

Re: APCC Services, Inc. Motion to Intervene and Request to Stay Proceeding

Dear Mses. Scott and Isler:

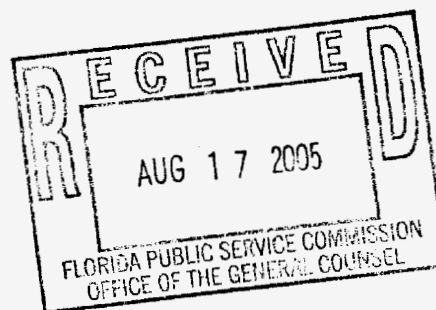
Enclosed, please find an original and fifteen (15) copies of APCC Services, Inc.'s Motion to Intervene and Request to Stay Proceeding of Radiant Telecom, Inc.'s July 28, 2005 request to cancel its IXC certificate with the Florida Public Service Commission. Please stamp a copy and send it back to me in the enclosed self-addressed envelope to acknowledge receipt of this filing.

Sincerely,



Gregory Kwan

Enclosure



1177 Avenue of the Americas • New York, NY 10036-2714

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www.DicksteinShapiro.com

DOCUMENT NUMBER -DA

07983 AUG 17 2005

FPSC-COMMISSION CLEAR

**Before the
PUBLIC SERVICE COMMISSION
Tallahassee, Florida 32399**

In the Matter of)	
)	
APCC Services, Inc.,)	
)	
Intervenor)	File No. _____
)	
v.)	
)	
Radiant Telecom, Inc.)	
)	
Defendant.)	

MOTION TO INTERVENE AND STAY PROCEEDING

Pursuant to Rules of the Florida Public Service Commission Section 25-22.039, APCC Services, Inc. ("APCC Services") on behalf of, and as agent for, independent payphone service providers ("PSPs"), hereby moves for leave to intervene and requests the Florida Public Service Commission ("FPSC") to stay the request by Radiant Telecom, Inc. ("Radiant") filed on July 28, 2005 to cancel its IXC certificate with the FPSC and exit the market. A copy of Radiant's July 28, 2005 request is attached as Exhibit 1.

APCC Services is an agent of independent PSPs for the billing and collection of dial-around compensation, with many of its PSP customers located and doing business in the state of Florida. Radiant is a common carrier that provides interexchange telecommunications service within the state of Florida and is a carrier under the Federal Communications Commission's ("FCC") payphone compensation rules obligated to

pay dial-around compensation to independent PSPs under federal regulations. *See* 47 C.F.R. 64.1310 *et seq.*

On August 2, 2005, APCC Services filed a formal complaint at the Federal Communications Commission ("FCC") against Radiant, and other affiliated entities, for unpaid dial-around compensation, and other violations of the FCC's payphone compensation rules, pursuant to Section 208 of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 208, and Section 1.721 of the rules of the FCC's rules, 47 C.F.R. § 1.721 (the "Complaint"). A copy of the Complaint is attached hereto as Exhibit 2. Many of the PSPs who will benefit from a successful prosecution of the Complaint are located and do business in the state of Florida.

Accordingly, APCC Services has a stake in, and its interests will be substantially adversely affected by, a grant by the FPSC of Radiant's July 28, 2005 request. Radiant should not be permitted to exit the market to escape liabilities for unpaid dial-around compensation mandated by federal regulations, as reflected more fully in the attached Complaint. Accordingly, APCC Services requests that no action should be taken on Radiant's request to exit the market until the Complaint is resolved by the FCC.

While a grant by the FPSC of APCC Services' instant request will help protect APCC Services from substantial economic injury, such a grant will also serve the public interest at large by serving to protect the independent PSPs located in Florida.


The FPSC has a responsibility to sustain the viability of diverse telecommunications services, such as payphone services, in the state of Florida. If Radiant is allowed to exit the market and terminate the revenues necessary to pay dial-around compensation, such action jeopardizes the very existence of independent PSPs who substantially rely on the payment of dial-around compensation as an integral

portion of the revenue necessary to fund their own operations. Indeed, allowing Radiant to exit the market when it owes PSPs in Florida, here represented by APCC Services, a substantial amount of revenue for past dial-around compensation may force many independent PSPs located in the state of Florida to exit the market as well. The result will be a diminution of service to the public.

Any proceeding which requires a carrier, such as Radiant, to request permission from the FPSC to exit the market, clearly requires the FPSC to consider whether such a request adversely affects the public interest. As such, APCC Services asserts standing in this matter not only because of the substantial economic injury it will suffer, in fact, but also the potential public injury which will ensue as a result of a grant of Radiant's request to exit the market.

Whereas, APCC Services respectfully request that the FPSC grant APCC Services motion for leave to intervene and stay Radiant's July 28 2005 request to cancel its IXC certificate and exit the market until the Complaint is fully adjudicated by the FCC.

Respectfully Submitted,



Albert H. Kramer
Robert F. Aldrich
Jacob S. Farber
Gregory Kwan
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, NW
Washington, DC 20037
Tel. (202) 785-9700
Fax (202) 887-0689

Attorneys for APCC Services, Inc.

Dated: August 16, 2005

CERTIFICATE OF SERVICE


I hereby certify that on August 16, 2005, I caused a copy of the foregoing Motion to Intervene and Stay Proceeding to be served by overnight courier and fax to the following:

Cagdas Kucukemiroglu
Radiant Telecom, Inc.
1020 NW 163rd Drive
Miami, FL 33169-5818

Walter Redondo
Radiant Telecom, Inc.
1020 NW 163rd Drive
Miami, FL 33169-5818

Katie Asher, Esq.
Radiant Telecom, Inc.
1020 NW 163rd Drive
Miami, FL 33169

Ali Guven Kivilcim
Radiant Telecom, Inc.
1020 NW 163rd Drive
Miami, FL 33169



Gregory D. Kwan

EXHIBIT 1

July 28, 2005

PUBLIC SERVICE COMMISSION

Ms. Paula Isler
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Ref: Radiant Telecom, Inc.
TJ230

Dear Ms. Isler:

As Radiant Telecom, Inc. is winding down, please cancel its IXC certificate with the Florida Public Service Commission. In addition, we have already remitted the 2004 and 2005 regulatory assessment fee returns with payments as required to cancel the certificate.

Should you have any additional questions please feel free to contact Jacqueline Cruz-Bustillo at 305-467-5519.

Sincerely,


Ali Guven Kivilcim
President

EXHIBIT 2

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
APCC Services, Inc. (FRN 0006-8497-07),)
Complainant,) File No. _____
v.)
Radiant Telecom, Inc.,)
Intelligent Switching and Software, LLC,)
Radiant Holdings, Inc.)
Defendants.)

FORMAL COMPLAINT

Albert H. Kramer
Robert F. Aldrich
Jacob S. Farber
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, NW
Washington, DC 20037
Tel. (202) 785-9700
Fax (202) 887-0689

Attorneys for the Complainants

Dated: August 2, 2005

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21. May 26, 2005 APCC Services certified letter to Radiant Telecom re settlement
22. Affidavit of Jacob S. Farber

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
APCC Services, Inc. (FRN 0006-8497-07),)	
)	
Complainant,)	File No. _____
)	
v.)	
)	
Radiant Telecom, Inc.,)	
Intelligent Switching and Software, LLC,)	
Radiant Holdings, Inc.)	
)	
Defendants.)	

FORMAL COMPLAINT

APCC Services, Inc. ("APCC Services" or "Complainant") on behalf of, and as agent for, the payphone service providers ("PSPs") listed in Exhibit 1 and Exhibit 2 hereto ("Represented PSPs") and pursuant to Section 208 of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 208, and Section 1.721 of the rules of the Federal Communication Commission ("FCC" or "Commission"), 47 C.F.R. § 1.721, submits this formal complaint against three affiliated entities, Radiant Telecom, Inc. ("Radiant Telecom"), Intelligent Switching and Software, LLC ("ISS"), and Radiant Holdings, Inc. ("Radiant Holdings"). This action relates to unpaid dial-around compensation owed by Radiant Telecom and ISS to the Represented PSPs, and other violations of the Commission's payphone compensation rules.

As discussed below, APCC Services knows the total amount of unpaid dial-around compensation owed collectively by Radiant Telecom and ISS. However, APCC

Services is not able determine the apportionment of its damages as between the two entities. Accordingly, APCC Services is bringing this action against both entities. In addition, as Radiant Telecom and ISS are both owned and controlled by, and on information and belief have acted in concert with, Radiant Holdings, Radiant Holdings is also named as a defendant out of an abundance of caution.¹ Since two of the entities are under common control by the third, and all three share the same address and officers according to the Commission's Form 499 reporting records (attached hereto as Exhibit 3), bringing a single action against all three is permissible pursuant to 47 C.F.R. § 1.735(a).²

Because they appear to be functionally the same entity, and for ease of reference, Radiant Telecom and ISS, the two operating companies, are referred to hereinafter as "Radiant/ISS." The term Radiant/ISS is intended to refer to each of them in their capacity as individual actors and both of them to the extent they acted together. The term "Defendants" will be used to refer to all three defendant entities.

As shown below, Radiant/ISS has violated Sections 201(b), 276, and 416(c) of the Act by failing to pay the payphone dial-around compensation it owes to the Represented PSPs for the third quarter of 2004 ("3Q2004") and the fourth quarter of 2004 ("4Q2004"). Dial-around compensation for a given quarter is due on the first day of the second following quarter.³ Thus, dial-around compensation was due on January

¹ Radiant Holdings has acted on behalf of Radiant Telecom in prior litigation brought by APCC Services. See n.18 below and accompanying text. In addition, Radiant Holdings may have direct liability under 47 C.F.R. 64.1310(a)(3). See n.27 below and accompanying text.

² A separate filing fee is being paid for each of the three defendants.

³ See *APCC Services, Inc. et al. v. TS Interactive, Inc.*, 19 FCC Rcd 10456 (EB 2004); *APCC Services, Inc. et al. v. WorldCom*, 35 F. Supp. 2d 1, 9 (D.D.C. 2001).

1, 2005 for 3Q2004 and on April 1, 2005 for 4Q2004. To date, no payment has been received from Radiant/ISS for either quarter in question.⁴

APCC Services seeks damages in the amount of \$1,114,803.32 , which represents Radiant/ISS' unpaid dial-around compensation obligation to the Represented PSPs for 3Q2004 and 4Q2004 (the "Damages Period") plus accrued interest through May 26, 2005 (which as discussed below is the date of APCC Services' final demand letter). APCC Services also seeks interest accruing from May 26, 2005 through the date of final payment.

Radiant/ISS has also violated Sections 201(b) and 416(c) of the Act by failing to comply with the payphone tracking and compensation requirements of 47 C.F.R. § 64.1310 and file the payphone call tracking system audit required by 47 C.F.R. § 64.1320. Complainant thus seeks the additional relief specified herein including, without limitation, an order compelling Radiant/ISS to come into compliance with the requirements of 47 C.F.R. §§ 64.1310 and 64.1320.

In light of the egregious, repeated, and willful nature of Radiant/ISS' violations, and in light of the serious harm those violations have caused the Represented PSPs, APCC Services is also seeking punitive damages in the amount of \$4,459,213.28. As the Supreme Court has said, punitive damages are intended to serve the purposes of "deterrence and retribution."⁵ They are thus warranted here because

⁴ Radiant/ISS has also failed to make any dial-around compensation payment for the first quarter of 2005, which was due July 1, 2005. APCC Services is in the process of reviewing and analyzing the data necessary to enable APCC Services to calculate the amount owed by Radiant/ISS for the first quarter of 2005. Once that review is complete, APCC Services expects to file either a supplement to this complaint or an additional complaint to recover that unpaid amount.

⁵ *State Farm Mutual Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003).

the Commission will not only be imposing a retributive penalty warranted by Radiant/ISS' abusive and harmful conduct, the Commission will also make absolutely clear to the literally dozens of other carriers that have ignored their compensation obligations that such abuses will not be tolerated. Bringing those carriers into compliance is critical because otherwise APCC Services will be forced to bring additional litigation as the only means of obtaining payment.

I. THE PARTIES

1. APCC Services is an agent of PSPs for the billing and collection of dial-around compensation. See Declaration of Ruth Jaeger ("Jaeger Decl.") at 1 (attached hereto as Exhibit 4). APCC Services has entered into the APCC Services Compensation Agency Agreement ("Agency Agreement") with each of the Represented PSPs. A sample Agency Agreement is attached hereto as Exhibit 5.⁶ Each Represented PSP has also executed a Power of Attorney authorizing APCC Services to act on its behalf. A sample Power of Attorney is attached hereto as Exhibit 6.⁷ Pursuant to the Agency Agreement and Power of Attorney, APCC Services is authorized to collect dial-around compensation on behalf of the Represented PSPs for the Damages Period. Exhibit 5 at 1; Exhibit 6 at 10.

2. APCC Services represents as dial-around compensation agent, and thus the Represented PSPs constitute, slightly different sets of PSPs for each of the quarters in

⁶ Because of the sheer volume of the Agency Agreements, APCC Services has not attached copies of each individual Agency Agreement. APCC Services hereby affirms that it has such an agreement for each of the Represented PSPs. Exhibit 4 (Jaeger Decl.) at 2.

⁷ Because of the sheer volume of the Powers of Attorney, APCC Services has not attached copies of each individual Power of Attorney. APCC Services hereby affirms that it has such an agreement for each of the Represented PSPs. Exhibit 4 (Jaeger Decl.) at 2.

the Damages Period. The Represented PSPs with respect to the third quarter of 2004 are listed, along with the ANIs for each and every one of their respective payphones for which damages are sought, in the text file identified as Exhibit 1. The Represented PSPs with respect to the fourth quarter of 2004 are listed, along with the ANIs for each and every one of their respective payphones for which damages are sought, in the text file identified as Exhibit 2. See Exhibit 4 (Jaeger Decl.) at 2. Both Exhibit 1 and Exhibit 2 are on the CD attached behind the Exhibit 1 tab.

3. APCC Services' FCC registration number ("FRN") and contact information are as follows:

APCC Services, Inc. (FRN 0006-8497-07)
Attn: Ruth Jaeger, President
625 Slater Lane, Suite 104
Alexandria, VA 22314
Tel: 703-739-1322
Fax: 703-739-1324

4. APCC Services is represented in this matter by:

Albert H. Kramer
Robert F. Aldrich
Jacob S. Farber
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, N.W.
Washington, D.C. 20037
Tel: 202-785-9700
Fax: 202-887-0689

5. Radiant Telecom is a common carrier that provides interexchange telecommunications service. Radiant Telecom is a Completing Carrier under the Commission's payphone compensation rules.

6. ISS is a common carrier that provides interexchange telecommunications service. ISS is a Completing Carrier under the Commission's payphone compensation rules.

7. According to the FCC's Form 499 reporting recordings, Radiant Holdings is a holding company for Radiant Telecom. *See Exhibit 3.* APCC Services also believes that Radiant Holdings is a holding company for ISS.

8. The contact information for Radiant/ISS is as follows:

Attn: Cagdas Kucukemiroglu
1020 NW 163rd Drive
Miami, FL 33169-5818
Tel: 305-914-3434/3465

9. The contact information for Radiant Holdings is as follows

1020 NW 163rd Drive
Miami, FL 33169-5818
Tel: 305-914-3434/3465

10. According to FCC records (*see Exhibit 3*), Radiant Telecom's registered agent in the District of Columbia for service of process is⁸:

TCS Corporate Services
1090 Vermont Ave., NW
Suite 910
Washington, DC 20005
Tel: 678-775-2251
Fax: 678-775-2254

⁸ According to TCS Corporate Services ("TCS"), TCS has resigned as agent for Radiant Telecom. A copy of this complaint is nevertheless being served by hand on TCS as Radiant Telecom's registered agent according to FCC records. The complaint is also being served directly on Radiant Telecom itself.

11. According to FCC records (*see Exhibit 3*), ISS does not have a registered agent in the District of Columbia for service of process. Its alternate agent is:

Walter Redondo
1020 NW 163rd Dr.
Miami, FL 33169
Tel: 305-914-3459
Fax: 305-914-3390

12. Radiant Holdings does not appear in the Commission's Form 499 reporting records.

II. INTRODUCTION AND SUMMARY

13. At issue in this complaint is Radiant/ISS' failure to comply with the Commission's payphone compensation rules. As detailed below, Radiant/ISS has failed to pay the compensation it owes to PSPs for the two consecutive quarters of the Damages Period⁹ and has utterly and completely ignored all of the Commission's payphone-related tracking, reporting, and auditing requirements. Making matters worse, APCC Services has (as detailed below) expended considerable time and resources in an effort to collect the compensation owed to the Represented PSPs. Time and time again, Radiant/ISS has promised to pay in an effort to delay APCC Services from taking further action, but has never made the promised payment.

14. Unfortunately, this pattern of behavior is an all-too familiar one. As detailed in paragraphs 31-36 below, this action marks the second time that APCC Services has been forced to file a complaint against Radiant/ISS for violations of the Commission's dial-around compensation rules. That earlier action related to Radiant Telecom's failure to

⁹ Counting the first quarter of 2005, which is not included in the Damages Period, Radiant has actually failed to pay compensation for three consecutive quarters.

pay dial-around compensation for the period from January 1, 2001 through November 23, 2001. When Radiant Telecom ultimately paid the last of the amounts that it owed in for that period August 2003, it marked the end of a five-year effort to collect dial-around compensation from Radiant Telecom for calls it completed from January 1, 1999 through November 23, 2001.¹⁰ The effort involved repeated broken promises to pay by Radiant Telecom; the filing of a complaint with the Commission by APCC Services; a settlement agreement entered into by the parties and then broken by Radiant Telecom; a federal District Court lawsuit by APCC Services to enforce the settlement agreement; a default judgment against Radiant Telecom for its failure to appear; and Radiant Telecom entering into a second settlement agreement under the compulsion of the default judgment against it. *See* paragraphs 31-36 below.

15. Radiant/ISS is now repeating the same pattern with respect to its dial-around compensation obligations with respect to the Damages Period. As detailed below, APCC Services has repeatedly contacted Radiant/ISS seeking payment; Radiant/ISS has responded to those requests by first ignoring them and then promising to pay the amounts in question; and Radiant/ISS has reneged on those promises, and has not paid any dial-around compensation for either quarter during the Damages Period.

16. In addition to once again failing to honor its payment obligations, Radiant/ISS has failed to comply with other critical aspects of the Commission's dial-around compensation rules. As explained below, those rules require all carriers that receive

¹⁰ For calls involving multiple carriers in the call path, the Commission's rules have from time to time shifted primary dial-around compensation payment responsibility back and forth between underlying facilities-based carriers ("IXCs") and their switch-based resellers ("SBRs"). As an SBR, Radiant has had primary payment responsibility for two periods under the Commission's rules: first, from October 1, 1997 until November 23, 2001 and second, from July 1, 2004 forward.

calls from payphones to comply with the payphone compensation obligations of 47 C.F.R. § 64.1310, including the establishment of a payphone call tracking and compensation system, and to file an audit report attesting to the adequacy of their compensation and tracking system ("System Audit Report") as required by 47 C.F.R. § 64.1320.¹¹ To date, despite repeated requests from APCC Services, Radiant/ISS has not filed a System Audit Report or complied with its obligations under 47 C.F.R. § 64.1310. Exhibit 4 (Jaeger Decl.) at 5.

17. The audit requirement and the tracking and reporting obligations that underlie the requirement are critical to the Commission's payphone compensation regime's success because they help ensure that PSPs receive reliable call data. As discussed below, in light of Radiant/ISS' failure to honor those obligations, the Commission should make clear that all calls delivered to Radiant/ISS are deemed completed and thus compensable.¹² As the Commission has said, without audited data, any call completion information supplied by carriers cannot be considered reliable.¹³ Radiant/ISS—which bore and violated the obligation to file an audit—should bear the consequences of that result, not the Represented PSPs.

¹¹ As an alternative to filing an audit report, a carrier unilaterally can opt to pay compensation under an alternative compensation arrangement pursuant to which it compensates PSPs for 100% of calls originated from the PSPs' payphones. See 47 C.F.R. § 64.1310(a); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Reconsideration, 19 FCC Rcd 21457, ¶¶ 13-21 (Oct. 22, 2004) ("*Tollgate Reconsideration*"). Carriers can also, pursuant to contractual agreements with PSPs, agree to pay under an alternative compensation arrangement for less than a 100% of calls. *Id.* Defendant has neither offered to pay on a 100% basis nor entered into any other alternative compensation arrangement with the Represented PSPs.

¹² See paragraphs 78-80 below.

¹³ See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 13 FCC Rcd 19973, ¶ 52 (2003) ("*Tollgate Order*").

18. The Commission should grant the relief requested herein not only to bring Radiant/ISS into compliance, but also to send a clear and strong signal to the entire carrier industry that abuses of its payphone compensation rules will not be tolerated. Such a signal is critical given the high level of carrier noncompliance. For example, for 3Q2004, some 388 out of 487 carriers, or roughly 80%, did not pay any compensation or file a System Audit Report. Exhibit 4 (Jaeger Decl.) at 10. As a result, the PSP industry is losing millions of dollars of critical revenue and is forced to expend considerable time and money in collection efforts.

19. If Radiant/ISS and other carriers see that there are serious repercussions for their violations, then there is at least a chance that they will begin to make their required payments. The alternative is grim. APCC Services could be forced to file complaints against literally dozens of carriers with significant outstanding balances. Pursuing collection efforts will become an overwhelming burden on both APCC Services' and the Commission's enforcement resources and a threat to PSPs' economic survival.

20. The strongest way for the Commission to make clear that violations of its compensation regime will not be tolerated is to grant the requested punitive damages, above and beyond holding Radiant/ISS responsible for 100% of its calls. While the Commission has been reluctant to award punitive damages in the past, they are warranted here by Radiant/ISS' pattern of willfully and flagrantly flouting its payment obligations to the harm of PSPs. As the Supreme Court has held, punitive damages serve the purposes of "deterrence and retribution." *State Farm*, 538 U.S. at 416. By granting punitive damages, the Commission will not only be imposing a retributive penalty warranted by Radiant/ISS' abusive and harmful conduct, the Commission will

also make absolutely clear to the dozens of other carriers violating its compensation rules that such abuses will not be tolerated.

III. STATEMENT OF FACTS

A. Regulatory Background

21. Section 276 of the Act requires the Commission to “establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone.”

47 U.S.C. § 276(b)(1)(A). Included among the calls subject to the mandate of Section 276 are certain categories of coinless payphone calls, known as dial-around calls.¹⁴ Dial-around calls, which include access code calls and subscriber toll-free calls, are subject to compensation whether they are intrastate or interstate in nature. *Compensation Rate Order* ¶ 3.

22. With respect to dial-around calls, the FCC concluded that, because PSPs could not otherwise obtain fair compensation for such calls, the switch-based carriers to which dial-around calls are routed—including Radiant/ISS—must (in the absence of individual agreements) pay the PSP compensation for each completed call at a prescribed “default” rate per call. *Id.*

23. Since 1996, the Commission has issued a number of orders addressing the “tollgate” question as to which carrier is responsible for paying the dial-around compensation to PSPs where there are multiple IXC (typically one or more resellers and the underlying facilities-based IXC) in the call path from the payphone to the called

¹⁴ *Request to Update Default Compensation Rate for Dial-Around Calls from Payphones, Report and Order, 19 FCC Rcd 15636, ¶ 3 & n.9 (August 12, 2004) (“Compensation Rate Order”).*

party.¹⁵ Under the initial rule, as applied by most facilities-based carriers, when a SBR completed a payphone call, the SBR rather than its underlying facilities-based carrier assumed the obligation to pay compensation to the PSP. *Second Payphone Reconsideration Order* ¶ 14.

24. The initial rule proved to be ineffective in practice in ensuring that PSPs were fairly compensated for calls completed by SBRs. *Second Payphone Reconsideration Order* ¶¶ 14-15; *Tollgate Order* ¶ 18. As the Commission later found:

[T]he PSPs suffered compensation shortfalls [because] (1) the PSPs had insufficient information about the identity of the SBRs and the number of calls they completed, and (2) the SBRs lacked an incentive to voluntarily identify themselves as the liable parties and to pay compensation for every completed call.

Id. As a result, as one carrier put it:

[M]any SBRs never invested in the facilities, nor did they develop procedures, to accurately match payphone identifiers . . . with switch records and then transfer them into formats that could be used to meet their payphone compensation responsibilities.

Id. ¶ 18 n.48 (quoting Comments of MCI at 6 (filed June 23, 2003)).

25. The Commission attempted to remedy this situation by revising the compensation rule. See *Second Payphone Reconsideration Order*. The revised rule, effective November 23, 2001, required "the first facilities-based interexchange carrier to which a [local exchange carrier] routes a compensable coinless payphone call" to track dial-around calls and pay the dial-around compensation directly to the PSP. *Id.* ¶ 2. In

¹⁵ See, e.g., *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 20541, ¶ 86 (1996) ("*First Payphone Order*"); Order on Reconsideration, 11 FCC Rcd 21233, ¶ 92 (1996) ("*First Payphone Reconsideration Order*"); Second Order on Reconsideration, 16 FCC Rcd 8098 (2001) ("*Second Payphone Reconsideration Order*"); *Tollgate Order*; *Tollgate Reconsideration Order*.

2003, however, the revised “tollgate” rule was vacated on procedural grounds by the U.S. Court of Appeals for the D.C. Circuit.¹⁶

B. The Current Dial-Around Compensation Rules

26. On remand from the D.C. Circuit, in the *Tollgate Order*, the Commission decided that the first facilities-based carrier should *not* be required to compensate the PSP for calls completed by SBRs because (1) the first facilities-based carrier is not the “primary economic beneficiary” of the calls and (2) the first facilities-based carrier generally could not determine on its own if the SBR completed a call. *Id.* ¶ 21. Therefore, the Commission again revised the compensation rule, this time explicitly assigning payment responsibility to SBRs such as Radiant/ISS for dial-around calls completed by SBRs. *Id.* These new rules took effect on July 1, 2004 and thus are the rules that govern the Damages Period.

27. Under the current rule, dial-around compensation liability is imposed on the “Competing Carrier.” 47 C.F.R. § 64.1300(b), (c). A Completing Carrier is defined as a “long distance carrier or [SBR] that completes a coinless access code or toll-free payphone call” 47 C.F.R. §§ 64.1300(a). Completing Carriers are required to “pay compensation to payphone service providers on a quarterly basis for each completed payphone call” 47 C.F.R. § 64.1310(a)(2). Completing Carriers are also required to submit a quarterly report to PSPs that, among other things, identifies by dialed number all of the completed calls carried during the quarter. 47 C.F.R. § 64.1310(a)(4).

28. The Commission’s rules also define as an “Intermediate Carrier” any carrier in the call path prior to the Completing Carrier. 47 C.F.R. § 64.1310(b). Intermediate Carriers are required to provide a quarterly report (the “Intermediate Carrier Report”)

¹⁶ *Sprint Corp. v. FCC*, 315 F.3d 369 (D.C. Cir. 2003).

that identifies all of the payphone calls routed by the Intermediate Carrier to another carrier. 47 C.F.R. § 64.1310(c). The Intermediate Carrier report must identify the name and address of each carrier to whom calls were routed, and list by dialed number, the calls sent to each such carrier. *Id.* The Commission adopted this requirement to “improve the ‘audit trail’ for the PSPs by providing a means to verify the accuracy of call tracking reports from carriers in the call path.” *Tollgate Order* ¶ 52. The Commission said that

these new requirements will enable a PSP to identify SBRs that are not compensating it and to challenge the payments in instances where the PSP may believe that the data provided by other facilities-based long distance carriers is out of proportion to the data provided by the final SBR in the call path.

Id.

29. In addition to defining the obligations of Completing Carriers and Intermediate Carriers, the Commission also took steps to prevent the reemergence of past abuses by SBRs. *Tollgate Order* ¶ 34. Among other measures, the Commission required each SBR to “implement a call tracking system, the accuracy of which must be verified by an independent third-party auditor.” *Id.* Section 64.1320(a) of the Commission’s rules provides

each Completing Carrier must undergo an audit of its section 64.1310(a)(1) tracking system by an independent third party auditor whose responsibility shall be, using audit methods approved by the American Institute for Certified Public Accountants, to determine whether the call tracking system accurately tracks payphone calls to completion.

47 C.F.R. § 64.1320(a). The auditor must verify the Completing Carrier’s compliance with the criteria enumerated in 47 C.F.R. § 64.1320(c). Each Completing Carrier must then file with the Commission a System Audit Report from the auditor regarding the carrier’s compliance, and must provide the audit report to any IXC from which the

Completing Carrier receives calls, and to each PSP for which the Completing Carrier completes calls. 47 C.F.R. § 64.1320(b). Initial System Audit Reports were required to be filed on July 1, 2004, with annual updates on the anniversary date thereafter. 47 C.F.R. § 64.1320(b), (f).

30. In adopting the audit requirement, the Commission said that “[t]hese requirements will provide PSPs with further certainty that call completion data is accurate and further visibility into the basis for compensation.” *Tollgate Order* ¶ 44. The Commission added that

[t]o the extent that the SBR payments are late or incomplete, the Commission may impose forfeitures or even revoke section 214 authorization, if we find that SBRs have been lax in fulfilling their obligations. . . . late payment or non-payment to PSPs could result in substantial forfeitures: up to \$120,000 for a single non-payment and up to \$1.2 million for a continuing violation. In egregious cases, we may issue an Order to Show Cause why we should not revoke a SBR’s section 214 authority, and possibly bar the company’s principals from participation in interstate telecommunications business activities without first obtaining explicit permission from the Commission.

Id.

C. Radiant Telecom’s Violations of Its Compensation Obligations Preceding the Damages Period

31. As mentioned above, this complaint marks the second time that APCC Services has been forced to bring an action against Radiant/ISS for its failure to pay dial-around compensation. Despite completing hundreds of thousands of calls from payphones in each quarter of 1999 and 2000 and receiving multiple requests for payment, Radiant Telecom¹⁷ failed to make a single dial-around compensation payment for those quarters. On or about December 20, 2000, APCC Services once again demanded payment of all of

¹⁷ During this earlier period, it appears that, if it existed, ISS did not have any compensable traffic.

Radiant Telecom's unpaid dial-around compensation. While Radiant Telecom continued to drag its heels and resist payment it ultimately did—after considerable delay and then only under the threat of suit—make payments for 1999 and 2000. Exhibit 4 (Jaeger Decl.) at 3.

32. Thereafter, however, Radiant Telecom once again suspended making payments and did not make any payments for the period from January 1, 2001 to November 23, 2001. Exhibit 4 at 3. APCC Services made repeated attempts to contact Radiant Telecom and address the unpaid amount, but was ignored by Radiant Telecom. Finally, on or around January 2, 2002, Radiant Telecom came forward and promised to pay compensation for the first and second quarters of 2001. Radiant Telecom, however, reneged on that promise and subsequently ignored all contact efforts by APCC Services Service, including a certified demand letter dated March 1, 2002. Exhibit 4 at 4. On March 29, 2002, APCC Services filed an informal complaint (the "Informal Complaint") against Radiant Telecom seeking recovery of unpaid dial-around compensation for the period from January 1, 2001 through November 23, 2001. (A copy of the Informal Complaint is attached hereto as Exhibit 7.)

33. Upon receipt of the Informal Complaint, Radiant Telecom again came forward and offered to settle with APCC Services for the claimed amounts. On June 28, 2002, APCC Services and Radiant Holdings (on behalf of Radiant Telecom)¹⁸ entered into a settlement agreement (attached hereto as Exhibit 8) pursuant to which Radiant Telecom promised to pay \$310,248.60 in settlement of the amounts owed, in four installment

¹⁸ The fact that Radiant Holdings entered into the settlement agreement on behalf of Radiant Telecom confirms that the two entities have acted in concert.

payments. However, after making the first of those installment payments, Radiant Telecom failed to make all subsequent payments when due. Exhibit 4 (Jaeger Decl.) at 4.

34. On December 30, 2002, APCC Services filed suit in federal District Court in Florida for Radiant Telecom's breach of the settlement agreement. Radiant Telecom failed to file an answer or otherwise respond to APCC Services' complaint. On February 6, 2003, the court entered a default judgment against Radiant Telecom (attached hereto as Exhibit 9).

35. In a final effort to resolve the dispute expeditiously and amicably, APCC Services once again entered in a settlement arrangement with Radiant Telecom. The parties jointly filed a Notice of Filing Joint Stipulation for Settlement (attached hereto as Exhibit 10) in which Radiant Telecom acknowledged that it was in material default under the initial settlement agreement by virtue of its failure to pay the amounts due thereunder and promised to pay the amount owed to APCC Services. See Exhibit 10.

36. Radiant Telecom ultimately complied with the parties' second settlement agreement, finally completing its payments to APCC Services on August 15, 2003. Exhibit 4 (Jaeger Decl.) at 4. It thus took APCC Services nearly two years, required the filing of both a complaint with the Commission and a federal District Court lawsuit, and two settlement agreements, to compel Radiant Telecom to comply with its compensation obligations for the pre-November 23, 2001 period.

D. History of the Present Dispute

37. On May 25, 2004, APCC Services sent a letter addressed to Radiant Telecom¹⁹ (attached as Exhibit 11) notifying Radiant/ISS of the revised dial-around compensation regulations effective as of July 1, 2004, and explaining the steps carriers needed to take in order comply with the revised regulations. APCC Services requested that Radiant/ISS contact APCC Services if Radiant/ISS had any questions about compliance with the new rules. Exhibit 11 at 1-2. Radiant/ISS did not respond to APCC Services' May 25, 2004, letter. Exhibit 4 (Jaeger Decl.) at 4-5.

38. Neither Radiant Telecom nor ISS filed, and to date neither has filed, the System Audit Report that Completing Carriers were required to file by July 1, 2004. Exhibit 4 at 5.

39. On September 14, 2004, APCC Services sent letter addressed to Radiant Telecom (attached as Exhibit 12) asking Radiant/ISS whether it intended to file a System Audit Report or make other arrangements to comply with the payphone compensation rule. Exhibit 12 at 1-2. Radiant/ISS did not respond to APCC Services' September 14, 2004 letter. Exhibit 4 (Jaeger Decl.) at 5.

40. On October 28, 2004, APCC Services separately sent both Radiant Telecom and ISS a CD that contained (1) a letter and accompanying memoranda explaining that their dial-around compensation payment for 3Q2004 would be due January 1, 2005 and requesting payment, and (2) a text file identifying the Represented PSPs for 3Q2004 and their ANIs. (The CD is attached hereto as Exhibit 13.) Neither Radiant Telecom nor ISS responded to APCC Services' October 28, 2004 mailing. Exhibit 4 (Jaeger Decl.) at 5.

¹⁹ While the letter was addressed in particular to Radiant Telecom, since the designated contact and company address for ISS are the same as for Radiant Telecom, the letter was effectively received by both entities. The same is equally true for all subsequent correspondence sent to Radiant Telecom's attention.

41. On November 23, 2004 and November 24, 2004, respectively, APCC Services sent letters to Radiant Telecom and ISS (attached hereto as Exhibit 14 as sent to Radiant Telecom; the letter sent to ISS is identical in substance) reminding them of their dial-around compensation obligations and requesting information about the status of their compliance. Neither Radiant Telecom nor ISS responded to APCC Services' letter. Exhibit 4 (Jaeger Decl.) at 5.

42. Neither Radiant Telecom nor ISS made and neither has made to date, a dial-around compensation payment for 3Q2004, which was due on January 1, 2005.

43. On January 27, 2005 and January 28, 2005, respectively, APCC Services separately sent to Radiant Telecom and ISS a CD that contained (1) a letter and accompanying memoranda explaining that their dial-around compensation payment for 4Q2004 would be due April 1, 2005 and requesting payment, and (2) a text file identifying the Represented PSPs for 4Q2004 and their ANIs. (The CD is attached hereto as Exhibit 15.) Neither Radiant Telecom nor ISS responded to APCC Services' mailing of the CD. Exhibit 4 (Jaeger Decl.) at 6.

44. After receipt of the 3Q2004 compensation payments and the associated Intermediate and Completing Carrier Reports due January 1, 2005, APCC Services began to process the 3Q2004 payment data. APCC Services compared the payments it received from various carriers and the number of calls reported as delivered to those carriers by their Intermediate Carriers. The Intermediate Carrier Reports identify the total number of calls delivered by the reporting Intermediate Carrier to each carrier to whom it delivered calls and provide identifying contact information for each such carrier. By aggregating the information supplied by individual Intermediate Carriers, APCC Services is able to determine which carriers were Completing Carriers and the

total number of calls sent to each such completing carrier. As discussed below, five 3Q2004 Intermediate Carrier Reports showed Radiant Telecom or ISS (neither of which had paid any compensation for the quarter) as receiving calls.

45. On February 17, 2005, APCC Services attempted to contact Radiant/ISS by telephone regarding Radiant/ISS' non-payment of dial-around compensation for 3Q2004 (which was past due as of January 1, 2005). APCC Services' call was not returned. Exhibit 4 (Jaeger Decl.) at 7.

46. On February 21, 2005, Ruth Jaeger, President of APCC Services, had a telephone conversation with Cagdas Kucukemiroglu, who was identified by the Intermediate Carrier Reports as the Carrier Reconciliation Manager for both Radiant Telecom and ISS. Mr. Kucukemiroglu acknowledged that he had received APCC Services' October 28, 2004 CD requesting payment for 3Q2004 and listing the 3Q2004 Represented PSPs' ANIs. Mr. Kucukemiroglu said that he understood Radiant/ISS' payment obligation; that Radiant/ISS was in the process of processing the CD; and that he would see to obtaining approval from the company's management to make the required payment. Exhibit 4 (Jaeger Decl.) at 7.

47. On February 25, 2005, Ms. Jaeger once again telephoned Mr. Kucukemiroglu to inquire into the status of Radiant/ISS' payment. Mr. Kucukemiroglu repeated his assurances' that payment would soon be forthcoming, saying that he was nearly ready to cut a check to APCC Services. Ms. Jaeger responded by saying that, given the company's past conduct, APCC Services would prefer payment by wire. Mr. Kucukemiroglu agreed. Exhibit 4 (Jaeger Decl.) at 7-8.

48. Following their conversation, Ms. Jaeger sent an e-mail (a copy of which is attached hereto as Exhibit 16) to Mr. Kucukemiroglu with instructions for making an

electronic payment of compensation to APCC Services. Exhibit 4 (Jaeger Decl.) at 8. Neither Mr. Kucukemiroglu nor any other representative of Radiant/ISS responded to this e-mail or made any payment to APCC Services. Exhibit 4 at 8.

49. When Radiant/ISS failed to send the promised wire, Ms. Jaeger once again called Mr. Kucukemiroglu. He said that he had not yet been able to obtain approval, but he expected to do so in the near future and that payment would be forthcoming. Exhibit 4 (Jaeger Decl.) at 8.

50. On at least one subsequent occasion in late March, Ms. Jaeger placed yet another call to Mr. Kucukemiroglu, who said that Radiant/ISS was still working on making the payment. Exhibit 4 (Jaeger Decl.) at 8.

51. On March 18, 2005, APCC Services sent a demand letter and an accompanying invoice (the "3Q2004 Invoice," attached hereto as Exhibit 17) to Radiant Telecom demanding payment of Radiant/ISS' unpaid compensation for 3Q2004. The demand was in the amount of \$468,600.20. See Exhibit 17.

52. APCC Services was able to determine the amount of dial-around compensation owed by Radiant/ISS as a result of its analysis of the 3Q2004 Intermediate Carrier Reports for 3Q2004.²⁰ (Summary data from the 3Q2004 Intermediate Carrier Reports are attached hereto as Exhibit 18²¹). The reports submitted by five carriers identified either Radiant Telecom or ISS as receiving calls which originated from the Represented PSPs' payphones. Two carriers reported delivering calls to Radiant Telecom, two carriers to

²⁰ The Intermediate Carrier Reports were thus not available when APCC Services sent its October 28, 2004 CD with the Represented PSPs' ANI list.

²¹ The Intermediate Carrier Reports are too voluminous to attach in their entirety. APCC Services will make them available upon request.

ISS, and one carrier provided aggregated call data for both entities.²² All five Intermediate Carrier Reports, however, provided the same contact name and address, regardless of whether the named entity was Radiant Telecom or ISS. Exhibit 4 (Jaeger Decl.) at 6-7.

53. Because at least one carrier did not provide data that distinguished between Radiant Telecom and ISS, and because it appeared from the data that the two were functionally the same entity, APCC Services combined the data for Radiant Telecom and ISS. APCC Services aggregated the totals of calls delivered from each Intermediate Carrier to either entity to arrive at a total number of 1,933,339 dial-around calls delivered to Radiant/ISS from the Represented PSPs' payphones. APCC Services thus billed Radiant/ISS for $1,933,339 \times \$0.24$,²³ or \$464,001.36, plus interest of \$4,598.84 for a total of \$468,600.20. Exhibit 4 at 8.

54. Radiant/ISS did not respond to the 3Q2004 Invoice. Exhibit 4 (Jaeger Decl.) at 8.

55. Neither Radiant Telecom nor ISS made and neither has made to date, a dial-around compensation payment for 4Q2004, which was due on April 1, 2005. Exhibit 4 at 9

56. On May 17, 2005, APCC Services sent a demand letter and an accompanying invoice (the "4Q2004 Invoice," attached hereto as Exhibit 19) to Radiant Telecom demanding payment of its unpaid compensation for 4Q2004 as well as the still-unpaid amount owed by Radiant/ISS for 3Q2004 (which had increased to \$487,779.51 as the

²² Global Crossing's Intermediate Carrier Report reported calls delivered to an entity with a carrier identifier listed as "Radiant Telecom/Intelligent Switching." Exhibit 4 (Jaeger Decl.) at 7.

²³ As the \$.494 compensation rate did not become effective until September 27, 2004, APCC Services billed for the calls at the prior effective rate of \$.24 per call.

result of additional interest accruing), APCC Services' demand for 4Q2004, in the amount of \$627,023.81, was based on the Intermediate Carrier Reports for the quarter, which were submitted on April 1, 2005. (Summary data from of the 4Q2004 Intermediate Carrier Reports are attached hereto as Exhibit 20). As was the case with the 3Q2004 reports, the 4Q2004 Intermediate Carrier Reports variously identified Radiant Telecom, ISS, or both²⁴ as the entity to which calls were delivered. Exhibit 4 (Jaeger Decl.) at 9. The reports showed that during the fourth quarter of 2004, 1,245,915 dial-around calls originating from the Represented PSPs' payphones calls were delivered to Radiant/ISS. Exhibit 4 (Jaeger Decl.) at 9; Exhibit 20. APCC Services thus billed Radiant/ISS for 1,245,915 x \$.494,²⁵ or \$615,483.50 plus interest of \$11,540.31 for a total of \$627,023.81. Exhibit 4 at 9; Exhibit 19.

57. Radiant/ISS did not respond to the 4Q2004 Invoice. Exhibit 4 (Jaeger Decl.) at 9.

58. On May 26, 2005, APCC Services sent a certified letter (attached hereto as Exhibit 21) to Radiant Telecom, which explicitly cited the good faith settlement requirement of 47 C.F.R. § 1.721(a)(8) and extended a two-week opportunity to settle. The letter reiterated APCC Services' demand for the unpaid amounts owed to the Represented PSPs for both the third and fourth quarters of 2004. The letter also explicitly cited Radiant/ISS' failure to file a System Audit Report as an additional violation of the Commission's rules. The certified letter stated that if Radiant/ISS did

²⁴ As with the 3Q2004 reports, Global Crossing's 4Q2004 Intermediate Carrier Report reported calls delivered to an entity with a carrier identifier listed as "Radiant Telecom/Intelligent Switching." Exhibit 4 (Jaeger Decl.) at 9.

²⁵ The \$.494 dial-around compensation default rate became effective on September 27, 2004.

not pay the compensation it owed by July 10, 2005, APCC Services would “proceed with the filing of a formal complaint with respect to the violations” Exhibit 21 at 2.

59. On June 9, 2005—thirteen days after APCC Services’ May 26th letter was sent, and on the day before the deadline set by the letter for Radiant/ISS’ response—Katie Asher, in-house counsel for Radiant/ISS, called APCC Services’ counsel. Ms. Asher represented that Radiant/ISS wished to make good on its unpaid amounts, but the company needed some additional time in order to research and make the payment. Ms. Asher requested an extension of one week in order to do so. Counsel for APCC Services made explicit that APCC Services’ willingness to extend the deadline was predicated on Radiant/ISS’ assurance that it would make a payment within the additional week period. Ms. Asher said she understood those terms, and said that she would be in contact shortly to discuss making the payment. Affidavit of Jacob Farber at 1-2 (attached hereto as Exhibit 22).

60. Radiant/ISS did not make the promised payment, nor has it contacted APCC Services, either during the one-week extension period or since.

IV. RADIANT/ISS’ VIOLATIONS

A. Radiant/ISS Failed to Pay Compensation Owed

Count One: Violation of Section 201(b) of the Act

61. APCC Services incorporates by reference herein, as though fully set forth, paragraphs 1-60 of this complaint.

62. Radiant/ISS’ failure to pay dial-around compensation billed by and owed to APCC Services on behalf of the Represented PSP Complainants for 3Q2004 and 4Q2004 violates Sections 64.1300 and 64.1310 of the Commission’s rules, 47 C.F.R. § 47 C.F.R.

§§ 64.1300, 1310, and is thus an unjust and unreasonable practice that violates Section 201(b) of the Act, 47 U.S.C. § 201(b).

Count Two: Violation of Section 416(c) of the Act

63. APCC Services incorporates by reference herein, as though fully set forth, paragraphs 1-60 of this complaint.

64. Radiant/ISS' failure to pay dial-around compensation billed by and owed to APCC Services on behalf the Represented PSPs for 3Q2004 and 4Q2004 violates the *Tollgate Order* and the *Tollgate Reconsideration* and is thus a violation of Section 416(c) of the Act, which provides that "[i]t shall be the duty of every person . . . to observe and comply with [every order of the Commission] so long as the same shall remain in effect." 47 U.S.C. § 416(c).

Count Three: Violation of Section 276 of the Act

65. APCC Services incorporates by reference herein, as though fully set forth, paragraphs 1-60 of this complaint.

66. Radiant/ISS' failure to pay dial-around compensation billed by and owed to APCC Services on behalf the Represented PSPs for 3Q2004 and 4Q2004 violates Section 276, 47 U.S.C. § 276 and the Commission's implementing regulations.

B. Radiant/ISS Failed to Track and Report Completed Calls

1. Count Four: Violation of Section 201(b) of the Act

67. APCC Services incorporates by reference herein, as though fully set forth, paragraphs 1-60 of this complaint.

68. Radiant/ISS' failure to track dial-around calls completed from APCC Services' customers' payphones and report those calls to APCC Services violates Section 64.1310

of the Commission's Rules, 47 C.F.R. § 64.1310, and is thus an unjust and unreasonable practice that violates Section 201(b) of the Act, 47 U.S.C. § 201(b).

2. Count Five: Violation of Section 416(c) of the Act

69. APCC Services incorporates by reference herein, as though fully set forth, paragraphs 1-60 of this complaint.

70. Radiant/ISS' failure to track dial-around calls completed from APCC Services' customers' payphones and report those calls to APCC Services violates the *Tollgate Order* and the *Tollgate Reconsideration* and is thus a violation of Section 416(c) of the Act, 47 U.S.C. § 416(c).

C. Radiant/ISS Failed to Undergo a Tracking System Audit and File an Audit Report

1. Count Six: Violation of Section 201(b) of the Act

71. APCC Services incorporates by reference herein, as though fully set forth, paragraphs 1-60 of this complaint.

72. Radiant/ISS' failure to undergo an audit of its call tracking system and file a System Audit Report violates Section 64.1320 of the Commission's rules, 47 C.F.R. § 64.1320, and is thus an unjust and unreasonable practice that violates Section 201(b) of the Act, 47 U.S.C. § 201(b).

2. Count Seven: Violation of Section 416(c) of the Act

73. APCC Services incorporates by reference herein, as though fully set forth, paragraphs 1-60 of this complaint.

74. Radiant/ISS' failure to undergo an audit of its call tracking system and file a System Audit Report violates the *Tollgate Order* and the *Tollgate Reconsideration* and is thus a violation of Section 416(c) of the Act, 47 U.S.C. § 416(c).

V. LEGAL ANALYSIS

A. Radiant/ISS' Failure to Pay Compensation Is a Violation of Sections 201(b), 416(c), and 276 of the Act

75. Under the Commission's rules effective as of July 1, 2004 (and thus in effect during the Damages Period), as an SBR Radiant/ISS is a Completing Carrier with respect to any dial-around calls that it completes. 47 C.F.R. § 64.1300(a). Accordingly, Radiant/ISS is required to pay dial-around compensation for all dial-around calls that it completes. 47 C.F.R. § 1300(b). In the absence of an agreement to the contrary between Radiant/ISS and the Represented PSPs, Radiant/ISS is required to pay dial-around compensation at the rate set forth in Section 64.1300(c) of the Commission's rules, 47 C.F.R. § 64.1300(c). For the period from July 1, 2004 to September 26, 2004, the default compensation rate was \$.24. For the period from and including September 27, 2004, the default compensation rate is \$.494. 47 C.F.R. § 64.1300(c). Accordingly, Radiant/ISS was obligated to pay dial-around compensation to the Represented PSPs for each of the two quarters at issue during the Damages Period in an amount equal to the number of calls completed by Radiant/ISS times the applicable default compensation rate.

76. Radiant/ISS' failure to pay such dial-around compensation constitutes a violation of Section 64.1300 of the Commission's rules, 47 C.F.R. § 64.1300. As the Commission has stated, the violation of Commission's payphone compensation rules "constitutes both a violation of Section 276 and an unjust and unreasonable practice in violation of Section 201(b) of the Act. *Tollgate Order* ¶ 32; *APCC Services, Inc. et al. v. Network IP, LLC et al.*, 20 FCC Rcd 2073, ¶ 16 (EB Feb. 1, 2005) (holding in a dial-around compensation formal complaint proceeding that the "failure to pay compensation violates rule 64.1300(c) and thus sections 276 and 201(b) of the Act").

77. Radiant/ISS' failure to pay compensation is also a violation of the *Tollgate Order* and the *Tollgate Reconsideration*, which require Completing Carriers to pay dial-around compensation, and thus constitutes a violation of Section 416(c) of the Act. Section 416(c) provides that "[i]t shall be the duty of every person . . . to observe and comply with [every order of the Commission] so long as the same shall remain in effect." 47 U.S.C. § 416(c). Thus, Section 416(c) makes violations of FCC orders, and the rules adopted therein, violations of the Act. *S. Cent. Bell Tel. Co. v. La. Pub. Serv. Comm'n*, 744 F.2d 1107, 1117 n.18 (5th Cir. 1984) ("Violating rules and regulations of the FCC . . . is . . . violative of the Act." (citing 47 U.S.C. § 416(c)), *vacated on other grounds*, 476 U.S. 1166 (1986)). Accordingly, Radiant/ISS' failure to comply with the *Tollgate Order* and the *Tollgate Reconsideration* is a direct violation of Section 416(c).

B. Radiant/ISS Should Pay for 100% of Calls

78. In light of Radiant/ISS' failure to file the System Audit Report required by 47 C.F.R. § 64.1320(a), all of the calls delivered to Radiant/ISS by Intermediate Carriers should be deemed completed, and thus compensable. As the Commission said in the *Tollgate Order*, in light of the Commission's past experience with SBR payments, the audit requirement is necessary to ensure accurate call completion data. *Id.* ¶ 38. Building on that notion, in the context of alternative compensation arrangements, or "ACAs," the Commission held in the *Tollgate Reconsideration* that

[i]n an enforcement action, a PSP would not have accurate evidence upon which to collect compensation if the Completing Carrier were permitted to reject the ACA and to instead rely on its own unaudited call tracking data, for in the [*Tollgate Order*] we found that a call tracking system must be audited in order to meet the terms of the statute [*i.e.* Section 276].

Tollgate Reconsideration ¶ 19 (citing *Tollgate Order* ¶¶ 26, 38). The Commission therefore found that ACAs must provide for compensation based on Intermediate Carrier data—

rather than the SBR's own, presumably faulty, unaudited data—in the event of a dispute in order to protect PSPs' interests. *Id.*

79. There is no material difference between the circumstances present here (i.e. a carrier's failure to file a System Audit Report) and the situation addressed by the Commission in the *Tollgate Reconsideration* (i.e. a carrier enters into an ACA to avoid having to file the System Audit Report and then withdraws from or violates the ACA). In both cases, without audited data to rely on, PSPs would not have reliable data with which to bring suit, *Tollgate Reconsideration* ¶ 19. It follows that the same rule should apply: where a carrier fails to file a System Audit Report, all of the calls reported as delivered to the carrier by its Intermediate Carriers should be deemed completed, and thus compensable.

80. Moreover, carriers that fail to file audit reports and pay compensation should also be held responsible for 100% of calls so that they will have a proper incentive to pay on a timely basis. If carriers believe that they can avoid their audit and payment responsibilities and ultimately only be held responsible for the same set of calls on which they should have paid in the first instance, they will have a strong incentive to violate their compensation obligations and thereby force PSPs to bring suit, which is a drain on both their and the Commission's resources. If, however, carriers understand that if they do not file a System Audit Report, they will be required to pay 100% of the calls delivered to them by Intermediate Carriers, then they will be more likely to correctly track and pay their completed calls.²⁶

²⁶ As discussed below, however, holding particularly egregious violators responsible for punitive damages is also necessary to ensure compliance with the Commission's rules.

C. Radiant/ISS Must Pay Interest at the Commission-Approved Rate of 11.25%

81. The Commission has determined that unpaid dial-around collection accrues interest at the rate of 11.25% per year. *APCC Services, Inc., et al. v. TS Interactive, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 10456, ¶ 22 (2004); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Second Report and Order, 13 FCC Rcd 1778, ¶¶ 59-60 (1997); *Bell-Atlantic-Delaware, Inc. et al. v. MCI Telecommunications Corp.*, Memorandum Opinion and Order, 16 FCC Rcd 8112, ¶ 17 n.43 (2001).

D. Radiant/ISS' Failure to Track and Report Completed Calls Is a Violation of Sections 201(b) and 416(c) of the Act

82. Radiant/ISS' failure to track and report completed calls represents a violation of Section 64.1310 of Commission's rules (and thus of the Act) separate and apart from Radiant/ISS' failure to pay compensation. Section 64.1310(a)(1) of the Commission's rules requires all Completing Carriers such as Radiant/ISS to "establish a call tracking system that accurately tracks coinless access code or subscriber toll-free payphone calls to completion." 47 C.F.R. § 64.1310(a)(1). Section 64.1310(a)(3) of the Commission's rules requires all Completing Carriers to submit on a quarterly basis a certification, signed by the carrier's chief financial officer, that it has paid compensation "on 100% of all completed calls" 47 C.F.R. § 64.1310(a)(3). Section 64.1310(a)(4) of the Commission's rules requires all Completing Carriers to submit on a quarterly basis a Completing Carrier Report identifying, among other things, all of the completed calls that it carried. 47 C.F.R. § 64.1310(a)(4).

83. To date, Radiant/ISS has not filed a chief financial officer certification nor submitted a Completing Carrier Report for either of the quarters during the damages period. In light of these failures, Radiant/ISS cannot be deemed to have established a

meaningful call tracking system. Accordingly, Radiant/ISS is in violation of 47 C.F.R. § 64.1310(a)(1), (3), and (4).²⁷ Such violation of the Commission's rules and their adopting orders constitutes an unjust and unreasonable practice under Section 201(b) of the Act, 47 U.S.C. § 201(b), as well as a violation of Section 416(c) of the Act, 47 U.S.C. § 416(c).

E. Radiant/ISS' Failure to Submit a System Audit Report Is a Violation of Sections 201(b) and 416(c) of the Act

84. Section 64.1320 of the Commission's rules requires that, absent their having entered into an alternative compensation arrangement, all Completing Carriers must submit a System Audit Report, 47 C.F.R. § 64.1310(a), and update that report on an annual basis, 47 C.F.R. § 64.1320(f). Radiant/ISS has not filed either the initial System Audit Report, which was due on July 1, 2004, nor the annual update due on July 1, 2005 and has not entered into an alternative compensation arrangement. Accordingly Radiant/ISS is in violation of 47 C.F.R. § 64.1320. Such violation of the Commission's rules and their adopting orders constitutes an unjust and unreasonable practice under Section 201(b) of the Act, 47 U.S.C. § 201(b), as well as a violation of Section 416(c) of the Act, 47 U.S.C. § 416(c).

F. Radiant/ISS Should Pay Punitive Damages

85. Punitive damages are appropriate where the defendant has acted "maliciously, wantonly, or with a recklessness that betokens improper motive or vindictiveness." *See, e.g., Jeffrey Krauss v. MCI Telecom Corp.*, 14 FCC Rcd 2770, ¶ 12 (1999); *Strough v. Western Union Telegraph Co.*, Initial Decision, 70 FCC 2d 525, 570 (1977), *aff'd in relevant part*, 70 FCC 2d 506 (Rev.Bd. 1978).

²⁷ Radiant Holdings may have direct liability under 47 C.F.R. 64.1320(a)(3). In the event that a subsidiary operating company does not have a chief financial officer, the certification requirement must be met by the parent's chief financial officer. *Tollgate Reconsideration* ¶ 37 n.120.

86. To date, the Commission has not, in its view, been presented with a case in which the complainant demonstrated that the defendant's conduct warranted punitive damages, and thus has never affirmatively held that it has the authority to award such damages. The Commission, has, however, been willing to assume, at least preliminarily that it does have such authority. See, e.g. *Metrocall, Inc. Southwestern Bell Telephone Co. et al.*, 16 FCC Rcd 18123, ¶ 19 (2001) (assuming that the Commission has the authority to award punitive damages, but not addressing the issue given the facts presented); *TSR Wireless, LLC et al. v. U S West Communications, Inc. et al.*, 15 FCC Rcd 11166 (2000) (the Commission would address a request for punitive damages in the damages phase of a bifurcated Section 208 complaint proceeding); *Halprin, Temple, Goodman & Sugrue v. MCI Telecommunications Corp.*, Memorandum Opinion and Order, 13 FCC Rcd 22568, ¶ 31 (1998) ("Assuming, without deciding, that we have the authority to award punitive damages, the facts here do not justify any consideration of such damages, because Complainants have failed to show that MCI acted 'maliciously, wantonly or with a recklessness that betokens improper motive or vindictiveness.'").

87. In contrast to the cases that the Commission has previously addressed, the facts set forth above demonstrate that Radiant/ISS has acted "maliciously, wantonly, and with a recklessness that betokens improper motive and vindictiveness." Maliciously "imports a wish to vex, annoy, or injure another, or an intent to do a wrongful act" Black's Law Dictionary, 6th Ed., 956. Wanton and reckless misconduct "occurs when a person, with no intent to cause harm, intentionally performs an act so dangerous that he knows, or should know, that it is highly probable that harm will result." *Id.* at 1582.

88. Here, Radiant/ISS' conduct is certainly intentional. There can be no argument that Radiant/ISS was unaware of its obligation to compensate the Requested PSPs, nor

that it did not intentionally ignore that obligation. APCC Services repeatedly brought first Radiant/ISS' payment obligation, and later its failure to pay, to Radiant/ISS' attention. Radiant/ISS repeatedly said that it would pay yet never did. Thus, Radiant/ISS' conduct could not be any more intentional.

89. Nor can Radiant/ISS contend that it was unaware that its failure to compensate PSPs would result in significant harm. APCC Services repeatedly requested payment, citing the *Tollgate Order* and the *Tollgate Reconsideration*. Those orders explain, at length, how vital the dial-around compensation revenue stream is to PSPs and why carrier compliance with their compensation obligations is critical.

90. Yet, knowing full well that it was required to pay the Represented PSPs, Radiant/ISS engaged in a pattern of deception and delay, repeatedly promising to pay, yet never fulfilling that promise. See paragraphs 31-60 above. In addition, Radiant/ISS utterly disregarded its call tracking, certification, and System Audit Report requirements.

91. Moreover, for the reasons discussed in paragraphs 19-20 above, punitive damages are necessary to send a strong signal to Radiant/ISS and other carriers that the Commission will not tolerate continued abuses of its compensation regime. Unless the carriers understand that there are significant consequences for violations of their compensation obligations, they will continue to game the system. PSPs will be forced to spend significant resources and money to file actions to collect the compensation they are owed, and those proceedings will, in turn, be a drain on the Commission's own resources.

92. Accordingly, the Commission should award punitive damages in the amount of \$4,459,213.28. This amount, which is four times APCC Services' damages, falls well

within the zone of reasonableness established by the Supreme Court for punitive damages. The Supreme Court has “instructed courts reviewing punitive damages to consider three guideposts: (1) the degree of reprehensibility of the defendant’s misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury [or in this case the administrative agency] and the civil penalties authorized or imposed in similar cases.” *State Farm*, 538 U.S. at 418 (citing *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 575 (1996)).

93. Of the three factors, the degree of reprehensibility is the most “important indicium of the reasonableness of a punitive damages award.” *Gore*, 517 U.S. at 575. The degree of reprehensibility is determined by considering whether “the harm caused was physical as opposed to economic, the tortious conduct evidenced an indifference to or a reckless disregard of the health or safety of others; the target of the conduct had financial vulnerability; the conduct involved repeated actions or was an isolated incident; and the harm was the result of intentional malice, trickery, or deceit, or mere accident.” *State Farm*, 538 U.S. at 419 (citing *Gore*, 517 U.S. at 576-77). While the existence of any one of these factors may not be sufficient to sustain punitive damages, not all need be present. *State Farm*, 538 U.S. at 419. Indeed, only economic harm had been done to the plaintiffs in *State Farm* and the Court, and while the Court reduced the amount of punitive damages, it did not question that some punitive damages were warranted. *See State Farm*, 538 U.S. at 429.

94. Applying the reprehensibility factors in this case, punitive damages are warranted. The targets of Radiant/ISS’ misconduct—the Represented PSPs—clearly have financial vulnerability, depending on dial-around compensation as a revenue

stream critical to their ability to stay in business; Radiant/ISS has repeatedly not only failed to pay its dial-around obligations but has also consistently and repeatedly failed to honor its System Audit Report and other tracking and reporting requirements; and Radiant/ISS' non-payment is willful and reflects a pattern of deception aimed at forestalling APCC Services' collection efforts. And, while health and safety are not implicated by Radiant/ISS' misconduct, *State Farm* makes clear that the health and safety-related factors are not a prerequisite to a punitive damages award. See *State Farm*, 538 U.S. at 429.

95. With regard to the second guidepost—the relationship between the actual harm suffered by the plaintiff and the amount of punitive damages—the Court has been reluctant to establish any bright-line ratios. It has said that punitive damages awards where the ratio between punitive and compensatory damages exceeds a “single digit” are more likely to be suspect, and that “an award of more than four times the amount of compensatory damages might be close to the line of constitutional impropriety.” *State Farm*, 538 U.S. at 425. The Court has also noted that double, treble, and quadruple damages are common sanctions to deter and punish, and that a 4-1 ratio is therefore consistent with due process. *Id.* The 4-1 ratio sought by APCC Services in this case is thus consistent with the second guidepost.

96. Finally, the \$4,459,213.28 in punitive damages sought by APCC Services is consistent with the third guidepost, which looks to the civil penalties available in comparable cases. Given that for three successive quarters, Radiant/ISS has failed to pay over 1,500 PSPs, and has violated multiple audit, tracking and reporting violations, and that the maximum penalty for *each* such violation is \$100,000, 47 U.S.C. § 503(b)(2)(B), an award of less than \$5,000,000 is eminently reasonable.

VI. PROPOSED FINDINGS OF FACT

97. APCC Services is the agent of, and is acting on the behalf of, the Represented PSPs.

98. Radiant Telecom is a common carrier.

99. ISS is a common carrier.

100. Radiant Telecom is a switch-based carrier.

101. ISS is a switch-based carrier.

102. Radiant Holdings is the parent company of Radiant Telecom and ISS.

103. In the third quarter of 2004, Intermediate Carriers delivered to Radiant/ISS 1,933,339 calls that originated from Represented PSP payphones.

104. In the fourth quarter of 2004, Intermediate Carriers delivered to Radiant/ISS 1,245,919 calls that originated from Represented PSP payphones.

105. Radiant/ISS did not pay any dial-around compensation for either the third or fourth quarter of 2004 to APCC Services or any of the Represented PSPs for the dial-around calls that Radiant/ISS received from the Represented PSPs' payphones.

106. APCC Services has repeatedly attempted to collect the compensation owed to the Represented PSPs.

107. Radiant/ISS has engaged in a pattern of deception and delay, repeatedly promising to pay in order to forestall collection efforts by APCC Services and then renegeing on its promises.

108. Radiant/ISS failed to implement the call tracking system required by 47 C.F.R. § 64.1310(a)(1).

109. Radiant/ISS failed to submit the chief financial officer certification required by 47 C.F.R. § 64.1310(a)(3) for both quarters during the Damages Period.

110. Radiant/ISS failed to submit the Completing Carrier Report required by 47 C.F.R. § 64.1310(a)(4) for both quarters during the Damages Period.

111. Radiant/ISS failed to file the Payphone System Audit Report required by 47 C.F.R. § 64.1320.

VII. PROPOSED CONCLUSIONS OF LAW

112. ISS is a Completing Carrier under the meaning of 47 C.F.R. § 64.13100(a) with respect to the calls it received from the Represented PSPs' payphones.

113. Under 47 C.F.R. §§ 64.1300 and 64.1310 and the *Tollage Order* and the *Tollgate Reconsideration*, Radiant/ISS is obligated to pay dial-around compensation to the Represented PSPs for the dial-around calls it received from the Represented PSPs' payphones.

114. Radiant/ISS' failure to pay dial-around compensation in violation of Commission rules and orders is an unjust and unreasonable practice under 47 U.S.C. § 201(b).

115. Radiant/ISS' failure to pay dial-around compensation in violation of Commission rules and orders is a violation of 47 U.S.C. § 416(c).

116. Radiant/ISS' failure to pay dial-around compensation in violation of Commission rules and orders is a violation of 47 U.S.C. § 276.

117. In light of its failure to file a System Audit Report, all calls delivered to Radiant/ISS are deemed completed, and thus compensable, calls.

118. Interest on unpaid dial-around compensation accrues at the rate of 11.25% per year.

119. APCC Services is entitled to damages in the amount of \$1,114,803.31, including interest through the May 26, 2005 demand letter. Interest shall continue to accrue until payment is made.

120. APCC Services is entitled to punitive damages in the amount of \$4,459,213.28.

121. Radiant/ISS' failure to comply with the call tracking and reporting requirements of 47 C.F.R. § 64.1310(a) in violation of Commission rules and orders is an unjust and unreasonable practice under 47 U.S.C. § 201(b).

122. Radiant/ISS' failure to comply with the call tracking and reporting requirements of 47 C.F.R. § 64.1310(a) in violation of Commission rules and orders is a violation of 47 U.S.C. § 416(c).

123. Radiant/ISS' failure to submit the System Audit Reports required by 47 C.F.R. § 64.1320(a) is an unjust and unreasonable practice under 47 U.S.C. § 201(b).

124. Radiant/ISS' failure to submit the System Audit Reports required by 47 C.F.R. § 64.1320(a) and the *Tollgate Order* and the *Tollgate Reconsideration* is a violation of 47 U.S.C. § 416(c).

VIII. DAMAGES

125. Pursuant to Section 1.722(a) of the Commission's Rules, APCC Services is entitled to collect damages on behalf of its customers in the amount of \$1,114,803.31 (which includes interest as of the May 26, 2005 demand letter), plus pre- and post-judgment interest at 11.25%. The \$1,114,803.31 figure reflects \$487,779.51 in unpaid dial-around compensation (at \$.24 per call) and interest for 3Q2004 and \$627,023.81 in unpaid dial-around compensation (at \$.494 per call) and interest for 4Q2004. *See*

paragraphs 51-53, 56 above.²⁸ This compensation amount is based on all of the calls delivered to Radiant/ISS by Intermediate Carriers that originated from the Represented PSPs' payphones. As discussed in paragraphs 78-80 above, because Radiant/ISS failed to file a System Audit Report and its call completion data must therefore be deemed unreliable, all calls are deemed completed.

126. Pursuant to 47 C.F.R. § 1.722(h)(1), APCC Services hereby states that the documents and materials used by APCC Services to determine its damages are: (1) the Represented PSP and ANI lists for 3Q2004 (Exhibit 1) and 4Q2004 (Exhibit 2); (2) the October 18, 2004 CD with the Represented PSP ANI list for 3Q2004 (Exhibit 13); (3) the January 27, 2005 CD with the Represented PSP ANI list for 4Q2004 (Exhibit 15); (4) the March 18, 2005 demand letter relating to 3Q2004 (Exhibit 17); (5) the May 17, 2005 demand letter relating to 4Q2004 (Exhibit 19); and (6) the Intermediate Carrier Reports relied upon in the foregoing (summary data from which is attached as Exhibit 18 and Exhibit 20).

127. To the extent, however, that the Commission believes that all calls should not be deemed completed, APCC Services, pursuant to Section 1.722(h)(2) hereby states that the data necessary to make any adjustment is uniquely in Radiant/ISS' possession. The Intermediate Carrier Reports identify only the total number of calls delivered to Completing Carriers such as Radiant/ISS. 47 C.F.R. § 64.1310(c); Exhibit 4 (Jaeger Decl.) at 6. PSPs have no visibility into the network and generally do not know to which carrier(s) a call is routed or if the call is ultimately completed. APCC Services believes

²⁸ Frequently, additional calls are reported by Intermediate Carriers for a particular quarter in subsequent quarters' Intermediate Carrier Report. APCC Services reserves the right to adjust its damages if additional calls are reported as delivered to Radiant/ISS during the Damages Period in the 1Q2005 or subsequent Intermediate Carrier Reports.

that Radiant/ISS possesses the information concerning which of the calls that were delivered to Radiant/ISS were completed because Radiant/ISS' switch generates call detail records ("CDRs") for each call it carries. The Commission's rules require that such records be maintained for 27 months, 47 C.F.R. § 64.1310(g), and less than a year has passed since the period in question. Aside from its obligations under the Commission's payphone compensation rules, APCC Services also believes that Radiant/ISS would retain such records for its own billing and internal accounting purposes.

128. Provided that Radiant/ISS makes available the data concerning (i) the payphone-originated calls it received from Intermediate Carriers and (ii) which of the calls were completed, APCC Services believes that it should be possible to validate the accuracy of those records with Intermediate Carrier Report data. Once the number of completed calls is confirmed, all that would be required to calculate APCC Services' damages is to multiply the number of completed calls by the applicable per-compensation rate (\$.24 for 3Q2004; \$.494 for 4Q2004), and then add interest at the recognized rate of 11.25% to arrive at a total damages amount.²⁹

IX. COMPLAINANTS' EFFORT TO SETTLE WITH RADIANT/ISS

129. APCC Services certifies that it mailed a certified addressed letter to Radiant Telecom on May 26, 2005 in which it outlined the allegations that form the basis of this complaint, explicitly cited the good faith settlement requirement of 47 C.F.R. § 1.721(a)(8), and proposed a settlement of the dispute. See Exhibit 21. The certified letter stated that if Radiant/ISS did not pay the compensation it owed by July 10, 2005, APCC

²⁹ Again, APCC Services does not believe that this step is required. As discussed above, all of the calls delivered to Radiant should be deemed completed, in which case APCC Services' damages are in the amount stated in paragraph 125 above.

Services would “proceed with the filing of a formal complaint with respect to the violations” Exhibit 21 at 2.

130. Other steps taken by APCC Services to resolve the dispute prior to the filing of the formal complaint include all of APCC Services’ repeated efforts to contact Radiant/ISS to discuss the matters at issue, as described in paragraphs 31 to 60 above.

X. INFORMATION DESIGNATION

A. Persons Believed to Have First-Hand Knowledge of the Facts Alleged

131. Pursuant to 47 C.F.R. §§ 1.721(a)(10)(i) and (iii), APCC Services hereby states that the following individuals have, or in the case of individuals in the employ of Radiant/ISS are believed to have, first-hand knowledge of the facts alleged in this complaint. The criteria used to identify the persons below is as follows: the persons identified below as associated with APCC Services are the individuals who worked on and had first-hand knowledge of APCC Services’ efforts to bill and collect dial around compensation from Radiant/ISS; the individual identified below as associated with Radiant/ISS is the contact person with whom APCC Services has been dealing in its efforts to collect compensation from Radiant/ISS.

132. Ruth Jaeger, President, APCC Services, 625 Slater Lane, Suite 104, Alexandria, VA 22314, (tel.) 703-739-1322, (fax) 703-739-1324, has first-hand knowledge of (i) the relationships between PSPs, carriers, and the various clearinghouses involved in the payphone compensation process; (ii) APCC Services’ dial-around collection process; (iii) APCC Services’ efforts to collection dial-around collection from Radiant/ISS.

133. John Ellis, Service Delivery Director, MicroPact Engineering, Inc., 600 Herndon Parkway, Suite 100, Herndon VA 20170, (tel.) 703-709-6110, (fax) 703-709-6118, as APCC Services’ outside data processor, has first-hand knowledge of the data-processing steps

involved in invoicing, collecting, and distributing dial-around compensation, including (i) analysis of data from Intermediate Carrier Reports and Completed Carrier Reports and (ii) reconciliation of carrier payment data with data from those reports.

134. Jacob S. Farber, counsel for APCC Services, Dickstein Shapiro Morin & Oshinsky LLP, 2101 L Street, N.W., Washington, DC 20037, (tel.) 202-828-2290, (fax) 202-887-0689, has first-hand knowledge of APCC Services' efforts to contact Radiant/ISS concerning resolution of the parties' dispute prior to the filing of this complaint.

135. Cagdas Kucukemiroglu, Radiant/ISS' Carrier Reconciliation Manager, is believed to have first-hand knowledge of (i) Radiant/ISS' network and traffic; (ii) Radiant/ISS' dial-around compensation payments; and (iii) Radiant/ISS' failure to pay dial-around compensation to the Represented PSPs and APCC Services' efforts to collect such unpaid compensation.

B. Relevant Documents, Data Compilations and Other Tangible Things

136. Pursuant to 47 C.F.R. §§ 1.721(a)(10)(ii) and (iii) APCC Services hereby states that the following documents and other material in its possession are relevant to the facts alleged in this complaint. APCC Services identified the following documents as relevant by reviewing (i) its correspondence with Radiant/ISS concerning the matters alleged in this complaint, (ii) the Intermediate Carrier Reports it received that identified Radiant/ISS as a recipient of calls; and (iii) APCC Services' internal electronic contact log and database.

Exhibit No.	Document Description	Author	Recipient	Location	Relevance
Exhibit 1 to Formal Complaint	Text file containing Represented PSPs & ANI Lists for 3rd Qtr. 2004	APCC Services, Inc.	N/A	Included on CD attached behind <u>Exhibit 1</u> tab	Provides identification of the PSPs and ANIs for which damages are sought for 3Q2004.
Exhibit 2 to Formal Complaint	Text file containing Represented PSPs & ANI Lists for 4th Qtr. 2004	APCC Services, Inc.	N/A	Included on CD attached behind <u>Exhibit 1</u> tab	Provides identification of the PSPs and ANIs for which damages are sought for 4Q2004.
Exhibit 3 to Formal Complaint	FCC Form 499 Records	N/A	N/A	Attached for Formal Complaint	Provides contact information for Defendants
Exhibit 4 to Formal Complaint	Declaration of Ruth Jaeger	Ruth Jaeger	N/A	Attached to Formal Complaint	Provides support for various facts alleged in complaint.
Exhibit 5 to Formal Complaint	APCC Services Standard Form Agency Agreement	APCC Services, Inc.	N/A	Attached to Formal Complaint	Evidence that Complainant has full authority to collect dial-around compensation for the Represented PSPs.
Exhibit 6 to Formal Complaint	Power of Attorney	APCC Services, Inc.	N/A	Attached to Formal Complaint	Evidence that Complainant has full authority to collect dial-around compensation for the

Exhibit No.	Document Description	Author	Recipient	Location	Relevance
					Represented PSPs.
Exhibit 7 to Formal Complaint	March 29, 2002 Informal Complaint	Dickstein Shapiro Morin & Oshinsky on behalf of APCC Services, Inc.	FCC	Attached to Formal Complaint	Demonstrates Radiant/ISS' previous violations of its payphone compensation obligations.
Exhibit 8 to Formal Complaint	June 28, 2002 Settlement Agreement	APCC Services, Inc. & Radiant Telecom, Inc.	N/A	Attached to Formal Complaint	Demonstrates Radiant/ISS' pattern of conduct.
Exhibit 9 to Formal Complaint	February 6, 2003 Default Judgment against Radiant	Federal District Court	Radiant Telecom, Inc.	Attached to Formal Complaint	Demonstrates Radiant/ISS' previous violations of its payphone compensation obligation.
Exhibit 10 to Formal Complaint	Notice of Filing Joint Stipulation for Settlement	APCC Services, Inc. & Radiant Telecom, Inc.	FCC	Attached to Formal Complaint	Demonstrates Radiant/ISS' previous violations of its payphone compensation obligation.
Exhibit 11 to Formal Complaint	May 25, 2004 APCC Services, Inc. Letter to Radiant Telecom, Inc.	APCC Services, Inc.	Radiant Telecom, Inc.	Attached to Formal Complaint	Demonstrates Radiant/ISS had notice of its post-Tollgate Order dial-around compensation obligations.

Exhibit No.	Document Description	Author	Recipient	Location	Relevance
Exhibit 12 to Formal Complaint	September 14, 2004 APCC Services, Inc. Letter to Radiant Telecom, Inc.	APCC Services, Inc.	Radiant Telecom, Inc.	Attached to Formal Complaint	Demonstrates Radiant/ISS had notice of its post-Tollgate Order dial-around compensation obligations.
Exhibit 13 to Formal Complaint	October 28, 2004 CD sent by APCC Services, Inc. to Radiant Telecom, Inc. ³⁰	APCC Services, Inc.	Radiant Telecom, Inc.	Attached to Formal Complaint	Demonstrates that APCC Services requested 3Q2004 compensation on behalf of the 3Q2004 Represented PSPs and identified those PSPs and their ANIs.
Exhibit 14 to Formal Complaint	November 24, 2004 APCC Services, Inc. Letter to Radiant Telecom, Inc. ³¹	APCC Services, Inc.	Radiant Telecom, Inc.	Attached to Formal Complaint	Demonstrates Radiant/ISS had notice of its post-Tollgate Order dial-around compensation obligations.

³⁰ APCC Services sent an identical CD to ISS on October 28, 2004.

³¹ APCC Services sent an identical letter to ISS on November 23, 2004.

Exhibit No.	Document Description	Author	Recipient	Location	Relevance
Exhibit 15 to Formal Complaint	January 27, 2005 APCC Services CD sent by APCC Services, Inc. to Radiant Telecom, Inc. ³²	APCC Services, Inc.	Radiant Telecom, Inc.	Attached to Formal Complaint	Demonstrates that APCC Services requested 4Q2004 compensation on behalf of the 4Q2004 Represented PSPs and identified those PSPs and their ANIs.
Exhibit 16 to Formal Complaint	Email from APCC Services, Inc. to Radiant Telecom, Inc.	APCC Services, Inc.	Radiant Telecom, Inc.	Attached to Formal Complaint	Demonstrates Radiant/ISS had promised to pay 3Q2004 compensation.
Exhibit 17 to Formal Complaint	March 18, 2005 APCC Services, Inc. Demand Letter to Radiant Telecom, Inc.	APCC Services, Inc.	Radiant Telecom, Inc.	Attached to Formal Complaint	Demonstrates APCC Services requested payment of Radiant/ISS' past-due compensation owed to the Represented PSPs for 3Q2004
Exhibit 18 to Formal Complaint	Summary of 3rd Qtr. 2004 Intermediate Carrier Reports	APCC Services, Inc.	N/A	Attached to Formal Complaint	Shows number of calls delivered to Radiant/ISS for 3Q2004.

³² APCC Services sent an identical CD to ISS on January 28, 2005.

Exhibit No.	Document Description	Author	Recipient	Location	Relevance
Exhibit 19 to Formal Complaint	May 17, 2005 APCC Services, Inc. demand letter to Radiant Telecom, Inc.	APCC Services, Inc.	Radiant Telecom, Inc.	Attached to Formal Complaint	Demonstrates APCC Services requested payment of Radiant/ISS' past-due compensation owed to the Represented PSPs for 4Q2004
Exhibit 20 to Formal Complaint	Summary of 4th Qtr. 2004 Intermediate Carrier Reports	APCC Services, Inc.	N/A	Attached to Formal Complaint	Shows number of calls delivered to Radiant/ISS for 4Q2004.
Exhibit 21 to Formal Complaint	May 26, 2005 APCC Services, Inc. certified letter to Radiant Telecom, Inc. re: good faith settlement	Counsel for APCC Services, Inc.	Radiant Telecom, Inc.	Attached to Formal Complaint	Demonstrates APCC Services' efforts to settle claims.
Exhibit 22 to Formal Complaint	Affidavit of Jacob Farber	Jacob Farber	N/A	Attached to Formal Complaint	Provides support for various facts alleged in Complaint.

XI. SEPARATE ACTIONS

137. Pursuant to 47 C.F.R. § 1.721(a)(9), APCC Services hereby states (i) that there are no actions related to this complaint pending before the Commission, any other governmental agency, or any court and (ii) that the relief requested herein is not before the Commission in a notice and comment rulemaking.

XII. FORMAL COMPLAINT INTAKE FORM

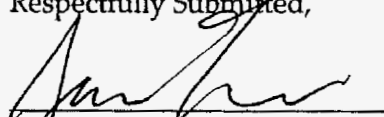
138. In accordance with Section 1.721(a)(12) of the Commission's rules, 47 C.F.R. § 1.721(a)(12), a completed Formal Complaint Intake Form is attached hereto.

XIII. RELIEF REQUESTED

APCC Services respectfully requests that the Commission find Radiant/ISS (i) in violation of Sections 201(b), 276, and 416 of the Act for its failure to pay the dial-around compensation it owes to the Represented PSPs for the Damages Period, (ii) in violation of Sections 201(b) and 416(c) for its failure to comply with its tracking and reporting obligations under 47 C.F.R. § 64.1310(a), and (iii) in violation of Sections 201(b) and 416(c) for its failure to submit the System Audit Reports required by 47 C.F.R. § 64.1320(a). APCC Services respectfully further requests that the Commission (i) award damages in the amount of \$1,114,803.31 (including interest through the May 26, 2005 demand letter), plus additional interest through the date of payment at 11.25% per year, (ii) award punitive damages in the amount of \$4,459,213.28, and (iii) order Radiant/ISS to come into compliance with all of its obligations under C.F.R. §§ 64.1300-1320.

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Respectfully Submitted,



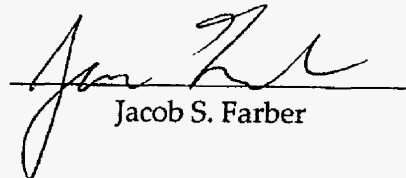
Albert H. Kramer
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Washington, DC 20037
Tel. (202) 785-9700
Fax (202) 887-0689

Attorneys for APCC Services

Dated: August 2, 2005

CERTIFICATE OF FEE PAYMENT

I hereby declare under penalty of perjury that (1) APCC Services has paid the \$540.00 filing fee for the foregoing complaint by means of a check signed by its counsel, Dickstein Shapiro Morin & Oshinsky and submitted simultaneously with the complaint, and (2) APCC Services' FRN is correctly stated in the complaint.


Jacob S. Farber

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2005, I caused a copy of (1) the foregoing Complaint and accompanying Exhibit volume and (2) Complainant's Initial Interrogatories to be served by Hand Delivery, or by overnight courier and fax, as indicated below, to the following:

Office of the Commission Secretary
(9 copies by hand)

Enforcement Bureau
(original plus stamp & return by hand)
c/o Mellon Bank
P.O. Box 358120
Pittsburgh, PA

Alexander P. Starr (2 copies by hand)
Chief, Market Disputes
Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5A-848
Washington, DC 20554

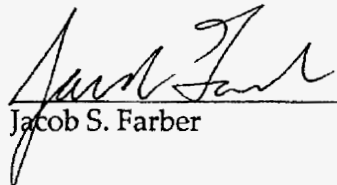
TCS Corporate Services,
agent for Radiant Telecom, Inc.
(copy by hand)
1090 Vermont Ave., NW, Suite 910
Washington, DC 20005

Cagdas Kucukemiroglu
(by overnight courier and fax)
Radiant Telecom, Inc.
Radiant Holdings, Inc.
Intelligent Switching and Software, LLC
1020 NW 163rd Drive
Miami, FL 33169-5818

Walter Redondo
(by overnight courier and fax)
Radiant Telecom, Inc.
Radiant Holdings, Inc.
Intelligent Switching and Software, LLC
1020 NW 163rd Drive
Miami, FL 33169-5818

Katie Asher, Esq.
(by overnight courier and fax)
Radiant Telecom, Inc.
Radiant Holdings, Inc.
Intelligent Switching and Software, LLC
1020 NW 163rd Drive
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Jacob S. Farber