



thus confirming the existence of questions as to whether Next-G has the requisite character qualifications to be a Commission licensee and the question of whether the Commission can grant a certificate to Next-G unless Next-G brings itself into compliance with the Commission's rules.

Next-G makes two arguments as to why the Commission should deny APCC Services' request. First, Next-G asserts that APCC Services' only interest in this proceeding is its private interests in collecting the dial around payphone compensation that Next-G has not paid. As we discuss below, Next -G is mistaken; the issue here is not APCC Services' private interests in collecting the compensation that Next-G has not paid APCC Services' payphone service provider ("PSP") customers; the issue here is the public issue of the Commission's duty to vindicate it's rules and the statute the Commission administers by not granting licenses to applicants who are in admitted blatant violation of Commission rules the applicant has specifically vowed to observe.

The second defense is that Next-G allegedly has discovered that it may not owe dial around compensation on calls from some of the telephones lines, referred to as "ANI"s, for which PSPs, through APCC Services, have submitted a request for compensation because in fact they are not payphone lines. Apart from the procedural deficiencies of the pleading (none of the facts alleged are specific and none is supported by declaration of a person having knowledge of the facts alleged), and apart from failing to recite that Next-G has complied with the Commission's procedures for ascertaining what lines are PSP lines, there is still another problem with Next-G's alleged defense. The Commission's rules specifically provide for what happens when a PSP submits a request for compensation for calls from a line that, through the verification procedures outlined in the Commission's rules and orders, the Completing Carrier verifies is not a payphone line. The rules allow the Completing Carrier to withhold payment for

completed calls *from those* lines that the Completing Carrier has verified are no longer in service as payphone lines. But that cannot conceivably justify a Completing Carrier's *failure to pay for all completed calls* from validated ANIs that did emanate from payphone lines.

We discuss each of these points in turn.

**A. Public v. Private Interest**

Next-G postulates that APCC Services in intervening in this proceeding in order to resolve a private billing dispute between it and Next-G. While there is no question that APCC Services is in a billing dispute with Next-G, APCC Services is fully aware that no order coming out of this proceeding will resolve that dispute, and has not intervened in this proceeding to resolve its billing dispute with Next-G.<sup>6</sup> Rather, APCC Services filed in this proceeding to raise basic character issues regarding Next-G's qualifications to hold a Commission certificate in light of Next-G's failure to adhere to Commission rules –an issue of public interest. Thus, the issue is not whether APCC Services' interests, narrow and private that they may or may not be, will be served; the issue is whether the public purpose of ensuring the integrity of the Commission's processes and the character of its grantees will be served. And clearly, these latter interests will be served.<sup>7</sup>

Next-G cites *SBC Communications v. FCC*, 56 F. 3d 1484, 1492-3 (D.C. Cir. 1995) and *United Telephone Co. of the Carolinas v. FCC*, 559 F.2d 720, 723 (D.C. Cir. 1977) in support of

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<sup>6</sup> APCC Services fully understands that to obtain an order from the Commission for Next-G to pay the dial around compensation for which Next G is in arrears, APCC Services would have to proceed under Sections 206-208 of the Act and related rules.

<sup>7</sup> It may be true that one of the consequences of Next-G's coming into compliance with the Commission's rules is that Next-G will have to pay APCC Services the payphone compensation owed to APCC Services PSP customers. But that does not defeat the public interest in ensuring that Commission grantees comply with Commission rules.

the proposition that the Commission is mandated to protect the public interest and not to provide a forum for the resolution of private disputes. Both of those cases are totally inapposite.

In *SBC*, Bellsouth had challenged a wireless merger and lost before the Commission. The court upheld the Commission because the conditions on the merger sought by BellSouth were designed to facilitate only the private interests of BellSouth by restricting the merged entity's ability to compete with BellSouth. 56 F.3d 1492. There was no issue of compliance with the Commission's rules by the merged entity. In the instant case, the relief sought by APCC Services serves the public interest by requiring Next-G to comply with the Commission's rules and/or preventing a putative Commission certificate holder who is not willing to comply with Commission rules from becoming a Commission grantee, clearly a public purpose. Any condition imposed by the Commission would involve compliance with Commission rules.

*United Telephone* is even more inapposite here. In that case, United Telephone and Southern Bell were in a dispute under the division of revenues scheme that was in place prior to the 1984 break up of the Bell System. As relevant here, United Telephone sought to have the Commission order a different division under an interim agreement pursuant to which Southern Bell and United Telephone were operating, and the Commission declined. The court upheld the Commission, saying that the Commission was justified in refusing to intervene since the purpose of the Act was not to provide a forum for the resolution of the private contractual dispute between the parties.<sup>8</sup> 559 F.2d 723.<sup>9</sup> In the instant case, APCC Services is not seeking to

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<sup>8</sup> In a related vein, Next-G is correct that the non-payment to APCC Services by Next-G, to the extent it is a private dispute and a matter of private relief between two disputing parties, can be resolved through the Commission's processes for resolving complaints. *See Next-G Opposition at 6, and cases cited in n. 15.* APCC Services fully understands this point. *See Note 6, supra.* That does not mean that, as discussed in the text, the Commission does not have an independent public interest in keeping blatant violators of its rules like Next-G from being grantees of Commission certificates.

<sup>9</sup> United Telephone had also asked the Commission to hold a hearing to determine a new division of revenues because it claimed the existing arrangement between the parties violated

resolve any contractual dispute with Next-G. APCC Services is calling to the Commission's attention Next-G's failure to comply with the Commission's rules, and clearly, the Act contemplates that the Commission will enforce its own rules.

Next-G also cites *UCN, Inc*, WC Dkt. No. 05-198, DA 05-2796, at ¶ 9 (rel. October 25, 2005) for the proposition that APCC Services should rely on the Commission's complaint processes rather than proceedings such as approvals of transactions to obtain relief in its private disputes with carriers over payphone compensation. But as APCC Services has already acknowledged in the discussion above, it recognizes that its private relief will not be granted in this proceeding, and private relief is not what was involved in *UCN*. Indeed, APCC Services had already filed a Section 208 action at the Commission against the Completing Carrier involved in that proceeding. The issue in *UCN* was whether the Commission would lose its jurisdiction and authority to order relief in the Section 208 proceeding if it granted the transfer in question which would allow the transferor Completing Carrier to exit the telecommunications business and lose its status as a carrier. The Commission simply ruled that it retained jurisdiction over the transferor and therefore it need not delay the transfer. That is different than the issue here. The issue here is whether the applicant, Next-G, is qualified to be a Commission grantee until it brings itself into compliance with Commission rules it has been and remains in blatant violation of despite its explicit pledge to comply with the rules.

**B. Alleged non-Payphone ANIs**

Next-G claims that *some* of the ANIs for which APCC Services submitted a request for compensation were not payphone ANIs and it therefore has withheld compensation for *all* the

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(Footnote continued)

Section 201 in that it did not yield high enough revenues to United Telephone. The Commission declined, and was upheld by the court.

ANIs pending its investigation. *Next-G Opposition at 4.*<sup>10</sup> There are at least three fundamental problems with Next-G's proffered defenses.

**1. Lack of Declaration and Failure to Allege Specific Facts.**

Next-G has submitted no declaration of a person with knowledge of the facts in support of its alleged factual allegations. Moreover, the factual allegations are not specific enough to allow a response; Next-G does not say which ANIs it is talking about, merely saying they are in certain geographic regions of the country. Nor does it say how its alleged "testing" of the "sample" payphone ANIs was conducted so there can be no analysis of the "testing" nor testing of the "testing." The Commission's rules generally require allegations of fact to be supported by relevant documentation or an affirming statement of a person with first hand knowledge of the facts.<sup>11</sup> Moreover, facts generally must be pleaded with specificity.<sup>12</sup> Next-G's reckless and unsubstantiated allegations well illustrate why. The Commission should give no credence to Next-G's unsupported and baseless charges.

**2. Failure to Follow Specific Commission Rules on Authenticating ANIs.**

A related problem is the second fatal deficiency in Next-G's alleged facts. To ensure that Completing Carriers such as Next-G can authenticate the validity of payphone ANIs and calls

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<sup>10</sup> While Next-G acknowledges that "the specific facts of the dispute [between Next-G and APCC Services ] are irrelevant", *id.*, it nonetheless goes on to recite a fantasy version of the facts in the dispute. Apart from the other deficiencies with Next-G's recitation of the alleged "facts" of the dispute, discussed in the text following this note, the *Next-G Opposition* is the first time APCC Services has heard of these "facts." Next-G has not communicated its alleged basis for its failure to comply with the Commission's payphone compensation rules. *See Declaration of Ruth Jaeger, attached hereto ("Jaeger Declaration")*. As far as APCC Services is aware and concerned, the only dispute between Next-G and APCC Services was Next-G's failure to pay the payphone dial around compensation as the payments became due under the Commission's rules—payments Next-G still has not made- and which Next-G has now admitted it did not make.

<sup>11</sup> *See, e.g.*, 47 CFR § 1.720(c).

<sup>12</sup> *See, e.g.*, 47 CFR § 1.720(a).

from payphones, the rules provide Completing Carriers with specific protective safeguards. Moreover, it is the Completing Carrier, a status Next-G has admitted, that has the responsibility to verify that calls originate from payphones using these methods.

Dial-around calls generally are transmitted with special coding digits identifying them as payphone-originated calls. It is clearly the carrier's responsibility to determine whether calls are transmitted with a relevant "payphone-specific" code.<sup>13</sup> Next-G alleges no facts about whether it used its tracking system to authenticate its alleged facts that some of the ANIs submitted to it were not payphone lines. But even if it had done so, that would not exonerate Next-G's failure to pay.

The Commission has also specifically addressed the possibility of non-payphone lines being submitted to carriers for compensation. LECs are required to maintain quarterly lists of payphone lines and to make them available to Completing Carriers on request for the express purpose of verifying whether the calls tracked by carriers originated from payphone lines.<sup>14</sup> The Commission's rules provide that Completing Carriers such as Next-G are only required to pay compensation for payphones on the lists of verified payphone lines.<sup>15</sup> Completing Carriers may dispute payment for any payphone that does not appear on a LEC list, absent the PSP's provision of alternative reasonable verification as to the existence of a working payphone. But if a payphone line does appear on the LEC lists, Completing Carriers have an absolute obligation to pay compensation for that line.<sup>16</sup> Moreover, once a LEC makes a positive identification of an

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<sup>13</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Memorandum Opinion and Order, 13 FCC Rcd 4998, ¶¶ 1-2 (1998).

<sup>14</sup> *See* 47 C.F.R. §§ 64.1310(d)-(f); *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 20541, 20597 (1996).

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

installed payphone, the carrier-payor must accept claims for that payphone's ANI until the LEC provides information, on a timely basis, that the payphone has been disconnected. . . . Carrier-payors are not required to pay compensation once the LEC verifies that the particular ANI is not associated with a COCOT line for which compensation must be paid.<sup>17</sup>

In summary, the FCC regulations provide for protective measures that carriers can take in carrying out their obligation to track and pay for dial-around calls to make sure that they pay only for compensable calls from payphone ANIs. Next-G says absolutely nothing about whether the ANIs from which it withheld compensation were on a LEC list. Next-G certainly never disputed its obligation to pay on those ANIs in the Completing Carrier reports it was supposed to file under the rules because it did not file Completing Carrier reports for the quarters for which it has not currently paid.<sup>18</sup> Thus, Next-G has proffered no facts that would excuse it under the Commission's rules from paying payphone compensation to any ANI as it became due.

**3 Even if Next-G Had Validly Disputed Some ANIs, Which It Did Not, The Dispute Over Some ANIs Could Not Excuse Its Failure to Pay On All ANIs.**

Finally, even if Next-G had followed the Commission's procedures for properly disputing some of the ANIs submitted by APCC Services, that could not excuse it from paying on all ANIs. Indeed, it would make no sense for the Commission to have specific procedures for contesting specific, individual ANIs and procedures to resolve those disputes except to prevent the absurd result for which Next-G contends—that it can arbitrarily withhold compensation from all ANIs based on its alleged dispute over some ANIs. There is no way for APCC Services to

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<sup>17</sup> *Id.*

<sup>18</sup> *See Jaeger Declaration* at ¶ 6. Indeed it is APCC Services' understanding that Next-G does not get LEC lists nor has Next G opted to use the services of a carrier clearinghouse, whose functions include ANI verification using LEC lists.



notify its customers of the dispute so they can take rectifying action and invoke their rights under the Commission's rules because there is no way to know which PSPs to notify.<sup>19</sup>

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Accordingly, the Commission should deny the Application streamlined treatment, conduct an appropriate inquiry and gives parties, such as APCC Services, the opportunity to participate, and deny the Application.

Respectfully Submitted,



Albert H. Kramer  
Dickstein Shapiro LLP  
1825 Eye Street, NW  
Washington, DC 20006  
Tel. (202) 420-2200  
Fax (202) 420-2201

*Attorneys for APCC Services, Inc.*

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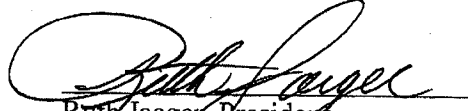
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<sup>19</sup> *Id.* ¶ 5. Nor should the Commission countenance any attempt by Next-G to launch a challenge to massive numbers of ANIs without resort to the Commission's rules providing that before declining to pay payphone compensation on an ANI, the Completing Carrier must show that the ANI in question has been disconnected.



I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on December 28, 2009



Ruth Jaeger, President  
APCC Services, Inc

**CERTIFICATE OF SERVICE**

I hereby certify that on December 28, 2009, I caused a copy of the foregoing Reply Comments of APCC Services, Inc., in Application No. ITC-214-20091110-00468, to be served by Hand Delivery, E-Mail or First-Class Mail as indicated below, to the following:

(Electronic Filing)  
Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW, TW-A325  
Washington, DC 20554

(By E-Mail and First-Class Mail)  
Ted A. Cox, P.C.  
Attorney at Law  
4910 Dacoma, Suite 100  
Houston, Texas 77092  
[Ted@Tedacox.com](mailto:Ted@Tedacox.com)

(Electronic Filing)  
IBFS

(By E-Mail and First-Class Mail)  
Jonathan S. Marashalian  
Helein & Marashlian, LLC, The  
CommLaw Group  
1483 Chain Bridge Road, Suite 301  
McLean, Virginia 22101  
[jsm@commlawgroup.com](mailto:jsm@commlawgroup.com)

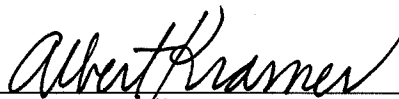
(By E-Mail)  
George S. Li  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554  
[George.li@fcc.gov](mailto:George.li@fcc.gov)

(By E-Mail)  
David Kretch  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554  
[David.kretch@fcc.gov](mailto:David.kretch@fcc.gov)

(By E-Mail)  
Hillary DeNigro  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554  
[hillary.denigro@fcc.gov](mailto:hillary.denigro@fcc.gov)

(By E-Mail)  
Genaro Fullano  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554  
[Genaro.fullano@fcc.gov](mailto:Genaro.fullano@fcc.gov)

(By E-Mail)  
Tracy Bridgham  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554  
[Tracy.bridgham@fcc.gov](mailto:Tracy.bridgham@fcc.gov)

  
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Albert H. Kramer