

22 F.C.C.R. 11811, 22 FCC Rcd. 11811, 2007 WL 1928658 (F.C.C.)

NOTE: An Erratum is attached to the end of this document

Federal Communications Commission (F.C.C.)

Order

**\*\*1** IN THE MATTER OF FEDERAL-STATE  
JOINT BOARD ON UNIVERSAL SERVICE  
Appeal of Administrator's Decision Radiant Tele-  
com, Inc. Filer ID 822268

CC 96-45  
DA 07-2922

Adopted: June 29, 2007

Released: July 2, 2007

**\*11811** By the Chief, Wireline Competition Bureau:

## I. INTRODUCTION

1. In this Order, we deny the appeal filed by Radiant Telecom, Inc. (Radiant) seeking review of the Universal Service Administrative Company's (USAC) Decision on Contributor Appeal.<sup>[FN1]</sup> Radiant alleges that USAC lacks authority to determine whether a voice over Internet protocol (VoIP) service is a telecommunications service for the purpose of determining whether Radiant is liable for contribution to the universal service fund (USF).<sup>[FN2]</sup>

## II. BACKGROUND

2. In detailing its service, Radiant explains that it provides telephony via packet switching.<sup>[FN3]</sup> Radiant states its "responsibility in the process is to convert analog signals to digital data, move the data over the Internet, and then transform the data back into analog signal so the receiving telephone (or fax machine) can terminate the communications as an

analog signal."<sup>[FN4]</sup> Radiant indicates that such services are commonly referred to as "phone-to-phone" IP telephony.<sup>[FN5]</sup>

3. Radiant further describes the functionalities of its service as offering supplements to the information typically provided on a caller ID display with additional information, such as advertisements, the time, date and temperature, account balance, available talk time, and other customized messages.<sup>[FN6]</sup> Radiant states that its service also provides consumers the opportunity to manage their own communications needs by screening or redirecting calls to predetermined numbers or voicemail, and **\*11812** offering customized ring tones or on-hold messages.<sup>[FN7]</sup> Radiant also states that its service allows customers to initiate new calls or conference calls and access operator services or other information without the need to hang up or redial a customer service number.<sup>[FN8]</sup>

4. Radiant began reporting revenues derived from its services as telecommunications revenues on the May 2002 Universal Service Worksheet FCC Form 499-Q and continued reporting quarterly revenues through the November 2003 filing.<sup>[FN9]</sup> Radiant, however, failed to pay any obligations to the USF and on September 30, 2003, the Commission issued a "Final Demand and Notice of Debt Transfer" letter notifying Radiant of its contribution obligations.<sup>[FN10]</sup> On October 30, 2003, Radiant filed a Letter of Appeal seeking a refund of contributions to date, which USAC construed as a Request for Decision.<sup>[FN11]</sup> Radiant asserted that it did not owe universal service contributions on its revenues because all of Radiant's revenues were derived from VoIP telephony.<sup>[FN12]</sup> On December 19, 2003, USAC denied Radiant's request stating that it lacked the authority to make a determination whether the specific type of phone-to-phone VoIP service offered by Radiant was a telecommunications service and that it lacked authority to reverse Radiant's billings or to reclassify Radiant's revenues as non-telecommunications revenues.<sup>[FN13]</sup>

**\*\*2** 5. In its appeal to the Commission, Radiant again asserts that its phone-to-phone IP telephony product is not a telecommunications service, and instead should be classified as an information service.<sup>[FN14]</sup> Radiant further asserts that the Commission has “explicitly deferred deciding whether VoIP services should be considered telecommunications services and that, until the FCC takes definitive action, Radiant’s VoIP services are exempt from USF assessment.”<sup>[FN15]</sup> As such, Radiant asserts that it should be treated as an information service provider for universal service purposes.<sup>[FN16]</sup> Radiant seeks a refund of amounts previously remitted, and seeks a declaration that it is not liable for unpaid USF contribution amounts.<sup>[FN17]</sup>

### III. DISCUSSION

6. We deny Radiant’s appeal. First, as described by Radiant, the service it provides is similar to the telecommunications service(s) at issue in the *AT&T Declaratory Ruling*, i.e., phone-to-phone IP telephony.<sup>[FN18]</sup> Second, we find that the additional functionalities offered by Radiant are akin to the **\*11813** offerings by AT&T at issue in the *Calling Card Order and NPRM*.<sup>[FN19]</sup> As such, we find that the service offered by Radiant is a telecommunications service and is subject to federal universal service contribution.

7. In the *AT&T Declaratory Ruling*, the Commission discussed three factors that compelled its decision to determine that the service provided by AT&T was a telecommunications service. In that order it found that the service at issue (1) used ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originated and terminated on the public switched telephone network (PSTN); and (3) underwent no net protocol conversion and provided no enhanced functionality to end users due to the provider’s use of IP technology.<sup>[FN20]</sup>

8. Consistent with the Commission’s findings in the *AT&T Declaratory Ruling*, we find that Radiant’s phone-to-phone IP telephony is a telecommunications service. First, Radiant acknowledges that its

customers utilize ordinary CPE, as do customers of the “phone-to-phone” IP telephony service at issue in the *AT&T Declaratory Ruling* and of other traditional analog telecommunications services.<sup>[FN21]</sup> Second, Radiant acknowledges that it originates and terminates calls on the PSTN, as did AT&T’s service at issue in the *AT&T Declaratory Ruling*.<sup>[FN22]</sup> Third, based on the information provided by Radiant, no net protocol conversion occurs<sup>[FN23]</sup> and that the additional functionalities offered by Radiant are not a result of its use of IP technology.<sup>[FN24]</sup> We note that in this matter, as with the AT&T service at issue in the *AT&T Declaratory Ruling*, the decision to use the Internet to route calls is made internally by Radiant and is transparent to the consumer.<sup>[FN25]</sup>

**\*\*3** 9. With regard to the classification of the additional functionalities offered by Radiant, we find such functionalities meet the Commission’s description of adjunct-to-basic services, and, therefore, do not transform Radiant’s offering from a telecommunications service to an information service. As the Commission reaffirmed in the *Calling Card Order and NPRM*, adjunct-to-basic services are services that are “incidental” to an underlying telecommunications service and do not “alter[] their fundamental **\*11814** character,” even if they may meet the literal definition of an information service or enhanced service.<sup>[FN26]</sup> The Commission has previously found that Congress preserved the Commission’s pre-1996 Act treatment of “adjunct-to-basic” services as telecommunications services, rather than information services.<sup>[FN27]</sup> We find that the additional functionalities provided by Radiant to its calling parties, like the advertising message provided by AT&T to its calling parties, are incidental to the underlying service offered to the cardholder because they do not in any way alter the fundamental character of that telecommunications service.<sup>[FN28]</sup> We therefore conclude that the service offered by Radiant should be classified as a telecommunications service.<sup>[FN29]</sup>

10. Finally, as the Commission stated in the *AT&T*

*Declaratory Ruling*, its finding was based on existing rules.<sup>[FN30]</sup> The Commission specifically noted that it had neither waived its rules nor created an exemption for this type of service.<sup>[FN31]</sup> As such, Radiant's phone-to-phone IP telephony services was a telecommunications service under existing rules during the period at issue in this proceeding.

11. As discussed above, we conclude that Radiant's service is a telecommunications service. Under the Commission's universal service program, entities contribute based on their end-user interstate **\*11815** and international telecommunications revenues.<sup>[FN32]</sup> As such, Radiant should have contributed on the revenues derived from its service beginning in 2002. We therefore require Radiant to file with USAC its revenue data from 2002 to the present and contribute to the USF based on revenues earned from its telecommunications offerings and reasonable costs, including interest and administrative costs caused by Radiant's overdue contributions.<sup>[FN33]</sup>

#### IV. ORDERING CLAUSES

12. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, **47 U.S.C. §§ 151-154** and **254**, and pursuant to the authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, **47 C.F.R. §§ 0.91, 0.291**, and **54.722(a)**, the appeal filed by Radiant Telecom, Inc., is hereby DENIED.

**\*\*4** 13. IT IS FURTHER ORDERED that Radiant Telecom, Inc. is to file FCC Form 499-A for years 2002 to the present with the Universal Service Administrative Company in accordance with the terms of this Order, and the Universal Service Administrative Company's universal service fund contribution filing procedures.

14. IT IS FURTHER ORDERED that the Universal Service Administrative Company IS INSTRUCTED to accept such filings and timely calculate and invoice Radiant Telecom, Inc.'s contribution oblig-

ations including reasonable costs, including applicable interest and administrative costs, caused by Radiant's overdue contributions.

#### FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Navin  
Chief

Wireline Competition Bureau

FN1. Letter of Appeal by Radiant Telecom, Inc., CC Docket No. 96-45 (filed Jan. 19, 2004) (*Radiant Appeal Letter*). Radiant later amended and supplemented its original filing. *See* Request for Review by Radiant Telecom, Inc. of Decision of Universal Service Administrator, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Amended and Supplemental Request for Review* (filed Sept. 17, 2004) (*Amended Radiant Request*).

FN2. Radiant Appeal Letter at 1.

FN3. *Id.* at 2.

FN4. *Id.*

FN5. *Id.* at Exhibit A, n.1

FN6. *See Amended Radiant Request*, Affidavit of Guven Kivilcim in Support of Radiant Telecom, Inc. at 1, para. 5.

FN7. *Id.* at 2.

FN8. *Id.*

FN9. *Radiant Appeal Letter* at Exhibit A, at 1.

FN10. *Radiant Appeal Letter* at Exhibit B.

FN11. *See generally Radiant Appeal Letter*. We note that Radiant, in its letter of appeal to USAC, states that its request is for a refund of "previously paid USF charges." *Radiant Appeal Letter* at 1. Contrary to Radiant's assertion, Radiant has not made any of its contributions to the USF. Their request, therefore, is for cancellation of contribution

obligations previously assessed. *See Amended Radiant Request* at 3.

FN12. *Radiant Appeal Letter* at Exhibit B.

FN13. *Id.*

FN14. *See Radiant Appeal Letter* at 3-4; *Amended Radiant Request* at 4-7.

FN15. *See Radiant Appeal Letter* at Exhibit A, at 2.

FN16. *See Amended Radiant Request* at 7-8.

FN17. *See Radiant Appeal Letter* at 1, Exhibit B (appending “Final Demand and Notice of Debt Transfer” notice from the Federal Communications Commission for the amount of \$1,662,366.18); *see also Amended Radiant Request* at 9. Contrary to Radiant's assertion, Radiant has not made any of its contributions to the USF. *See supra* n.11.

FN18. *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt From Access Charges*, WC Docket No. 02-361, Order, [19 FCC Rcd 7457 \(2004\)](#)(AT&T Declaratory Ruling).

FN19. *See AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, Regulation of Prepaid Calling Card Services, WC Docket No. 03-133, 05-68, Order and Notice of Proposed Rulemaking, [20 FCC Rcd 4826 \(2005\)](#)(Calling Card Order and NPRM).

FN20. *Id.* at 7457, para. 1.

FN21. *See e.g., Amended Radiant Request* at 6 (“Radiant's customers utilize ordinary CPE to use Radiant's VoIP services . . . .”); *Radiant Appeal Letter* at 2 (describing that under Radiant's service, a customer “dials a toll-free 800 or local access number from his phone” that, after reaching the terminating gateway, is “sent over the local telephone network to the called number.”)

FN22. Radiant “converts analog signals to digital signals, moves the data over the Internet, and then

transforms the data back into an analog signal so the receiving telephone (or fax machine) can terminate the communication as an analog signal.” *Radiant Appeal Letter* at 2. Radiant further explains that “once the call reaches the terminating gateway, it is sent over the local telephone network to the called number” and that “[t]he originating gateway packetizes the call to be delivered on the IP network and the terminating gateway unpacketizes the same call before sending it over the local public switched network (PSTN) lines to the local carrier.” *Id.*

FN23. Radiant states that “[t]he originating gateway packetizes the call to be delivered on the IP network and the terminating gateway unpacketizes the same call before sending it over the local public switched network (PSTN) lines to the local carrier.” *Radiant Appeal Letter* at 2.

FN24. *Amended Radiant Request* at 6-7, Affidavit of Guven Kivilcim in Support of Radiant Telecom, Inc. at 2, para.7-8 (describing Radiant's additional functionalities such as call forwarding, caller id, customized ring tones, call waiting, access to operator services, redialing, and other information (e.g., lottery or weather information recordings)).

FN25. [AT&T Declaratory Ruling](#), [19 FCC Rcd at 7465](#), para. 12. *See also Radiant Appeal Letter* at 2.

FN26. *See Calling Card Order and NPRM*, [20 FCC Rcd at 4831](#), para. 16, n.28. (citing various Commission precedents supporting the holding that services incidental to the provision of telecommunications services are regulated as telecommunications services).

FN27. *See Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, [11 FCC Rcd 21905](#), [21958](#), para. 107 (1997)(Non-Accounting Safeguards Order) (“services the Commission has classified as ‘adjunct-to-basic’ should be classified as telecom-

munications services, rather than information services”).

FN28. *See supra* n.24.

FN29. *See Time Machine Inc., Request for Declaratory Ruling Concerning Preemption of State Regulation of Interstate 800-Access Debit Card Telecommunications Services*, 11 FCC Rcd 1186, 1192-93, para. 40 (information regarding time remaining on card is not an enhanced service). *See Non-Accounting Safeguards Order*, 11 FCC Rcd at 21958, para. 107; *Joint Use Calling Card Order*, 7 FCC Rcd at 3531, para. 21 (service may be incidental to transmission even if it is not strictly necessary to complete a call). We also note that in at least two states, Missouri and Tennessee, Radiant sought and received authorization to provide telecommunications services as a telecommunications carrier. While not dispositive to our determination, we do find the information insightful as to the veracity of Radiant's argument before USAC and the FCC. *See Application of Radiant Telecom, Inc. for a Certificate of Service Authority to Provide Interexchange Telecommunications Service and to Classify Such Services and the Company as Competitive*, Case No. XA-2003-0041, Tariff No. XA-2003-0054, Order Approving Interexchange Certificate of Service Authority and Order Approving Tariff, available at <http://www.psc.mo.gov/orders/2002/0909341.htm> (2002). The Missouri Public Service Commission revoked Radiant's authorization in 2004 because Radiant failed to file required annual reports. *See The Staff of the Mo. Pub. Serv. Comm. V. Radiant Telecom, Inc.*, Case No. TC-2004-0373, Order Granting Default and Canceling Certificate and Tariff, available at <http://www.psc.mo.gov/orders/2004/03184373.htm> (2004). *See also Application for Authority to Provide Operator Services and/or Resell Telecommunications Services in Tennessee Pursuant to Rule 1220-4-2-5.7*, Docket No. 03-00037, Order Revoking Authority to Provide Operator Services and/or Resell Telecommunications Services in Tennessee

for Non-Payment of Fees, available at <http://www.state.tn.us/tra/orders/2003/0300037.pdf> (2005) (*noting* Radiant's approval to offer telecommunications service in Tennessee in 2003).

FN30. *AT&T Declaratory Ruling*, 19 FCC Rcd at 7463, para. 10.

FN31. *Id.* at 7471, para. 20.

FN32. 47 C.F.R. § 54.706.

FN33. *See* CA ERRATUM

Erratum Released: July 9, 2007

By the Chief, Wireline Competition Bureau:

On July 2, 2007, the Wireline Competition Bureau released an Order, DA 07-2922, in the above-captioned proceeding. This Erratum corrects that Order as indicated below:

1. In paragraph 6, third sentence, we replace “we find that the additional functionalities offered by Radiant” with “we find that many of the additional functionalities offered by Radiant”.
2. In footnote 28, we replace “*See supra* n.24.” with “*See supra* n.24. We also note that certain of the additional functionalities offered by Radiant appear to be information services, but for the reasons previously explained by the Commission, we do not find that such functionalities transform Radiant's offering from a telecommunications service to an information service. *See, e.g., Regulation of Prepaid Calling Card Services*, WC Docket No. 05-38, Declaratory Ruling and Report and Order, 21 FCC Rcd 7290 (2006). To the extent that Radiant has isolated the revenues associated with its information services, it is not required to contribute to universal service based on those revenues. *See, e.g., id.* at para. 22.”

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