

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of)

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

Allison Hift
Becker & Poliakoff, P.A.
3111 Stirling Road
Fort Lauderdale, FL 33312
(954) 364-6045
ahift@becker-poliakoff.com

Elgin Yesil
Radiant Telecom, Inc.
1020 163rd Drive
Miami, Florida 33169
(305) 914-3434

Chérie R. Kiser
Angela F. Collins
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Ave., N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300
crkiser@mintz.com
afcollins@mintz.com

Its Attorneys

Dated: September 17, 2004

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND BACKGROUND	1
I. RADIANT’S SERVICES ARE INFORMATION SERVICES UNDER CURRENT LAW	4
II. RADIANT IS NOT SUBJECT TO UNIVERSAL SERVICE CONTRIBUTION REQUIREMENTS AS AN INFORMATION SERVICE PROVIDER	7
CONCLUSION.....	9

Affidavit of Guven Kivilcim

Attachment 1 (Radiant Initial Request)

Attachment 2 (Administrator’s Decision)

Attachment 3 (Radiant October 30 Letter)

Attachment 4 (Radiant November 20 Letter)

Attachment 5 (USF Assessment Letter)

Certificate of Service

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of)	
)	
Request for Review by Radiant Telecom, Inc. of Decision of Universal Service Administrator)	CC Docket No. 96-45
)	
Federal-State Joint Board on Universal Service)	
)	

AMENDED AND SUPPLEMENTAL REQUEST FOR REVIEW

Radiant Telecom, Inc. (“Radiant”), by its attorneys and pursuant to Sections 54.719 and 54.721 of the Commission’s rules, 47 C.F.R. §§ 54.719, 54.721, hereby files an amended and supplemental request for review (“Request”) of a decision made by the Universal Service Administrative Company (“USAC”). This Request amends and supplements the request for review filed by Radiant on January 20, 2004.^{1/}

INTRODUCTION AND BACKGROUND

Telecommunications carriers that provide interstate telecommunications services are required to contribute to the universal service fund (“USF”) in order to preserve and advance universal telephone service throughout the United States.^{2/} Telecommunications carriers’ contributions to the USF are based on their quarterly and annual Form 499 filings, which USAC uses to calculate and assess telecommunications carriers’ monthly universal service obligations.

^{1/} Letter from Jeffrey L. Rubinger, Counsel for Radiant, to Federal Communications Commission, Office of the Secretary, CC Docket No. 96-45 (filed Jan. 20, 2004) (“Radiant Initial Request”) (Attachment 1). This amended and supplemental Request relates back to Radiant’s Initial Request. *See* Letter from Cathy Carpino, Deputy Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, to Mark E. Williams, Counsel for Radiant, CC Docket No. 96-45 (Aug. 13, 2004).

^{2/} 47 U.S.C. § 254(d).

In contrast, providers of information services currently are not required to contribute to the USF.^{3/} Indeed, information service providers generally are free from all federal and state regulation.^{4/} Radiant provides voice over Internet Protocol (“VoIP”) services to customers throughout the United States and many countries worldwide. To date, most VoIP services have been treated as information services free from federal and state regulation. As a provider of information services, Radiant is not subject to universal service contribution obligations.

Despite the fact that it was not required to make any Form 499 filings due to its status as an information service provider, Radiant mistakenly filed Form 499s in May 2002, August 2002, November 2002, February 2003, August 2003, and November 2003.^{5/} Realizing its error, Radiant informed USAC that it is not a telecommunications carrier because it offers VoIP services, which are considered information services under the Communications Act and Commission precedent.^{6/} Radiant also revoked its previously filed Form 499s and requested that USAC remove Radiant from its database.^{7/}

^{3/} *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶ 789 (1997) (“*Universal Service Order*”); see also *In the Matter of IP-Enabled Services*, 19 FCC Rcd 4963, ¶ 63 (2004) (“*IP-Enabled Services NPRM*”).

^{4/} 47 U.S.C. § 230(b)(2) (stating that the Internet and other interactive computer services should remain “unfettered by Federal or State regulation”); *Amendment of Section 64.702 of the Commission’s Rules and Regulations (Second Computer Inquiry)*, 77 FCC 3d 384, ¶ 102 (1980) (“*Computer IP*”) (“We seek to remove unnecessary and inappropriate FCC regulation as an inhibiting barrier to the various combinations and permutations of enhanced services that may be offered over the nationwide telecommunications network.”); *Petition for Declaratory Ruling that pulver.com’s Free World Dialup Is Neither Telecommunications Nor a Telecommunications Service*, 19 FCC Rcd 3307, ¶ 21 (2004) (“*FWD Order*”) (finding information services “develop best in an unregulated environment and, given the competitive nature of the market, regulation of enhanced services was thus unwarranted”).

^{5/} Letter from USAC, to Jeffrey L. Rubinger, Counsel for Radiant, at 2 (Dec. 19, 2003) (“*Administrator’s Decision*”) (Attachment 2).

^{6/} Letter from Jeffrey Rubinger, Counsel for Radiant, to USAC (Oct. 30, 2003) (“*Radiant October 30 Letter*”) (Attachment 3).

^{7/} Letter from Jeffrey Rubinger, Counsel for Radiant, to USAC (Nov. 20, 2003) (“*Radiant November 20 Letter*”) (Attachment 4).

On December 19, 2003, USAC issued an Administrator's Decision finding that it did not have the requisite authority to determine whether VoIP services generally are telecommunications services for purposes of the universal service assessment, or whether Radiant's specific VoIP services are telecommunications services.^{8/} In addition, USAC determined that it did not have the authority to reverse the USF billings already imposed on Radiant or to reclassify Radiant's revenue as non-telecommunications revenue.^{9/} Consequently, Radiant requested that the Commission, through its Wireline Competition Bureau, review the Administrator's Decision and find that Radiant is not subject to universal service obligations because it does not offer telecommunications services.

As described in more detail below and in the attached Affidavit, Radiant is a VoIP service provider offering information services. Radiant's services offer consumers enhanced functionality and significant subscriber interaction and direction, the true hallmarks of the information service classification. While the Commission is currently considering whether VoIP service providers should be subject to universal service contribution obligations in the future,^{10/} under existing law there is no requirement for information service providers like Radiant to contribute to the universal service fund. Accordingly, Radiant respectfully requests that the Commission issue a finding that Radiant is under no obligation to file Form 499 or contribute to the USF, and is not liable for previously assessed USF contribution amounts.^{11/}

^{8/} Administrator's Decision at 2.

^{9/} Administrator's Decision at 2.

^{10/} *IP-Enabled Services NPRM* ¶ 63.

^{11/} Letter from Claudette E. Pride, Chief, Revenue and Operations Group, FCC, to Radiant (Dec. 10, 2003) ("USF Assessment Letter") (Attachment 5).

I. RADIANT'S SERVICES ARE INFORMATION SERVICES UNDER CURRENT LAW

The VoIP services offered by Radiant are information services under the language of the Act, Commission rules, Commission precedent, and court decisions. Radiant's VoIP services fall within the purview of the definitions established by Congress and the Commission for information and enhanced services, and provide enhanced functionality beyond mere transport of telephone calls.

Radiant's VoIP services offer the "capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications," and therefore, fit within the definition of "information service" in the Act.^{12/} In addition, Radiant's services fall within the Commission's definition of "enhanced service" because they are

services, offered over common carrier transmission facilities used in interstate communications, which (1) employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information; (2) provide the subscriber additional, different, or restructured information; or (3) involve subscriber interaction with stored information.^{13/}

One federal court has relied on these definitions to confirm that a VoIP service provider, like Radiant, is to be treated as an information service provider.^{14/} Another federal court recently indicated that these definitions likely support a VoIP service provider's claim that it should be considered a provider of information services.^{15/}

^{12/} 47 U.S.C. § 153(20).

^{13/} 47 C.F.R. § 64.702(a).

^{14/} *Vonage Holdings Corporation v. Minnesota Public Utilities Commission, et al.*, 290 F. Supp. 2d 993 (D. Minn. 2003).

^{15/} *Vonage Holdings Corporation v. New York State Public Service Commission, et al.*, 04-CV-4306, Preliminary Injunction Order (S.D.N.Y. July 16, 2004).

As the attached Affidavit reflects, Radiant’s services offer all of the features delineated by Congress and the Commission to be characteristic of the information service classification. Radiant’s VoIP service is not removed from the information/enhanced service classification merely because it may transmit voice communications or use “telecommunications” as part of the service. It is well-established that

when an entity offers transmission incorporating the ‘capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information,’ it does not offer telecommunications. Rather, it offers an ‘information service’ *even though it uses telecommunications to do so.*^{16/}

Indeed, the Commission has determined that “[a]n offering that constitutes a single service from the end user’s standpoint is not subject to carrier regulation simply by virtue of the fact that it involves telecommunications components.”^{17/} Thus, offerings such as Radiant’s “combining communications and computing components should always be deemed enhanced.”^{18/}

Further, unlike the specific service offered by AT&T at issue in the *AT&T Phone-to-Phone Order*, Radiant offers its subscribers far more than basic transport of telephone calls.^{19/} In the *AT&T Phone-to-Phone Order*, the Commission found that the service described by AT&T was a telecommunications service, not an information service, based on three factors that separated AT&T’s specific service from typical information services: (1) use of ordinary customer premises equipment (“CPE”) with no enhanced functionality; (2) origination and termination on the public switched telephone network (“PSTN”); and (3) no evidence of a net

^{16/} *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501, ¶ 39 (1998) (“*Report to Congress*”) (emphasis added).

^{17/} *Report to Congress* ¶ 58.

^{18/} *Report to Congress* ¶ 60.

^{19/} *Cf. Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, 19 FCC Rcd 7457, ¶ 12 (2004) (“*AT&T Phone-to-Phone Order*”) (finding that users of AT&T’s specific service obtain only voice transmission with nothing more).

protocol conversion or offering of enhanced functionality to end users.^{20/} In addition, the Commission found that AT&T did not offer an information service because its specific service did not provide “access to stored files,” and end users did not “order a different service, pay different rates, or place and receive calls any differently” than they would through a traditional telephony offering.^{21/} As a result, “[c]ustomers of AT&T’s specific service receive no enhanced functionality by using the service.”^{22/}

Radiant’s VoIP services are distinguishable from the specific service addressed in the *AT&T Phone-to-Phone Order*. While Radiant’s customers utilize ordinary CPE to use Radiant’s VoIP services, Radiant’s VoIP service gives CPE enhanced functionality beyond that of ordinary CPE. Specifically, as described in the attached Affidavit, Radiant has the capability to supplement the information typically provided on a Caller ID display to include additional information such as advertisements, additional names, the time of day, date, temperature, account balance, available talk time, or other customized messages. Radiant’s service also allows its customers to bypass the traditional method of initiating new calls using ordinary CPE (*i.e.*, hanging up to obtain a new dial tone). A Radiant VoIP service customer can re-originate a new call, initiate a conference call, or access operator services without hanging up.^{23/}

In addition, Radiant’s VoIP service customers receive “enhanced functionality by using the service.”^{24/} Unlike the specific AT&T service at issue in the *AT&T Phone-to-Phone Order*, Radiant’s customers receive “a different” and “separate” service and place calls differently than

^{20/} *AT&T Phone-to-Phone Order* ¶ 1.

^{21/} *AT&T Phone-to-Phone Order* ¶ 12.

^{22/} *AT&T Phone-to-Phone Order* ¶ 15.

^{23/} Affidavit ¶ 8.

^{24/} *Cf. AT&T Phone-to-Phone Order* ¶ 15.

they would with a traditional telephony service.^{25/} Radiant customers can access other information (such as lottery or weather information) while talking to a third party, or can find out information about the call itself (such as the duration and cost of the call), in real time, without disturbing or interrupting the ongoing conversation in any way.^{26/}

Similarly, Radiant customers can manage information, retrieve stored information, and specifically customize their service to fit their individual needs. Radiant’s service allows customers to instantly receive access to stored information on their calling patterns, access content, redirect calls, and schedule message delivery.^{27/} Radiant’s services are interactive services that offer consumers enhanced and additional functionality, a “variation in experience or capability” beyond that of traditional telephony.^{28/}

II. RADIANT IS NOT SUBJECT TO UNIVERSAL SERVICE CONTRIBUTION REQUIREMENTS AS AN INFORMATION SERVICE PROVIDER

Under the Commission’s existing rules, providers of information services are not required to contribute to the USF.^{29/} In 1997, the Commission first considered whether to apply universal service obligations to Internet access providers and other information service providers. In that proceeding, the Commission found that universal service requirements are “explicitly limited to telecommunications services.”^{30/} The Commission reasoned that information service providers “alter the format of information through computer processing applications such as protocol

^{25/} Cf. *AT&T Phone-to-Phone Order* ¶¶ 12, 18.

^{26/} Affidavit ¶ 6.

^{27/} Affidavit ¶¶ 6-7.

^{28/} *AT&T Phone-to-Phone Order* ¶ 17; Statement of Chairman Michael K. Powell on *AT&T Phone-to-Phone Order*, at 1; *FWD Order* ¶ 11.

^{29/} *IP-Enabled Services NPRM* ¶ 63; *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings*, 17 FCC Rcd 3019, ¶ 79 (2002) (“*Wireline Broadband NPRM*”).

^{30/} *Universal Service Order* ¶ 437.

conversion and interaction with stored data while the statutory definition of telecommunications only includes transmissions that do not alter the form or content of the information sent.”^{31/} The Commission also recognized that information service providers already contribute to USF indirectly when they lease or purchase telecommunications inputs from carriers in order to transmit their information services.^{32/} Thus, the FCC concluded that there was no legitimate justification for considering information service providers to be providers of “telecommunications service” for purposes of universal service contributions.^{33/}

In addition, it would be patently unfair to subject Radiant to universal service obligations while the Commission is considering a complete overhaul of the USF system, including the future application of those obligations to information service providers.^{34/} Any application of universal service obligations to an information service provider like Radiant should be done in the context of the Commission’s pending dockets to ensure evenhanded application of such obligations to all similarly situated providers. It also would be premature to impose these obligations on VoIP service providers without resolution of the critical issues regarding assessments and contributions the Commission currently is reviewing in its separate universal service proceedings.^{35/}

^{31/} *Universal Service Order* ¶ 789.

^{32/} *Wireline Broadband NPRM* ¶ 74; *see also* Comments of Vonage Holdings Corp., WC Docket No. 04-36 at 48 (filed May 28, 2004); Comments of AT&T Corp., WC Docket No. 04-36 at 37-39 (filed May 28, 2004); Comments of CompTel/ASCENT, WC Docket No. 04-36 at 18 (filed May 28, 2004); Comments of Dialpad, *et al.*, WC Docket No. 04-36 at 21 (filed May 28, 2004).

^{33/} *Universal Service Order* ¶ 789; *see also Report to Congress* ¶ 81 (concluding that information service providers that do not provide stand-alone telecommunications services are not required to contribute to universal service).

^{34/} *Federal-State Joint Board on Universal Service, et al.*, 17 FCC Rcd 3752 (2002); *Wireline Broadband NPRM* ¶ 79; *IP-Enabled Services NPRM* ¶ 63.

^{35/} *See, e.g., Federal-State Joint Board on Universal Service, et al.*, 17 FCC Rcd 3752 (2002) (seeking comment on assessment and contribution issues); *Federal-State Joint Board on Universal Service*, 19 FCC Rcd 10800 (2004) (asking for comment on the designation process for eligible telecommunications carriers and whether high cost support should be limited to primary lines).

CONCLUSION

For the foregoing reasons, Radiant respectfully requests that the Commission, acting through its Wireline Competition Bureau, find that the services offered by Radiant are information services, and therefore, Radiant is not subject to universal service contribution obligations or liable for previously assessed USF contributions amounts.

Respectfully submitted,

RADIANT TELECOM, INC.



Allison Hift
Becker & Poliakoff, P.A.
3111 Stirling Road
Fort Lauderdale, FL 33312
(954) 364-6045
ahift@becker-poliakoff.com

Elgin Yesil
Radiant Telecom, Inc.
1020 163rd Drive
Miami, Florida 33169
(305) 914-3434

Chérie R. Kiser
Angela F. Collins
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Ave., N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300
crkiser@mintz.com
afcollins@mintz.com

Its Attorneys

Dated: September 17, 2004

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of)	
)	
Request for Review by Radiant Telecom, Inc. of Decision of Universal Service Administrator)	CC Docket No. 96-45
)	
Federal-State Joint Board on Universal Service)	
)	

**AFFIDAVIT OF GUVEN KIVILCIM
IN SUPPORT OF RADIANT TELECOM, INC.**

I, **Guvén Kivilcim**, being of lawful age and under no disability, upon being duly sworn, and having personal knowledge of the matters set forth herein, declare and state as follows:

1. I am the President of Radiant Telecom, Inc. (“Radiant”). I have been with the company since 1997.
2. I am submitting this Affidavit in support of Radiant’s assertion that it provides information services.
3. Radiant offers voice over Internet Protocol (“VoIP”) services to customers throughout the United States and internationally.
4. Radiant’s VoIP services offer enhanced features and functionality that are not available through traditional telephony services and that have the capability of generating, acquiring, storing, transforming, processing, retrieving, utilizing, and making available information.
5. Radiant has the capability to supplement the information typically provided with Caller ID service to include advertisements, provider name, time of day, date, temperature, account balance, available talk time, or other customized messages.

6. Radiant provides its customers with an interactive web portal, which provides real time call detail (including the cost and length of the call), automatic account balance upload, and the ability to establish conference calls. Radiant VoIP service customers also can dial *411 during a call to find out real time call detail information without the called party hearing the information.

7. Unlike traditional telephony services, Radiant's VoIP services give consumers the opportunity to manage their own communications needs by screening or redirecting calls to predetermined numbers or to voicemail, and offering customized ring tones or on-hold messages. In addition, Radiant customers can schedule specialized messages to be delivered to a specific predetermined number at a predetermined time, such as a birthday message to be delivered at a certain time.

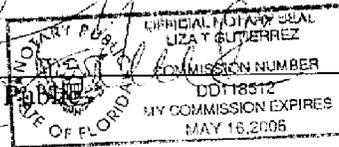
8. Customers also have the increased convenience of initiating new calls or conference calls and accessing operator services or other information (*e.g.*, lottery or weather information), all without the need to hang up or redial a customer service number.

Dated: September 17, 2004

By: _____
Güven Kivilcim
President

Subscribed and sworn to me this 17 day of September 2004.

Notary _____



Attachment 1 (Radiant Initial Request)

DOCKET FILE COPY ORIGINAL
LAW OFFICES

BECKER & POLIAKOFF, P.A.

3111 Stirling Road
Ft. Lauderdale, Florida 33312-6525
Phone: (954) 987-7550 Fax: (954) 985-4176
US Toll Free: 800-432-7712

RECEIVED & INSPECTED
JAN 20 2004
FCC - MAILROOM

Reply To:
Jeffrey L. Rubinger
Direct dial: (954) 985-4181
jrubinger@becker-poliakoff.com

January 19, 2004

Florida Offices

- Administrative Office
3111 Stirling Road
Ft. Lauderdale, FL 33312
US Toll Free: (800) 432-7712
by@becker-poliakoff.com
- Boca Raton
- Fort Myers
- Fort Walton Beach
- Hollywood
- Jacksonville
- Largo
- Melbourne
- Miami
- Naples
- Ocala
- Port Charlotte
- Sarasota
- Tallahassee
- Tampa
- West Palm Beach

available for comment
or deposition only

**International and
Affiliated Offices**

- Prague
Czech Republic
- Haiti
- Frankfurt, Germany
- Hong Kong
People's Republic
of China
- Bern, Switzerland

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capital Heights, MD 20743

Re: **Radiant Telecom, Inc.**
Filer ID 822268
0007-2523-07
03US000028
Docket #96-45

Dear Sir or Madam:

This letter is an appeal to the "Administrator's Decision" (the "Decision") (a copy of which is attached as Exhibit A) dated December 19, 2003, from the Universal Service Administrative Company ("USAC") to the above-referenced entity. According to the Decision, the USAC does not have the authority to determine whether voice-over IP telephony services ("VOIP") are telecommunications services for the purposes of determining whether Radiant Telecom, Inc. ("Radiant") is liable for unpaid contributions to the Universal Service Fund ("USF").

This Decision was issued in response to Radiant's appeal (a copy of which is attached as Exhibit B) of a "Final Demand and Notice of Debt Transfer" (the "Notice") issued by the FCC on September 6, 2003 (a copy of which is attached as Exhibit C). According to the FCC, Radiant is liable for unpaid USF contributions, including administrative charges, in the amount of \$1,662,366.18.

For the reasons set forth below, we believe that Radiant is not liable for unpaid USF contributions, and therefore, we are appealing the Decision issued by the USAC.

I. Radiant in General.

Radiant is a telecommunications company with headquarters located in Miami, Florida. Radiant derives all or substantially all of its revenues from voice-over IP telephony. In other words, as opposed to traditional telephone companies, which use circuit-switched technology, Radiant uses internet protocol ("IP") telephony or "packet switching," a process of breaking down data into packets of digital bits and transmitting them over the Internet.

No. of Copies rec'd 0
List ABCDE



MEMBER OF THE
INTERNATIONAL ASSOCIATION
OF LAW FIRMS



826623-1

BECKER & POLIAKOFF, P.A.

This is accomplished by having customers dial up a gateway switch, which receives standard analog circuit-switched (i.e., TDM) phone calls and processes it via a voice data access concentrator ("VDAC") motherboard. The VDAC provides distributed processing between media processing resources, the TDM and the voice-over IP ("VOIP") packet switching control.

The VOIP packets travel through the internet until they reach the digital destination encoded in its header information. Radiant's responsibility in this process is to convert the analog signals to digital data, move the data over the internet, and then transform the data back into an analog signal so that the receiving telephone (or fax machine) can terminate the communications as an analog signal. Radiant pays the network operators at either end of the network for access to their network facilities

Additionally, the services that Radiant offers with regards to the prepaid application is as follows: (i) the customer dials a toll-free 800 or local access number from his phone; (ii) the call reaches the local central office, which then is forwarded by the underlying carrier to the Radiant gateways; (iii) Gateway controllers authorize and record the customer's access to the system through a series of lookups in the database; (iv) based on the dialed destination number, the database directs the gateway controller to route the call to the appropriate terminating gateway; (v) the database then informs the terminating gateway of the routed call and the incoming call is received by the terminating gateway; (vi) all activities including those on local phone lines, internet servers, internet access circuits, etc. are monitored by a network operating center; (vii) once the call reaches the terminating gateway, it is sent over the local telephone network to the called number; and (viii) the called party answers the call.

All call routing between the originating and the terminating gateways and the database lookups to control the routing and directing the traffic are done as VOIP. The originating gateway packetizes the call to be delivered on the IP network and the terminating gateway unpacketizes the same call before sending it over local public switched telephone network ("PSTN") lines to the local carrier.

II. Current Status of the Law.

In general, every "telecommunications carrier that provides interstate telecommunications services is required to contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service (i.e., the Universal Service Fund)."¹ A telecommunication carrier is defined as an entity that provides interstate "telecommunications" to the public, or to such classes of users as to be effectively available to the public, for a fee.² The term "telecommunications" is

¹ 47 USC §254(d).

² 47 CFR §54.706(a). Interstate telecommunications include, but are not limited to, (i) cellular telephones and paging services, (ii) mobile radio services, (iii) operator services; (iv) personal communications services (PCS), (v) access to interexchange service; (vi) special access service; (vii) WATS, (viii) toll-free service, (ix) 900 service; (x) message telephone service (MTS), (xi) private line service, (xii) telex, (xiii) telegraph, (xiv) video services; (xv) satellite service; (xvi) resale of interstate services, and (xvii) payphone services. Id

defined as the "transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."³

Companies that provide "information services," however, are not required to contribute to the USF.⁴ "Information service" is defined as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."⁵

In a report before Congress (i.e., the Universal Service Report),⁶ the FCC distinguished two types of IP telephony: (i) computer-to-computer telephony, and (ii) telephone-to-telephone telephony. With regard to the first type of IP telephony (i.e., computer-to-computer), the FCC stated that the "[i]nternet service provider does not appear to be 'providing' telecommunications to its subscribers."⁷ Recently, the U.S. District Court for the District of Minnesota also held that a telecommunications company that derived all of its revenue from computer-to-computer VOIP telephony was providing "information services" rather than "telecommunications services" and therefore was not subject to Minnesota laws that regulate telephone companies.⁸

In regard to the second type of IP telephony (i.e., phone-to-phone), the FCC stated that it "appears to present a different case."⁹ The FCC defined "phone-to-phone" IP telephony as meeting four conditions: (i) it holds itself out as providing voice telephony or facsimile transmission service; (ii) it does not require the customer to use customer premises equipment (CPE) different from that CPE necessary to place an ordinary touch-tone call (or facsimile transmission) over the public switched telephone network; (iii) it allows the customer to call telephone numbers assigned in accordance with the North American Numbering Plan, and associated international agreements; and (iv) it transmits customer information without net change in form or content.¹⁰

Based on this definition, the FCC stated that "the record currently before us suggests that this type of IP telephony lacks the characteristics that would render them 'information services' within the meaning of the statute, and instead bear the characteristics of 'telecommunications services.'" Nevertheless, the FCC stated that "[w]e do not believe, however, that it is appropriate to make any definitive pronouncements in the absence of a more complete record focused on individual service offerings. As stated above, we use in this analysis a tentative definition of

³ 47 USC §153(43)

⁴ 133 FCC Rcd. ¶43, at 11523

⁵ 47 USC §153(20)

⁶ 133 FCC Rcd. 11501

⁷ 133 FCC Rcd. ¶87, at 11543.

⁸ *Vonage Holdings Corporation, v The Minnesota Public Utilities Commission*, 2003 U.S. Dist. LEXIS 18451

⁹ 133 FCC Rcd. ¶88, at 11543

¹⁰ *Id.*

'phone-to-phone' IP telephony. Because of the wide range of services that can be provided using packetized voice and innovative CPE, we will need, before making definitive pronouncements, to consider whether our tentative definition of phone-to-phone IP telephony accurately distinguishes between phone-to-phone and other forms of IP telephony, and is not likely to be quickly overcome by changes in technology. We defer a more definitive resolution of these issues pending the development of a more fully-developed record because we recognize the need, when dealing with emerging services and technologies in environments as dynamic as today's Internet and telecommunications markets, to have as complete information and input as possible."

The FCC then stated that "[i]n upcoming proceedings with the more focused records, we undoubtedly will be addressing the regulatory status of various specific forms of IP telephony, including the regulatory requirements to which phone-to-phone providers may be subject if we were to conclude that they are 'telecommunications carriers.' The Act and the Commission's rules impose various requirements on providers of telecommunications, including contributing to universal service mechanisms, paying interstate access charges, and filing interstate tariffs. We note that, to the extent we conclude that certain forms of phone-to-phone IP telephony service are 'telecommunications services,' and to the extent the providers of those services obtain the same circuit-switched access as obtained by other interexchange carriers, and therefore impose the same burdens on the local exchange as do other interexchange carriers, we may find it reasonable that they pay similar access charges. On the other hand, we likely will face difficult and contested issues relating to the assessment of access charges on these providers... We intend to examine these issues more closely based on the more complete records developed in future proceedings."¹¹

Finally, the FCC concluded that "[w]ith regard to universal service contributions, to the extent we conclude that certain forms of phone-to-phone IP telephony are interstate 'telecommunications,' and to the extent that providers of such services are offering those services directly to the public for a fee, those providers would be 'telecommunications carriers.' Accordingly, those providers would fall within section 254(d)'s mandatory requirement to contribute to universal service mechanisms."

III. Application of Law to Radiant.

In order for Radiant to be required to contribute to the USF it must be providing interstate "telecommunications" to the public. If, on the other hand, Radiant is providing "information services" it should not be required to contribute to the USF.

As noted above, Radiant derives all or substantially all of its revenues from providing VOIP services (i.e., IP telephony). Of the two main types of IP telephony, Radiant appears to provide phone-to-phone IP telephony. Namely, (i) it holds itself out as providing voice telephony or facsimile transmission service; (ii) it does not require the customer to use CPE different from that CPE necessary to place an ordinary touch-tone call (or facsimile transmission) over the public switched telephone network; (iii) it allows the customer to call telephone numbers assigned in accordance with the North

¹¹ 133 FCC Rcd ¶91, at 11545

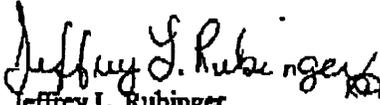
American Numbering Plan, and associated international agreements; and (iv) it transmits customer information without net change in form or content.

While the FCC has stated that phone-to-phone IP telephony "lacks the characteristics that would render them 'information services' within the meaning of the statute, and instead bear the characteristics of 'telecommunications services,'" the FCC also stated that it was not "appropriate to make any definitive pronouncements in the absence of a more complete records focused on individual service offerings." In other words, no decision has been made as of yet regarding whether phone-to-phone IP telephony constitutes "telecommunication services" or "information services," and thus, are part of the USF¹²

Given that the law in this area continues to evolve and no "definitive pronouncements" have been issued regarding whether companies, such as Radiant, are required to contribute to the USF, we are appealing the determination set forth in the attached Decision issued by the USAC and the initial determination issued by the FCC, finding Radiant liable for unpaid USF contributions.

If you need any additional information, please do not hesitate to contact me at (954) 985-4181.

Very truly yours,


Jeffrey L. Rubinger
For the Firm

JLR/tt

¹² It is also our understanding that the FCC is currently considering a petition from AT&T to declare that AT&T's phone-to-phone IP telephony services are exempt from interstate access charges on long-distance phone calls

Attachment 2

(Administrator's Decision)



Universal Service Administrative Company

Administrator's Decision

December 19, 2003

BY FEDERAL EXPRESS

Jeffrey L. Rubinger
Becker & Poliakoff, P.A.
3111 Stirling Road
Ft. Lauderdale, Florida 33312-6525

Re: Radiant Telecom, Inc. (Filer ID 822268)
Request for Decision of the Universal Service Administrative Company

Dear Mr. Rubinger:

The Universal Service Administrative Company (USAC) has completed its evaluation of the Letter of Appeal on behalf of Radiant Telecom, Inc. (Radiant) dated October 30, 2003, and subsequent letter dated November 20, 2003. Although styled a "Letter of Appeal," USAC construes these letters together as a Request for Decision (Request).

Background:

In accordance with Federal Communications Commission (FCC) rules and regulations, Radiant reported its revenue from the provision of telecommunications services on Universal Service Worksheet FCC Form 499-Q (Form 499-Q) that were due in May 2002, August 2002, November 2002, February 2003, August 2003, and November 2003, respectively. USAC relied on the revenue reported by Radiant in order to calculate and invoice Radiant for its required Federal Universal Service Fund (USF) contributions. Radiant asserts in its Request that "it derives all or substantially all of its revenues from voice-over IP telephony."¹ Radiant claims that the FCC has not determined whether or what types of voice-over IP telephony service (VOIP) are telecommunications services and that, therefore, Radiant is not subject to the USF contribution requirement. Radiant seeks to withdraw all of its previously filed Forms 499 and to have its previously paid USF charges reversed.

¹ Radiant indicates that the type of VOIP services it offers are commonly known as "phone-to-phone" IP Telephony.

Jeffrey L. Rubinger
Becker & Poliakoff, P.A.
December 19, 2003
Page 2 of 4

Discussion:

FCC regulations in force during the period at issue required carriers to file a Universal Service Worksheet FCC Form 499-Q quarterly and a Universal Service Worksheet FCC Form 499-A (Form 499-A) annually and required USAC to bill contributors based on reported revenues. *See generally* 47 C.F.R. Part 54.

Radiant did not file the Form 499-A that was due in April 2003 reporting 2002 annual revenue. However, Radiant reported revenue from the provision of telecommunications services on the Forms 499-Q that it submitted, beginning in May 2002. Radiant now asserts that "it derives all or substantially all of its revenues from voice-over IP telephony" and that such services are not "telecommunications services" for the purposes of USF assessment. In its Request, Radiant takes the position that the FCC 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

USAC does not have authority to determine whether VOIP services generally are telecommunications services for the purposes of USF assessment or whether Radiant's specific type of phone-to-phone VOIP services are telecommunications services. Furthermore, USAC does not have the authority to reverse Radiant's billings or to reclassify Radiant's revenue as non-telecommunications revenue.²

Accordingly, and for these reasons, Radiant's request that USAC reverse Radiant's previous USF assessments and allow Radiant to withdraw its previously filed Form 499s is denied.

If you disagree with USAC's decision, you may file an appeal with the FCC. Your appeal must be **POSTMARKED** within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via the United States Postal Service, you should direct the appeal to:

Federal Communications Commission
Office of the Secretary
445 – 12th Street, SW
Room TW-A325
Washington, DC 20554

² Moreover, as USAC has explained to Mr Rubinger, attorney for Radiant, in the event that Radiant simply stops filing Forms 499, USAC, as current procedures require, will continue to assess and invoice Radiant based upon estimated revenues derived from Radiant's previous filings.

Jeffrey L. Rubinger
Becker & Poliakoff, P.A.
December 19, 2003
Page 3 of 4

Documents sent by Federal Express of any other express mail should use the following address:

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743
(8:00 A.M. – 5:30 P.M. ET)

For hand-delivered or messenger-delivered items, use the following address:

Federal Communications Commission
Office of the Secretary
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002
(8:00 A.M. – 7:00 P.M.)

For security purposes, hand-delivered or messenger-delivered documents will not be accepted if they are enclosed in an envelope. Any envelopes must be disposed of before entering the building. Hand deliveries must be held together with rubber bands or fasteners.

Appeals may also be submitted to the FCC electronically, either by the Electronic Comment Filing System (ECFS) or by fax. The FCC recommends filing with the ECFS to ensure timely filing. Instructions for using ECFS can be found on the ECFS page of the FCC web site. Appeals to the FCC filed by fax must be faxed to 202-418-0187. Electronic appeals will be considered filed on a business day if they are received at any time before 12:00 A.M. (midnight), Eastern Standard Time. Fax transmissions will be considered filed on a business day if the complete transmission is received at any time before 12:00 A.M.

Please be sure to refer to CC Docket No. 96-45 on all communication with the FCC. The appeal transmission must also provide your company's name and Filer ID, plus necessary contact information, including the name, address, telephone number, fax number, and e-mail address of the person filing the appeal. Unless the appeal is by ECFS, please include a copy of the letter being appealed.

Sincerely,

USAC

Universal Service Administrative Company

Jeffrey L. Rubinger
Becker & Poliakoff, P.A.
December 19, 2003
Page 4 of 4

cc: Diane Law Hsu, FCC Wireline Competition Bureau
James Shook, FCC Enforcement Bureau

Attachment 3

(Radiant October 30 Letter)

LAW OFFICES

BECKER & POLIAKOFF, P.A.

3111 Stirling Road
Ft. Lauderdale, Florida 33312-6525
Phone: (954) 987-7550 Fax: (954) 985-4176
US Toll Free: 800-432-7712

Mailing Address:
P.O. Box 9057
Ft. Lauderdale, FL 33310-9057

Reply To:
Jeffrey L. Rubinger
Direct dial: (954) 985-4181
jrubinger@becker-poliakoff.com

Florida Offices

Administrative Office
3111 Stirling Road
Ft. Lauderdale, FL 33312
U.S. Toll Free: (800) 432-7712
hp@becker-poliakoff.com

Boca Raton*

Ft. Myers

Ft. Walton Beach

Hollywood

Jacksonville

Largo

Melbourne*

Miami

Naples

Orlando

Pon Charlotte*

Sarasota

Tallahassee

Tampa*

West Palm Beach

* available for consideration
by appointment only

**International and
Affiliated Offices**

Prague,
Czech Republic

Paris, France

Frankfurt, Germany

Beijing,
People's Republic
of China

Bern, Switzerland

October 30, 2003

Contributor Letter of Appeal
USAC
2120 L Street, N.W. Suite 600
Washington, D.C. 20037

Re: Radiant Telecom, Inc.
0007-2523-07
03US000028
Docket #96-45

Dear Sir or Madam:

This letter is an appeal to the notice entitled "Final Demand and Notice of Debt Transfer" (the "Notice") (a copy of which is attached) dated September 6, 2003, from the Federal Communications Commission to the above-referenced entity. According to such Notice, Radiant Telecom, Inc. ("Radiant") is liable to the Universal Service Administrative Company ("USAC") for unpaid Universal Service Fund ("USF") contributions, as well accrued administrative charges, in the amount of \$1,662,366.18. For the reasons set forth below, we believe that Radiant is not liable for these unpaid USF contributions, and therefore, we are appealing the initial determination made by the USAC.

I. Radiant in General.

Radiant is a telecommunications company with headquarters located in Coral Gables, Florida. Radiant derives all or substantially all of its revenues from voice-over IP telephony. In other words, as opposed to traditional telephone companies, which use circuit-switched technology, Radiant uses internet protocol ("IP") telephony or "packet switching," a process of breaking down data into packets of digital bits and transmitting them over the Internet.

This is accomplished by having customers dial up a gateway switch, which receives standard analog circuit-switched (i.e., TDM) phone calls and processes it via a voice data access concentrator ("VDAC") motherboard. The VDAC provides

 **CONSULEGIS 2810**
Member of Consulegis,
an International Association
of Law Firms.

Network of Leading Law Firms



"The Global Alliance of Law Firms Worldwide"

BECKER & POLIAKOFF, P.A.

Contributor Letter of Appeal
USAC
October 30, 2003
Page 2

distributed processing between media processing resources, the TDM and the voice-over IP ("VOIP") packet switching control.

The VOIP packets travel through the internet until they reach the digital destination encoded in its header information. Radiant's responsibility in this process is to convert the analog signals to digital data, move the data over the internet, and then transform the data back into an analog signal so that the receiving telephone (or fax machine) can terminate the communications as an analog signal. Radiant pays the network operators at either end of the network for access to their network facilities.

Additionally, the services that Radiant offers with regards to the prepaid application is as follows: (i) the customer dials a toll-free 800 or local access number from his phone; (ii) the call reaches the local central office, which then is forwarded by the underlying carrier to the Radiant gateways; (iii) Gateway controllers authorize and record the customer's access to the system through a series of lookups in the database; (iv) based on the dialed destination number, the database directs the gateway controller to route the call to the appropriate terminating gateway; (v) the database then informs the terminating gateway of the routed call and the incoming call is received by the terminating gateway; (vi) all activities including those on local phone lines, internet servers, internet access circuits, etc. are monitored by a network operating center; (vii) once the call reaches the terminating gateway, it is sent over the local telephone network to the called number; and (viii) the called party answers the call.

All call routing between the originating and the terminating gateways and the database lookups to control the routing and directing the traffic are done as VOIP. The originating gateway packetizes the call to be delivered on the IP network and the terminating gateway unpacketizes the same call before sending it over local public switched telephone network ("PSTN") lines to the local carrier.

II. Current Status of the Law.

In general, every "telecommunications carrier that provides interstate telecommunications services is required to contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service (*i.e.*, the Universal Service Fund)."¹ A telecommunication carrier is defined as an entity that provides interstate "telecommunications" to the public, or to such classes of users

¹ 47 USC §254(d).

Contributor Letter of Appeal
USAC
October 30, 2003
Page 3

as to be effectively available to the public, for a fee.² The term "telecommunications" is defined as the "transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."³

Companies that provide "information services," however, are not required to contribute to the USF.⁴ "Information service" is defined as "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."⁵

In a report before Congress (*i.e.*, the Universal Service Report),⁶ the FCC distinguished two types of IP telephony: (i) computer-to-computer telephony, and (ii) telephone-to-telephone telephony. With regard to the first type of IP telephony (*i.e.*, computer-to-computer), the FCC stated that the "[i]nternet service provider does not appear to be 'providing' telecommunications to its subscribers."⁷ Recently, the U.S. District Court for the District of Minnesota also held that a telecommunications company that derived all of its revenue from computer-to-computer VOIP telephony was providing "information services" rather than "telecommunications services" and therefore was not subject to Minnesota laws that regulate telephone companies.⁸

In regard to the second type of IP telephony (*i.e.*, phone-to-phone), the FCC stated that it "appears to present a different case."⁹ The FCC defined "phone-to-phone" IP telephony as meeting four conditions: (i) it holds itself out as providing voice telephony or facsimile transmission service; (ii) it does not require the customer to use customer premises equipment (CPE) different from that CPE

² 47 CFR §54.706(a). Interstate telecommunications include, but are not limited to, (i) cellular telephone and paging services; (ii) mobile radio services; (iii) operator services; (iv) personal communications services (PCS); (v) access to interexchange service; (vi) special access service; (vii) WATS; (viii) toll-free service; (ix) 900 service; (x) message telephone service (MTS); (xi) private line service; (xii) telex; (xiii) telegraph; (xiv) video services; (xv) satellite service; (xvi) resale of interstate services; and (xvii) payphone services. *Id.*

³ 47 USC §153(43).

⁴ 133 FCC Rcd. ¶43, at 11523.

⁵ 47 USC §153(20).

⁶ 133 FCC Rcd. 11501.

⁷ 133 FCC Rcd. ¶87, at 11543.

⁸ *Vonage Holdings Corporation, v. The Minnesota Public Utilities Commission*, 2003 U.S. Dist. LEXIS 18451.

⁹ 133 FCC Rcd. ¶88, at 11543.

Contributor Letter of Appeal
USAC
October 30, 2003
Page 4

necessary to place an ordinary touch-tone call (or facsimile transmission) over the public switched telephone network; (iii) it allows the customer to call telephone numbers assigned in accordance with the North American Numbering Plan, and associated international agreements; and (iv) it transmits customer information without net change in form or content.¹⁰

Based on this definition, the FCC stated that "the record currently before us suggests that this type of IP telephony lacks the characteristics that would render them 'information services' within the meaning of the statute, and instead bear the characteristics of 'telecommunications services.'" Nevertheless, the FCC stated that "[w]e do not believe, however, that it is appropriate to make any definitive pronouncements in the absence of a more complete record focused on individual service offerings. As stated above, we use in this analysis a tentative definition of 'phone-to-phone' IP telephony. Because of the wide range of services that can be provided using packetized voice and innovative CPE, we will need, before making definitive pronouncements, to consider whether our tentative definition of phone-to-phone IP telephony accurately distinguishes between phone-to-phone and other forms of IP telephony, and is not likely to be quickly overcome by changes in technology. We defer a more definitive resolution of these issues pending the development of a more fully-developed record because we recognize the need, when dealing with emerging services and technologies in environments as dynamic as today's Internet and telecommunications markets, to have as complete information and input as possible."

The FCC then went on to state that "[i]n upcoming proceedings with the more focused records, we undoubtedly will be addressing the regulatory status of various specific forms of IP telephony, including the regulatory requirements to which phone-to-phone providers may be subject if we were to conclude that they are 'telecommunications carriers.' The Act and the Commission's rules impose various requirements on providers of telecommunications, including contributing to universal service mechanisms, paying interstate access charges, and filing interstate tariffs. We note that, to the extent we conclude that certain forms of phone-to-phone IP telephony service are 'telecommunications services,' and to the extent the providers of those services obtain the same circuit-switched access as obtained by other interexchange carriers, and therefore impose the same burdens on the local exchange as do other interexchange carriers, we may find it reasonable that they pay similar access charges. On the other hand, we likely will face difficult and contested issues relating to the assessment of access charges on these

¹⁰ Id.

Contributor Letter of Appeal
USAC
October 30, 2003
Page 5

providers...We intend to examine these issues more closely based on the more complete records developed in future proceedings."¹¹

Finally, the FCC concluded that "[w]ith regard to universal service contributions, to the extent we conclude that certain forms of phone-to-phone IP telephony are interstate 'telecommunications,' and to the extent that providers of such services are offering those services directly to the public for a fee, those providers would be 'telecommunications carriers.' Accordingly, those providers would fall within section 254(d)'s mandatory requirement to contribute to universal service mechanisms."

It is also important to note that, without distinguishing between computer-to-computer and phone-to-phone IP telephony, FCC Chairman Michael Powell recently stated at a news conference that the FCC planned to become more involved in the debate over how - or whether - VOIP should be regulated. Specifically, Chairman Powell stated that "[w]e're probably going to hold a hearing this fall and we're probably going to initiate a notice of inquiry to begin examining voice-over IP issues and the proper classification."¹² This statement, along with the FCC's other statements in the Universal Service Report, appear to indicate that the FCC has yet to decide whether VOIP service providers (particularly phone-to-phone IP telephony) constitutes "telecommunications services" and therefore are required to contribute to the USF.

III. Application of Law to Radiant.

In order for Radiant to be required to contribute to the USF it must be providing interstate "telecommunications" to the public. If, on the other hand, Radiant is providing "information services" it should not be required to contribute to the USF.

As noted above, Radiant derives all or substantially all of its revenues from providing VOIP services (*i.e.*, IP telephony). Of the two main types of IP telephony, Radiant appears to provide phone-to-phone IP telephony. Namely, (i) it holds itself out as providing voice telephony or facsimile transmission service; (ii) it does not require the customer to use CPE different from that CPE necessary to place an ordinary touch-tone call (or facsimile transmission) over the public switched telephone network; (iii) it allows the customer to call telephone numbers assigned in accordance with the North American Numbering Plan, and associated

¹¹ 133 FCC Rcd. ¶91, at 11545.

¹² "Powell Says It's Time to Tackle VoIP," Washington Internet Daily, October 2, 2003, Vol. 4, No. 191.

Contributor Letter of Appeal
USAC
October 30, 2003
Page 6

international agreements; and (iv) it transmits customer information without net change in form or content.

While the FCC has stated that phone-to-phone IP telephony "lacks the characteristics that would render them 'information services' within the meaning of the statute, and instead bear the characteristics of 'telecommunications services,'" the FCC also stated that it was not "appropriate to make any definitive pronouncements in the absence of a more complete records focused on individual service offerings." In other words, no decision has been made as of yet regarding whether phone-to-phone IP telephony constitutes "telecommunication services" or "information services," and thus, are part of the USF.¹³

Given that the law in this area continues to evolve and no "definitive pronouncements" have been made regarding whether companies, such as Radiant, are required to contribute to the USF, we respectfully are appealing the preliminary decision set forth in the attached Notice finding Radiant liable for unpaid USF contributions. We realize this letter is being sent beyond the thirty-day limit that was set forth in the Notice. We have been assured, however, by Timothy Peterson, an attorney at the FCC, that Radiant's account will not be sent over to the United States Department of Treasury for collection at this time.

If you need any additional information, please do not hesitate to contact me at (954) 985-4181.

Very truly yours,


Jeffrey L. Rubinger
For the Firm

JLR/tt

¹³ It is also our understanding that the FCC is currently considering a petition from AT&T to declare that AT&T's phone-to-phone IP telephony services are exempt from interstate access charges on long-distance phone calls.

Attachment 4
(Radiant November 20 Letter)

LAW OFFICES

BECKER & POLIAKOFF, P.A.

3111 Stirling Road
Ft. Lauderdale, Florida 33312-6525
Phone: (954) 987-7550 Fax: (954) 985-4176
US Toll Free: 800-432-7712

Reply To:
Jeffrey L. Rubinger
Direct dial: (954) 985-4181
jrubinger@becker-poliakoff.com

November 20, 2003

Florida Offices

Administrative Office
3111 Stirling Road
Ft. Lauderdale, FL 33312
U.S. Toll Free: (800) 432-7712
bp@becker-poliakoff.com

Boca Raton*

Pt. Myers

Pt. Walton Beach

Hollywood

Jacksonville

Largo

Melbourne*

Miami

Naples

Orlando

Port Charlotte*

Sarasota

Tallahassee

Tampa*

West Palm Beach

* available for consultation
by appointment only

**International and
Affiliated Offices**

Prague,
Czech Republic

Paris, France

Frankfurt, Germany

Beijing,
People's Republic
of China

Bern, Switzerland

Contributor Letter of Appeal
USAC
2120 L Street, N.W. Suite 600
Washington, D.C. 20037

Re: Radiant Telecom, Inc.
0007-2523-07
03US000028
Docket #96-45

Dear Sir or Madam:

On October 30, 2003, we filed an appeal (a copy of which is attached) to a "Final Demand and Notice of Debt Transfer" on behalf of the above-referenced entity, Radiant Telecom, Inc. ("Radiant"), regarding unpaid contributions to the Universal Service Fund ("USF"). On November 17, we had a telephone conversation with Tracy Beaver, Esq. and other personnel from your office who advised us that technically there is nothing we can appeal at this point.

Based on this conversation we are requesting that all Form 499s that have been filed on behalf of Radiant be revoked and treated as if they have never been filed. We are also requesting that Radiant be removed from the Universal Service Administrative Company reporting system so that it is no longer treated as if it is automatically liable for additional USF contributions. We were told that by making these requests, this would create an issue we could appeal and thus eventually allow the Federal Communication Commission to review our case on the merits.

If you have any questions regarding this request, please contact me at (954) 985-4181.

Very truly yours,

Jeffrey L. Rubinger
Jeffrey L. Rubinger
For the Firm

 **CONSULEGIS** INC
Member of Consulegis,
an International Association
of Law Firms.

JLR/
816573_1.DOC

NETWORK OF LEADING LAW FIRMS



* 27 Global Members of Our Firm Represented in the Network

Attachment 5

(USF Assessment Letter)



Federal Communications Commission
Washington, D.C. 20554

December 10, 2003

Radiant Telecom, Inc.
1020 NW 163 Dr.
Miami, FL 33169
Attn: Korhan Aydin

**RE: IMPORTANT INFORMATION DO NOT DISCARD -FINAL DEMAND AND
NOTICE OF DEBT TRANSFER**
Radiant Telecom, Inc. Filer ID 822268
0007-2523-07
04US000312

The Universal Service Administrative Company (USAC) notified the entity referenced above (You or Debtor) previously and provided other correspondence concerning a Debt due and payable to the federal Universal Service Fund (USF) (a debt owed to the United States). The Debt results from Debtor's non-payment of USF contributions. Because Debtor failed to pay this Debt and the accrued administrative charges, it has been referred to the Federal Communications Commission (Commission or FCC) for further collection effort. The Commission has determined that the outstanding Debt, including presently accrued administrative charges owed to the USF is \$ 679,361.49 to date. This Notice is a Demand for payment to be remitted no later than 30 days from the date of this Notice.

**THE FOLLOWING PROVISIONS PROVIDE IMPORTANT INFORMATION AND A
DESCRIPTION OF LEGAL RIGHTS AND OBLIGATIONS**

1. Debtor is cautioned that failure to remit the demanded payment on or before the Last Due Date will result in further sanctions, including, but not limited to, the initiation of proceedings to recover the outstanding debt, together with any applicable administrative charges, penalties, and interest pursuant to the provisions of the Debt Collection Act of 1982 (Public Law 97-365) and the Debt Collection Improvement Act of 1996 (Public Law 104-134), as amended (the DCIA), as set forth below.

2. If we do not receive full payment of the outstanding Debt plus accrued administrative charges within 30 days of the date of this letter (Last Due Date), pursuant to the DCIA, You may incur additional charges and costs, and we will transfer the Debt to the United States Department of Treasury (Treasury) or the United States Department of Justice for debt collection. The FCC has determined that the funds are owed to the United States pursuant to the provisions of 31 U.S.C. § 3701 and 47 U.S.C. § 254. Because the unpaid amount is a debt owed to the United States, we are required by the DCIA to impose interest, processing charges, and penalties (31 U.S.C. § 3717(e)), and to inform You what may happen if You do not pay the full outstanding debt. Under the DCIA, the United States will charge interest from the date of this notice (Demand Date), you will be required

to pay the administrative costs of processing and handling a delinquent debt to date, as well as the administrative costs as set by the Treasury (currently 18% of the debt), and You will be charged an additional penalty of 6% a year for any part of the debt that is more than 90 days past due. Interest on the outstanding debt (DCIA Interest) will be assessed at the published investment rate for the Treasury tax and loan accounts (Treasury Current Value of Funds Rate). However, if You pay the full amount of the outstanding Debt and associated administrative costs and penalties within 30 days of the Demand Date, the DCIA Interest will be waived. These requirements are set out at 31 U.S.C. § 3717.

3. When we transfer the Debt (to the Treasury), You may be subject to other administrative proceedings. Your failure to pay the Debt may be reported to credit bureaus (*see* 31 U.S.C. § 3711(e)), the Debt will be considered for administrative offset (*see* 31 U.S.C. § 3716), the Debt may be further transferred to collection agencies (*see* 31 U.S.C. §§ 3711 & 3718), and also the Debt may be referred to the United States Department of Justice or agency counsel for litigation. In that situation, You may be subject to additional administrative costs that result from the litigation. Moreover, pursuant to 31 U.S.C. § 3720B, a person owing an outstanding nontax debt that is in delinquent status shall not be eligible for Federal financial assistance. You should be aware that the discharge of any portion of the debt may be reported to the Internal Revenue Service as potential taxable income.

Rights of Inspection, Review, and Repayment Agreement

4. You (through Your previously designated authorized representative) have a right to inspect and copy the invoices and other records that are pertinent to Your Debt, and You may request that we review the records pertaining to the Debt and You may, in connection with that request and review, present evidence that all or part of the Debt is not past due or legally enforceable. Finally, You have an opportunity to enter into a written repayment agreement (Promissory Note) to pay the full amount of the Debt. In that case, You must first provide evidence that demonstrates financial inability to pay the debt in one payment. Your claim of financial inability to pay in one payment is subject to verification (*see* 31 CFR § 901.8), and if Your request is approved for further processing, You will be required to execute a written agreement suitable to the Commission. If You desire to exercise any of these above described rights, You must do so in writing delivered to and received at the address below within 10 (ten) days of the Demand Date. Any required evidence must be submitted at the same time that You submit your request. Failure to provide the written request (and, as appropriate, the required evidence) within the stated time is a waiver of these rights.

5. You may notify us in writing by mail or email to the following addresses:

**Federal Communications Commission
Attn: Revenue and Receivables Operations Group
445 12th Street S.W., Room 1-A821
Washington, DC 20554**

Email: ARINQUIRIES@fcc.gov

When You pay the Debt, your remittance must be delivered in a manner so as be received on or before the Last Due Date by the Commission at the following address:

**Federal Communications Commission
P.O. Box 358340
Pittsburgh, PA 15251-5340**

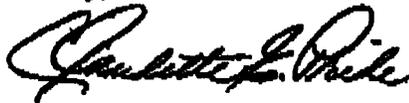
If the Commission does not receive the full payment of the Debt (as computed to the date of payment) by the Last Due Date, the Commission will promptly transfer the Debt to the Treasury or the United States Department of Justice for collection. As noted above, transfer of the Debt may result in sanctions, including, but not limited to, substantial additional costs and fees pursuant to the provisions of the DCIA.

If this debt has been satisfied or otherwise mitigated, You/Debtor must, before the Last Due Date, provide evidence satisfactory to the Commission, such as a verified copy of the cancelled check, which satisfied the full amount of the Debt, or a Resolution Letter issued by USAC or the Commission, together with a copy of this Notice to the Commission at the following address:

**Federal Communications Commission
Attn: Revenue and Receivables Operations Group
445 12th Street S.W., Room 1-A821
Washington, DC 20554**

If You have any questions, please contact the Revenue and Operations Group at (202) 418-1995 or by email to **ARINQUIRIES@fcc.gov**.

Sincerely,



**Claudette E. Pride
Chief
Revenue and Operations Group**

CERTIFICATE OF SERVICE

I, Angela F. Collins, hereby certify that on this 17th day of September 2004, I filed, via ECFS, the foregoing Amended and Supplemental Request for Review and accompanying Affidavits and Attachments with Secretary Marlene H. Dortch of the Federal Communications Commission, and served one (1) copy on each of the following:

Universal Service Administrative Company
2000 L Street, NW
Suite 200
Washington, DC 20036
Via facsimile and First-class U.S. mail, postage prepaid

Cathy Carpino
Deputy Division Chief
Telecommunications Access Policy Division
Wireline Competition Bureau
445 12th Street, SW
Washington, DC 20554
Via electronic mail



Angela F. Collins